

House Bill 1265

By: Representatives McDonald III of the 26th, Smith of the 18th, Crowe of the 118th, Hitchens of the 161st, Kelley of the 16th, 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 create an offense for fleeing or attempting to elude
3 a pursuing vehicle or law enforcement officer performing duties on behalf of the Capitol
4 Police Division, Commercial Vehicle Enforcement Division, or Uniform Division of the
5 Department of Public Safety; to provide for penalties based on the distance a person fled or
6 otherwise attempted to elude a pursuing vehicle or law enforcement officer performing duties
7 on behalf of the Department of Public Safety; to provide for related matters; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 15 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to
12 serious traffic offenses, is amended by adding a new Code section to read as follows:

13 "40-6-395.1.

14 (a) It shall be unlawful for any driver of a vehicle to willfully fail or refuse to bring his or
15 her vehicle to a stop or to flee or otherwise attempt to elude a pursuing law enforcement
16 vehicle or officer performing official duties on behalf of the Capitol Police Division,

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17 Commercial Vehicle Enforcement Division, or Uniform Division of the Department of
18 Public Safety when given a visual or an audible signal to bring the vehicle to a stop. The
19 signal given by such officer may be by hand, voice, emergency light, or siren. The officer
20 giving such signal shall be in uniform prominently displaying his or her badge of office,
21 and his or her vehicle shall be appropriately marked showing it to be an official vehicle of
22 the Department of Public Safety, including, but not limited to, vehicles specifically marked
23 as Capitol Police Division, Commercial Vehicle Enforcement Division, and Georgia State
24 Patrol.

25 (b) The trier of fact shall determine beyond a reasonable doubt the distance the person
26 actually traveled while fleeing or otherwise attempting to elude a pursuing Department of
27 Public Safety vehicle or officer after such officer notified the Department of Public Safety
28 dispatcher that such person was fleeing or otherwise eluding the officer. The determination
29 of the distance traveled shall not be an essential element of such offense. If the distance
30 traveled cannot be determined, such distance shall be presumed to be zero miles.

31 (c)(1) Any person convicted of violating the provisions of subsection (a) of this Code
32 section, upon a first conviction thereof, shall be guilty of a high and aggravated
33 misdemeanor and, upon a second or subsequent conviction thereof, shall be guilty of a
34 felony and shall be punished as follows:

35 (A) Upon the first conviction, a fine not subject to suspension, stay, or probation of not
36 less than \$1,000.00 nor more than \$5,000.00 and confinement for 30 days for each mile
37 the person actually traveled while fleeing or otherwise attempting to elude a pursuing
38 Department of Public Safety vehicle or officer but in no case for a period of less than
39 30 days or more than 12 months. Any period of such imprisonment in excess of 30
40 days may, in the sole discretion of the judge, be suspended, stayed, or probated;

41 (B) Upon the second conviction within a ten-year period of time, as measured from the
42 date of previous arrest for which a conviction was obtained to the date of the current
43 arrest for which a conviction is obtained, a fine not subject to suspension, stay, or

44 probation of not less than \$2,500.00 nor more than \$7,500.00 and imprisonment for the
45 greater of 30 days for each mile the person actually traveled while fleeing or otherwise
46 attempting to elude a pursuing Department of Public Safety vehicle or officer or 90
47 days but in no case for a period of more than 2 years; and

48 (C) Upon the third or subsequent conviction within a ten-year period of time, as
49 measured from the dates of previous arrests for which convictions were obtained to the
50 date of the current arrest for which a conviction is obtained, a fine not subject to
51 suspension, stay, or probation of not less than \$5,000.00 nor more than \$10,000.00 and
52 imprisonment for the greater of 30 days for each mile the person actually traveled while
53 fleeing or otherwise attempting to elude a pursuing Department of Public Safety vehicle
54 or officer or two years but in no case for a period of more than ten years.

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

57 (3) Upon a finding by the sentencing judge that payment of the fine required under
58 subparagraphs (A) through (C) of paragraph (1) of this subsection would impose an
59 economic hardship on the defendant, such judge may order the defendant to pay such fine
60 in installments which may be enforced through a contempt proceeding or a revocation of
61 any probation otherwise authorized by this subsection.

62 (4) Notwithstanding the limits set forth in any municipal charter, any municipal court of
63 any municipality shall be authorized to impose the punishments provided for in
64 subparagraph (A) of paragraph (1) of this subsection upon a conviction of violating such
65 subparagraph or upon conviction of violating any ordinance adopting the provisions of
66 such subparagraph.

67 (d) Any person violating the provisions of subsection (a) of this Code section who, while
68 fleeing or otherwise attempting to elude a pursuing Department of Public Safety vehicle
69 or officer:

- 70 (1) Operates his or her vehicle in excess of 20 miles an hour above the posted speed
71 limit;
72 (2) Strikes or collides with another vehicle or a pedestrian;
73 (3) Is the proximate cause of an accident;
74 (4) Flees in traffic conditions which place the general public at risk of receiving serious
75 injuries;
76 (5) Commits a violation of:
77 (A) Code Section 40-6-144;
78 (B) Subsection (a) of Code Section 40-6-163;
79 (C) Subsection (a) of Code Section 40-6-251;
80 (D) Subsection (a) of Code Section 40-6-390;
81 (E) Subsection (a) of Code Section 40-6-390.1; or
82 (F) Subsection (a) of Code Section 40-6-391; or
83 (6) Leaves this state
84 shall be guilty of a felony punishable by a fine of not less than \$5,000.00 nor more
85 than \$10,000.00 and imprisonment for the greater of 30 days for each mile the person
86 actually traveled while fleeing or otherwise attempting to elude a pursuing Department of
87 Public Safety vehicle or officer or one year but in no case for a period of more than ten
88 years.
89 (e) Following adjudication of guilt or imposition of sentence for a violation of
90 subparagraph (c)(1)(B) or (c)(1)(C) or subsection (d) of this Code section, the sentence
91 shall not be suspended, probated, deferred, or withheld, and the charge shall not be reduced
92 to a lesser offense, merged with any other offense, or served concurrently with any other
93 offense."

94 **SECTION 2.**

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