

House Bill 828

By: Representatives Hembree of the 67th, Talton of the 145th, Purcell of the 159th, Hanner of the 148th, Neal of the 1st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 15 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated,
2 relating to serious traffic offenses, so as to modify provisions relating to fleeing or attempting
3 to elude a pursuing police vehicle or police officer; to increase the penalty for fleeing or
4 attempting to elude under certain circumstances; to provide for the forfeiture of vehicles used
5 to flee or elude a pursuing police vehicle; to provide for related matters; to provide for an
6 effective date and applicability; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 15 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to
10 serious traffic offenses, is amended by repealing Code Section 40-6-395, relating to fleeing
11 or attempting to elude a pursuing police vehicle or police officer, and enacting a new Code
12 Section 40-6-395 to read as follows:

13 "40-6-395.

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

21 (b) Any person violating the provisions of subsection (a) of this Code section shall be
22 guilty of a felony punishable by a fine of not less than \$1,500.00 nor more than \$5,000.00
23 or imprisonment for not less than one year nor more than five years or both.

24 (c) For the purpose of imposing a sentence under this Code section, a plea of nolo
25 contendere shall constitute a conviction.

26 (d) A charge for a violation of this Code section shall not be merged with any other
 27 offense or served concurrently with any other offense.

28 (e) It shall be unlawful for a person:

29 (1) To impersonate a sheriff, deputy sheriff, state trooper, agent of the Georgia Bureau
 30 of Investigation, agent of the Federal Bureau of Investigation, police officer, or any other
 31 authorized law enforcement officer by using a motor vehicle or motorcycle designed,
 32 equipped, or marked so as to resemble a motor vehicle or motorcycle belonging to any
 33 federal, state, or local law enforcement agency; or

34 (2) Otherwise to impersonate any such law enforcement officer in order to direct, stop,
 35 or otherwise control traffic."

36 **SECTION 2.**

37 Said article is further amended by adding a new Code section to read as follows:

38 "40-6-395.1.

39 (a) Except as provided in subsections (d) through (i) of this Code section, any motor
 40 vehicle operated by a person who is arrested and charged with a violation of Code Section
 41 40-6-395 relating to fleeing or attempting to elude a pursuing police vehicle is declared to
 42 be contraband and subject to forfeiture, as provided in this Code section, provided that said
 43 forfeiture shall not be absolute unless the defendant is finally convicted of such offense.

44 (b) Any motor vehicle subject to forfeiture under subsection (a) of this Code section shall
 45 be seized immediately upon discovery by any law enforcement officer, peace officer, or
 46 law enforcement agency of this state or any political subdivision thereof who has the power
 47 to make arrests and whose duty it is to enforce this article that said motor vehicle has been
 48 declared contraband. Said motor vehicle shall be delivered within 20 days to the district
 49 attorney whose circuit includes the county in which a seizure is made or to his or her duly
 50 authorized agent. At any time subsequent to the seizure, the chief officer of the seizing
 51 agency, his or her designee, or the district attorney may release the vehicle upon bond
 52 being posted in like manner as authorized in subsection (e) of this Code section.

53 (c) Within 60 days from the date of the seizure, the district attorney of the judicial circuit,
 54 or the director on his or her behalf, shall cause to be filed in the superior court of the county
 55 in which the motor vehicle is seized or detained an action for condemnation of such motor
 56 vehicle. The proceedings shall be brought in the name of the state by the district attorney
 57 of the circuit in which the motor vehicle was seized, and the action shall be verified by a
 58 duly authorized agent of the state in a manner required by the law of this state. The action
 59 shall describe the motor vehicle and state its location, present custodian, and the name of
 60 the owner; allege the essential elements of the violation which is claimed to exist; and
 61 conclude with a prayer of due process to enforce the forfeiture. Upon the filing of such an

62 action, the court shall promptly cause process to issue to the present custodian in
63 possession of the motor vehicle described in the action, commanding him or her to seize
64 the motor vehicle in the action and to hold that motor vehicle for further order of the court.
65 The owner, lessee, or any person having a duly recorded security interest in or lien on such
66 motor vehicle shall be notified by any means of service provided for in Title 9 or by
67 delivery of a copy of the complaint and summons by certified mail or statutory overnight
68 delivery to said owner or lienholder or a person of suitable age or discretion having charge
69 of said owner's premises. For purposes of this subsection, where forfeiture of a motor
70 vehicle titled or registered in Georgia is sought, notice to the titleholder shall be deemed
71 adequate if a copy of the complaint and summons is mailed by certified mail or statutory
72 overnight delivery to the titleholder at the address set out in the title and an additional copy
73 is mailed by certified mail or statutory overnight delivery to the firm, person, or
74 corporation which holds the current registration for said motor vehicle, who shall be
75 deemed agent for service for said titleholder, and said complaint is advertised once a week
76 for two weeks as set out in this subsection. If the owner, lessee, or person having a duly
77 recorded security interest in or lien on the contraband motor vehicle is unknown or resides
78 out of the state or departs the state or cannot after due diligence be found within the state
79 or conceals himself or herself so as to avoid notice, notice of the proceedings shall be
80 published once a week for two weeks in the newspaper in which the sheriff's
81 advertisements are published. Such publication shall be deemed notice to any and all
82 persons having an interest in or right affected by such proceeding and any sale of the motor
83 vehicle resulting therefrom, but shall not constitute notice to any person having a duly
84 recorded security interest in or lien upon such motor vehicle and required to be served
85 under this Code section unless that person is unknown or resides out of the state or departs
86 the state or cannot after due diligence be found within the state or conceals himself or
87 herself to avoid notice.

88 (d)(1) Any party at interest may appear, by answer under oath, and file an intervention
89 or defense within 30 days from the date of service on the condemnee of the action for
90 condemnation. The owner, lessee, security interest holder, or lienholder shall be
91 permitted to defend by showing that the motor vehicle seized was not subject to forfeiture
92 under this Code section.

93 (2) A rented or leased vehicle shall not be subject to forfeiture unless it is established in
94 the forfeiture proceedings that the owner of the rented or leased vehicle knew or should
95 have known of or consented to the operation of such motor vehicle in a manner which
96 would subject the vehicle to forfeiture. Upon learning of the address or phone number
97 of the rental or leasing company which owns such vehicle, the district attorney shall

98 immediately contact the company to inform it that the vehicle is available for the
99 company to take possession.

100 (e) The court to which any such petition for condemnation may be referred may, in its
101 discretion, allow any party at interest, after making said defense under subsection (d) of
102 this Code section, to give bond and take possession of the motor vehicle seized. Such
103 motor vehicle shall not be sold or leased without prior approval of the court. In the event
104 the court approves such sale or lease, the proceeds arising therefrom shall be deposited in
105 the registry of the court, pending final adjudication of the forfeiture proceeding. The court
106 shall determine the type of the bond and shall also determine the amount of the bond. The
107 enforcement of any bond so given shall be regulated by the general law applicable to such
108 cases.

109 (f) If no defense or intervention is filed within 30 days from the date of service on the
110 condemnee of the petition, judgment shall be entered by the court and the motor vehicle
111 shall be sold. The court may direct that such property be sold by:

112 (1) Judicial sale as provided in Article 7 of Chapter 13 of Title 9; provided, however, that
113 the court may establish a minimum acceptable price for such property; or

114 (2) Any commercially feasible means.

115 (g) The proceeds arising from such sale shall be deposited into the general treasury of the
116 governmental unit whose law enforcement agency it was that originally made the arrest of
117 the operator of the vehicle. It is the intent of the General Assembly that, where possible,
118 proceeds deposited should be used to contribute toward safety equipment and vehicles for
119 law enforcement officers after making the necessary expenditures for:

120 (1) Any costs incurred in the seizure;

121 (2) The costs of the district attorney's office and the court and its officers; and

122 (3) Any costs incurred in the storage, advertisement, maintenance, or care of the motor
123 vehicle.

124 (h) The interest of an owner, lessee, security interest holder, or lienholder shall not be
125 subject to forfeiture unless the condemnor shows by a preponderance of evidence that such
126 person knew or reasonably should have known that the operator of the vehicle would
127 operate or was operating the vehicle while in violation of Code Section 40-6-395.

128 (i) In any case where a vehicle which is the only family vehicle is determined to be subject
129 to forfeiture, the court may, if it determines that the financial hardship to the family as a
130 result of the forfeiture and sale outweighs the benefit to the state from such forfeiture, order
131 the title to the vehicle transferred to such other family member who is a duly licensed
132 operator and who requires the use of such vehicle for employment or family transportation
133 purposes. Such transfer shall be subject to any valid liens and shall be granted only once."

134 **SECTION 3.**

135 This Act shall become effective on July 1, 2012, and shall apply to offenses committed on
136 or after such date.

137 **SECTION 4.**

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