

HOUSE SUBSTITUTE TO SENATE BILL 160

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 2 of Chapter 3 of Title 3 of the Official Code of Georgia Annotated,
 2 relating to prohibited acts regarding alcoholic beverages, so as to revise penalties for a
 3 violation of Code Section 3-3-23; to amend Article 2 of Chapter 11 of Title 16 of the Official
 4 Code of Georgia Annotated, relating to offenses against public order, so as to prohibit any
 5 person from causing a minor to be identified as the individual in an obscene depiction; to
 6 provide for definitions; to provide for venue; to provide for exceptions; to provide for
 7 penalties; to amend Article 2 of Chapter 4 of Title 17 of the Official Code of Georgia
 8 Annotated, relating to arrest by law enforcement officers generally, so as to revise procedures
 9 for arrest by citation; to provide for related matters; to repeal conflicting laws; and for other
 10 purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Article 2 of Chapter 3 of Title 3 of the Official Code of Georgia Annotated, relating to
 14 prohibited acts regarding alcoholic beverages, is amended by revising subsections (d) and
 15 (e) of Code Section 3-3-23.1, relating to procedure and penalties upon violation of Code
 16 Section 3-3-23, as follows:

17 ~~"(d)(1) Unless the officer has reasonable cause to believe such person is intoxicated,~~
 18 Except as provided for in paragraph (2) of this subsection, a law enforcement officer ~~may~~
 19 shall arrest by issuance of a citation, ~~summons, or accusation~~ a pursuant to Code Section
 20 17-4-23, any person accused of violating any provision paragraph (2), (3), or (5) of
 21 subsection (a) of Code Section 3-3-23. The citation, ~~summons, or accusation~~ shall
 22 enumerate the specific charges against the person and either the date upon which the
 23 person is to appear and answer the charges or a notation that the person will be later
 24 notified of the date upon which the person is to appear and answer the charges. If the
 25 person charged shall fail to appear as required, the judge having jurisdiction of the
 26 offense may issue a warrant or other order directing the apprehension of such person and

27 commanding that such person be brought before the court to answer the charges
 28 contained within the citation, ~~summons, or accusation~~ and the charge of his or her failure
 29 to appear as required. Nothing in this ~~subsection~~ paragraph shall be construed to
 30 invalidate an otherwise valid arrest by citation, summons, or accusation of a person who
 31 is intoxicated and who has committed an offense under the laws of this state other than
 32 that provided for in Code Section 3-3-23. Nothing in this paragraph shall be construed
 33 to restrict the discretion of the prosecuting attorney to use a uniform traffic citation as the
 34 formal charging document.

35 (2) If the arresting officer provided for in paragraph (1) of this subsection has probable
 36 cause to believe that a person accused of violating paragraph (2), (3), or (5) of subsection
 37 (a) of Code Section 3-3-23 is intoxicated to the extent that he or she poses a danger to
 38 himself or herself or to the person or property of another, the arresting officer may effect
 39 a custodial arrest of such person in addition to the issuance of a citation, summons, or
 40 accusation. The citation, summons, or accusation shall enumerate the specific charges
 41 against the person and either the date upon which the person is to appear and answer the
 42 charges or a notation that the person will be later notified of the date upon which the
 43 person is to appear and answer the charges. In all such cases provided for under this
 44 subsection, the provisions of Code Section 17-6-1 shall apply. Nothing in this paragraph
 45 shall be construed to invalidate an otherwise valid arrest by citation, summons, or
 46 accusation of a person who is intoxicated and who has committed an offense under the
 47 laws of this state other than that provided for in Code Section 3-3-23.

48 (e) A law enforcement officer arresting a person by the issuance of a citation, ~~summons,~~
 49 ~~or accusation~~ under paragraph (1) of subsection (d) of this Code section may require any
 50 such person having a driver's license or instruction permit to deposit such license or permit
 51 with the arresting officer in order to ensure the appearance of such person to answer the
 52 charges against him or her. The procedures and rules connected with the acceptance of
 53 such license or permit and subsequent disposition of the case shall be the same as provided
 54 for the acceptance of a driver's license as bail on arrest for traffic offenses pursuant to Code
 55 Section 17-6-11."

56 SECTION 1A.

57 Article 2 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to
 58 offenses against public order, is amended by adding a new Code section to read as follows:

59 "16-11-40.1.

60 (a) As used in this Code section, the term:

61 (1) 'Minor' means an individual who is under the age of 18 years.

62 (2) 'Nudity' shall have the same meaning as set forth in Code Section 16-11-90.

63 (3) 'Obscene depiction' means a visual depiction of an individual displaying nudity or
 64 sexually explicit conduct.

65 (4) 'Sexually explicit conduct' shall have the same meaning as set forth in Code Section
 66 16-12-100.

67 (b) No person shall intentionally cause a minor to be identified as the individual in an
 68 obscene depiction in such a manner that a reasonable person would conclude that the image
 69 depicted was that of such minor. Such identification shall include, without limitation, the
 70 minor's name, address, telephone number, e-mail address, username, or other electronic
 71 identification. Such identification shall also include the electronic imposing of the facial
 72 image of a minor onto an obscene depiction.

73 (c) Any person convicted of violating this Code section shall be guilty of a misdemeanor;
 74 provided, however, that upon a second or subsequent violation of this Code section, he or
 75 she shall be guilty of a felony and, upon conviction thereof, shall be punished by
 76 imprisonment of not less than one nor more than five years, a fine of not more than
 77 \$100,000.00, or both.

78 (d) A person shall be subject to prosecution in this state pursuant to Code Section 17-2-1
 79 for any conduct made unlawful by this Code section in which such person engages while:

80 (1) Either within or outside of this state if, by such conduct, the person commits a
 81 violation of this Code section which involves an individual who resides in this state; or

82 (2) Within this state if, by such conduct, the person commits a violation of this Code
 83 section which involves an individual who resides within or outside this state.

84 (e) The provisions of subsection (b) of this Code section shall not apply to:

85 (1) The activities of law enforcement and prosecution agencies in the investigation and
 86 prosecution of criminal offenses; or

87 (2) An image and identification made pursuant to or in anticipation of a civil action.

88 (f) Any violation of this Code section shall constitute a separate offense and shall not
 89 merge with any other crimes set forth in this title."

90 **SECTION 2.**

91 Article 2 of Chapter 4 of Title 17 of the Official Code of Georgia Annotated, relating to
 92 arrest by law enforcement officers generally, is amended by revising subsection (a) of Code
 93 Section 17-4-23, relating to procedure for arrests by citation for motor vehicle violations,
 94 issuance of warrants for arrest for failure of persons charged to appear in court, and bond, as
 95 follows:

96 "(a) A law enforcement officer may arrest a person accused of violating any law or
 97 ordinance governing the operation, licensing, registration, maintenance, or inspection of
 98 motor vehicles or violating paragraph (2), (3), or (5) of subsection (a) of Code Section

99 3-3-23 by the issuance of a citation, provided that the offense is committed in his presence
100 or information constituting a basis for arrest concerning the operation of a motor vehicle
101 or a violation of paragraph (2), (3), or (5) of subsection (a) of Code Section 3-3-23 was
102 received by the arresting officer from a law enforcement officer observing the offense
103 being committed, except that, where the offense results in an accident, an investigating
104 officer may issue citations regardless of whether the offense occurred in the presence of a
105 law enforcement officer. The arresting officer shall issue to such person a citation which
106 shall enumerate the specific charges against the person and the date upon which the person
107 is to appear and answer the charges or a notation that the person will be later notified of the
108 date upon which the person is to appear and answer the charges. Whenever an arresting
109 officer makes an arrest concerning the operation of a motor vehicle based on information
110 received from another law enforcement officer who observed the offense being committed,
111 the citation shall list the name of each officer and each must be present when the charges
112 against the accused person are heard."

113 **SECTION 3.**

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