

Senate Bill 136

By: Senators Miller of the 49th, Unterman of the 45th, Murphy of the 27th, Sims of the 12th, Tolleson of the 20th and others

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Title 27 and Chapter 7 of Title 52 of the Official Code of Georgia Annotated,
2 relating to game and fish and to registration, operation, and sale of watercraft, respectively,
3 so as to provide greater public protection for hunting and boating; to harmonize provisions
4 relating to hunting, boating, and driving under the influence of alcohol, toxic vapors, or
5 drugs; to provide for short titles; to change provisions relating to rules and regulations used
6 to establish criminal violations for hunting; to change provisions relating to hunting under
7 the influence; to change provisions relating to required equipment for children on vessels and
8 lighting; to change provisions relating to operating vessels and personal watercraft; to change
9 provisions relating to operation of watercraft and operating watercraft while under the
10 influence of alcohol, toxic vapors, or drugs; to change provisions relating to ordering drug
11 or alcohol testing; to change provisions relating to suspension of an operator's privilege to
12 operate a vessel in this state; to change provisions relating to boating education courses in
13 this state; to change provisions relating to rules and regulations used to establish criminal
14 violations for registration, operation, and sale of watercraft and displaying watercraft
15 information; to provide for related matters; to provide for an effective date and applicability;
16 to repeal conflicting laws; and for other purposes.

17 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

18 **SECTION 1.**

19 Sections 5, 6, and 11 of this Act shall be known and may be cited as the "Kile Glover Boat
20 Education Law," and Sections 8, 9, and 10 of this Act shall be known and may be cited as
21 the "Jake and Griffin Prince BUI Law."

22 **SECTION 2.**

23 Title 27 of the Official Code of Georgia Annotated, relating to game and fish, is amended by
24 revising Code Section 27-1-39, relating to rules and regulations used to establish criminal
25 violations, as follows:

"27-1-39.

Notwithstanding any other law to the contrary, for purposes of establishing criminal violations of the rules and regulations promulgated by the Board of Natural Resources as provided in this title, the term 'rules and regulations' ~~shall mean~~ means those rules and regulations of the Board of Natural Resources in force and effect on ~~January 1, 2012~~ February 5, 2013."

SECTION 3.

Said title is further amended in Code Section 27-3-7, relating to hunting under the influence of alcohol or drugs, by revising paragraph (4) of subsection (b), subsection (f), and paragraph (2) of subsection (g) and by adding three new subsections to read as follows:

"(4) The person's alcohol concentration is ~~0.10~~ 0.08 grams or more at any time within three hours after such hunting from alcohol consumed before such hunting ended; or"

"(f) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person hunting in violation of subsection (b) of this Code section, the amount of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(1) If there was at that time a blood alcohol concentration of 0.05 grams or less, it shall be presumed that the person was not under the influence of alcohol, as prohibited by paragraphs (1), (2), and (3) of subsection (b) of this Code section;

(2) If there was at that time a blood alcohol concentration in excess of 0.05 grams but less than 0.08 grams, such fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, as prohibited by paragraphs (1), (2), and (3) of subsection (b) of this Code section, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol, as prohibited by paragraphs (1), (2), and (3) of subsection (b) of this Code section; and

~~(3) If there was at that time a blood alcohol concentration of 0.08 grams or more, it shall be presumed that the person was under the influence of alcohol, as prohibited by paragraphs (1), (2), and (3) of subsection (b) of this Code section; and~~

~~(4)~~(3) If there was at that time or within three hours after hunting, from alcohol consumed before such hunting ended, a blood alcohol concentration of ~~0.10~~ 0.08 or more grams, the person shall be in violation of paragraph (4) of subsection (b) of this Code section."

"(2) At the time a chemical test or tests are requested, the arresting officer shall read to the person the following implied consent warning:

61 'Georgia law requires you to submit to state administered chemical tests of your blood,
62 breath, urine, or other bodily substances for the purpose of determining if you are under
63 the influence of alcohol or drugs. If you refuse this testing ~~and you are convicted of~~
64 ~~hunting while under the influence of alcohol or drugs,~~ your privilege to hunt in this
65 state will be suspended for a period of two years. Your refusal to submit to the required
66 testing may be offered into evidence against you at trial. If you ~~consent to the test, the~~
67 ~~results may be offered into evidence against you~~ submit to testing and the results
68 indicate an alcohol concentration of 0.08 grams or more or the presence of any illegal
69 drug, your privilege to hunt in this state may be suspended for a minimum period of one
70 year. After first submitting to the required state tests, you are entitled to additional
71 chemical tests of your blood, breath, urine, or other bodily substances at your own
72 expense and from qualified personnel of your own choosing. Will you submit to the
73 state administered chemical tests of your (designate which tests) under the implied
74 consent law?"

75 "(j) Nothing in this Code section shall be deemed to preclude the acquisition or admission
76 of evidence of a violation of this Code section if the evidence was obtained by voluntary
77 consent or a search warrant as authorized by the Constitution or the laws of this state or the
78 United States.

79 (k) Upon the request of a law enforcement officer, if a person consents to submit to a
80 chemical test designated by such officer as provided in subsection (g) of this Code section,
81 and the results of such test indicate an alcohol concentration of 0.08 grams or more, upon
82 a conviction of a violation of paragraph (4) of subsection (b) of this Code section, in
83 addition to any other punishment imposed, such person's privileges to hunt in this state
84 shall be suspended by operation of law for a period of one year. Even if such person did
85 not possess a valid hunting license at the time of the violation, such person's hunting
86 privileges shall be suspended for one year.

87 (l) Following the period of suspension set forth in subsection (i) or (k) of this Code
88 section, such person may apply to the department for reinstatement of his or her hunting
89 privileges. Any suspension pursuant to this Code section shall remain in effect until such
90 person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction
91 Program certified by the Department of Driver Services and pays a restoration fee of
92 \$200.00, unless such conviction was a recidivist conviction, in which case the restoration
93 fee shall be \$500.00."

SECTION 4.

Chapter 7 of Title 52 of the Official Code of Georgia Annotated, relating to registration, operation, and sale of watercraft, is amended by revising paragraph (3) of subsection (d) of Code Section 52-7-8, relating to classification of vessels and required equipment, as follows:

"(3) No person shall operate a moving vessel upon the waters of this state with a child under the age of ten 13 years on board such vessel unless ~~the~~ such child is wearing an appropriately sized personal flotation device, as required by this subsection to be on board the vessel. This requirement shall not apply when the child is within a fully enclosed roofed cabin or other fully enclosed roofed compartment or structure on the vessel."

SECTION 5.

Said chapter is further amended by revising subsections (a), (c), (l), and (m) of Code Section 52-7-8.2, relating to restrictions on operation of personal watercraft, as follows:

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

(1) 'Accompanied by' means in the physical presence within the vessel of a person who is not under the influence of alcohol, toxic vapors, or drugs to a degree which would constitute a violation of Code Section 52-7-12 were such person operating the vessel.

~~(2) 'Class A vessel' means a boat less than 16 feet in length.~~

~~(3)~~(2) 'Personal watercraft' means a Class A vessel which:

(A) Has an outboard motor or which has an inboard motor which uses an internal combustion engine powering a water jet pump as its primary source of motive propulsion;

(B) Is designed with the concept that the operator and passenger ride on the outside surfaces of ~~the~~ such vessel as opposed to riding inside ~~the~~ such vessel; and

(C) Has the probability that the operator and passenger may, in the normal course of use, fall overboard.

Such term includes, without limitation, any vessel where the operator and passenger ride on the outside surfaces of the vessel, even if the primary source of motive propulsion is a propeller, and any ~~vessels~~ vessel commonly known as a 'jet ski.'

~~(4) 'Under the direct supervision' means within sight of and within 400 yards of a person who is not under the influence of alcohol or drugs to a degree which would constitute a violation of Code Section 52-7-12 were such person operating the vessel and who is aware of his or her supervisory responsibility."~~

~~"(c) No person shall rent, lease, or let for hire a personal watercraft to any person under the age of 16 years~~ Reserved."

(l) ~~On and after June 1, 1995, no~~ No person under the age of 16 years shall operate a personal watercraft on the waters of this state; provided, however, that a person ~~age 12 through 15 years~~ of age may operate a personal watercraft if he or she is accompanied by an adult ~~age 18 years of age or over~~ older or he or she has successfully completed a ~~personal watercraft safety program~~ boating education course approved by the department ~~or is under direct supervision by an adult age 18 or over~~. The department may, ~~but shall not be required to~~, conduct or provide ~~personal watercraft safety~~ boating education courses to the public.

(m) ~~On and after July 1, 1995, it~~ It shall be unlawful for any person to cause or knowingly permit such person's child or ward who is less than 12 years of age or the child or ward of another over whom such person has a permanent or temporary responsibility of supervision if such child or ward is less than 12 years of age to operate a personal watercraft."

SECTION 6.

Said chapter is further amended by revising Code Section 52-7-8.3, relating to operation of watercraft, as follows:

"52-7-8.3.

(a) A person ~~age 16 years of age or over~~ older may operate any vessel or personal watercraft on any of the waters of this state if such person has met the applicable requirements of Code Section 52-7-22, and such person ~~shall have~~ has in such vessel proper identification.

(b) A person ~~age 14 or 12 through 15 years of age~~ may operate:

~~(1) A~~ a personal watercraft or ~~nonmotorized~~ Class A vessel on any of the waters of this state in compliance with the provisions of this article; ~~and if such person:~~

~~(2) Any other vessel if such person:~~

~~(A)(1)~~ (1) Is accompanied by an adult ~~age 18 or over~~ 18 years of age or older who is authorized to operate such vessel under the provisions of subsection (a) of this Code section; or

~~(B)(2)~~ (2) Has completed a safe boating education course approved by the department; ~~or~~

~~(C) Is under direct supervision by an adult age 18 or over.~~

~~(c) A person age 12 or 13 may operate any Class A vessel utilizing mechanical means of propulsion not exceeding 30 horsepower, under the conditions set forth in subparagraphs~~

~~(b)(2)(A) through (b)(2)(C) of this Code section. Such person may operate a personal watercraft in compliance with Code Section 52-7-8.2, and such person may operate nonmotorized Class A vessels without restriction~~ No person between 12 through 15 years of age may operate a Class 1, Class 2, or Class 3 vessel.

(d) No person under the age of 12 years shall operate any Class 1, 2, or 3 vessel or any personal watercraft on any of the waters of this state, and no such person shall operate any Class A vessel utilizing mechanical means of propulsion exceeding 30 horsepower. Such person may operate a Class A vessel, other than a personal watercraft, utilizing mechanical means of propulsion not exceeding 30 horsepower only where such person is accompanied by an adult ~~age 18 years of age or over~~ older who is authorized to operate such vessel under the provisions of subsection (a) of this Code section.

(e) No person having ownership or control of a vessel shall permit another person to operate such vessel in violation of this Code section.

(f) No person shall rent, lease, or let for hire any vessel ten horsepower or more to any person under 16 years of age. On and after July 1, 2014, a person 16 years of age or older may rent or lease any vessel ten horsepower or more if such person has completed a boating education course approved by the department. This subsection shall not apply to any person licensed by the United States Coast Guard as a master of a vessel or a nonresident who has in his or her possession proof that he or she has completed a National Association of State Boat Licensed Administrators approved boater education course or equivalency examination from another state.

~~(e)~~(g) As used in this Code section, the term:

(1) 'Accompanied by' means in the physical presence within the vessel of a person who is not under the influence of alcohol, toxic vapors, or drugs to a degree which would constitute a violation of Code Section 52-7-12 were such person operating the vessel.

(2) 'Personal watercraft' shall have the same meaning as set forth in Code Section 52-7-8.2.

(3) 'Proper identification' shall have the same meaning as in subsection (d) of Code Section 3-3-23, relating to furnishing of alcoholic beverages.

~~(3) 'Under the direct supervision' means within sight of and within 400 yards of a person who is not under the influence of alcohol or drugs to a degree which would constitute a violation of Code Section 52-7-12 were such person operating the vessel and who is aware of his or her supervisory responsibility.~~

~~(f) No person having ownership or control of a vessel shall permit another person to operate such vessel in violation of this Code section."~~

SECTION 7.

Said chapter is further amended by revising paragraph (2) of subsection (b) of Code Section 52-7-11, relating to lights, as follows:

"(2) All motorized Class A and Class 1 vessels being operated during hours of darkness or low visibility shall display a 32 point white stern light visible for a distance of two

200 miles, plus a 20 point combination red and green light on the bow; or ten-point
201 combination red and green side lights properly screened and visible for a distance of one
202 mile and displayed lower than the white stern light."

203 **SECTION 8.**

204 Said chapter is further amended by revising Code Section 52-7-12, relating to operation of
205 watercraft while under the influence of alcohol or drugs, as follows:

206 "52-7-12.

207 (a) No person shall operate, navigate, steer, or drive any moving vessel, or be in actual
208 physical control of any moving vessel, nor shall any person manipulate any moving water
209 skis, moving aquaplane, moving surfboard, or similar moving device while:

210 (1) Under the influence of alcohol to the extent that it is less safe for the person to
211 operate, navigate, steer, drive, manipulate, or be in actual physical control of a moving
212 vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving
213 device;

214 (2) Under the influence of any drug to the extent that it is less safe for the person to
215 operate, navigate, steer, drive, manipulate, or be in actual physical control of a moving
216 vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving
217 device;

218 (3) Under the intentional influence of any glue, aerosol, or other toxic vapor to the extent
219 that it is less safe for the person to operate, navigate, steer, drive, manipulate, or be in
220 actual physical control of a moving vessel, moving water skis, moving aquaplane,
221 moving surfboard, or similar moving device;

222 ~~(3)~~(4) Under the combined influence of ~~alcohol and any drug~~ any two or more of the
223 substances specified in paragraphs (1) through (3) of this subsection to the extent that it
224 is less safe for the person to operate, navigate, steer, drive, manipulate, or be in actual
225 physical control of a moving vessel, moving water skis, moving aquaplane, moving
226 surfboard, or similar moving device;

227 ~~(4)~~(5) The person's alcohol concentration is ~~0.10~~ 0.08 grams or more at any time within
228 three hours after such operating, navigating, steering, driving, manipulating, or being in
229 actual physical control of a moving vessel, moving water skis, moving aquaplane,
230 moving surfboard, or similar moving device from alcohol consumed before such
231 operating, navigating, steering, driving, manipulating, or being in actual physical control
232 ended; or

233 ~~(5)~~(6) Subject to the provisions of subsection (b) of this Code section, there is any
234 amount of marijuana or a controlled substance, as defined in Code Section 16-13-21,
235 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 operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device safely as a result of using a drug other than alcohol which such person is legally entitled to use.

(c) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device while under the influence of alcohol or drugs, evidence of the amount of alcohol or drug in a person's blood, urine, breath, or other bodily substance at the alleged time, as determined by a chemical analysis of the person's blood, urine, breath, or other bodily ~~substances~~ substance, shall be admissible. Where such chemical test is made, the following provisions shall apply:

(1) Chemical analysis of the person's blood, urine, breath, or other bodily substance, to be considered valid under this Code section, shall have been performed according to methods approved by the Division of Forensic Sciences of the Georgia Bureau of Investigation and by an individual possessing a valid permit issued by the Division of Forensic Sciences for this purpose. The Division of Forensic Sciences of the Georgia Bureau of Investigation is authorized to approve satisfactory techniques or methods to ascertain the qualifications and competence of individuals to conduct analyses and to issue permits, which shall be subject to termination or revocation at the discretion of the Division of Forensic Sciences;

(2) When a person ~~shall undergo~~ undergoes a chemical test at the request of a law enforcement officer under subsection (e) of this Code section, only a physician, registered nurse, laboratory technician, emergency medical technician, or other qualified person may withdraw blood for the purpose of determining the alcoholic or drug content therein, provided that this limitation shall not apply to the taking of breath or urine specimens. No physician, registered nurse, laboratory technician, emergency medical technician, or other qualified person or employer thereof shall incur any civil or criminal liability as a result of the medically proper obtaining of such blood specimens when requested in writing by a law enforcement officer;

(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~~ submits to a chemical test or tests at the request of a law enforcement officer, full information concerning ~~the~~ such test or tests shall be made available to such person or such 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.

(d) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device while under the influence of alcohol, the amount of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(1) If there was at that time an alcohol concentration of 0.05 grams or less, it shall be presumed that the person was not under the influence of alcohol, as prohibited by paragraphs (1), ~~(2), and (3)~~ (4), and (5) of subsection (a) of this Code section;

(2) If there was at that time an alcohol concentration in excess of 0.05 grams but less than 0.08 grams, such fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, as prohibited by paragraphs (1), ~~(2), and (3)~~ (4), and (5) of subsection (a) of this Code section, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol, as prohibited by paragraphs (1), ~~(2), and (3)~~ (4), and (5) of subsection (a) of this Code section; and

~~(3) If there was at that time an alcohol concentration of 0.08 grams or more, it shall be presumed that the person was under the influence of alcohol, as prohibited by paragraphs (1), (2), and (3) of subsection (a) of this Code section; and~~

~~(4)~~(3) If there was at that time or within three hours after operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device from alcohol consumed before such operating, navigating, steering, driving, manipulating, or being in actual physical control ended an alcohol concentration of ~~0.10~~ 0.08 or more grams, the person shall be in violation of paragraph ~~(4)~~ (5) of subsection (a) of this Code section.

(e) The State of Georgia considers that persons who are under the influence of alcohol, toxic vapors, or drugs while operating a vessel on the waters of this state constitute a direct

and immediate threat to the welfare and safety of the general public. Therefore, any person who operates a vessel upon the waters of this state shall be deemed to have given consent, subject to ~~subsections (c) and (d)~~ subsection (c) of this Code section, to a chemical test or tests of his or her blood, breath, or urine or other bodily ~~substances~~ substance for the purpose of determining the alcoholic or drug content of his or her blood if arrested for any offense arising out of acts alleged to have been committed while the person was operating, navigating, steering, driving, manipulating, or in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device while under the influence of alcohol, toxic vapors, or any drug. The test or tests shall be administered at the request of a law enforcement officer having reasonable grounds to believe that the person has been operating or was in actual physical control of a vessel upon the waters of this state while under the influence of alcohol, toxic vapors, or any drug. Subject to ~~subsections (c) and (d)~~ subsection (c) of this Code section, the requesting law enforcement officer shall designate which of the aforesaid tests shall be administered.

(f) Any person who is dead, unconscious, or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (e) of this Code section, and the test or tests may be administered subject to ~~subsections (c) and (d)~~ subsection (c) of this Code section.

(g) If a person refuses, upon the request of a law enforcement officer, to submit to a chemical test designated by the law enforcement officer as provided in subsection (e) of this Code section, no test shall be given; however, such refusal shall be admissible in evidence.

(h) In the event of a boating accident involving a fatality, the investigating coroner or medical examiner having jurisdiction shall direct that a chemical blood test to determine blood alcohol concentration (BAC) or the presence of drugs be performed on the dead person or persons and that the results of such test be properly recorded in his or her report.

(i) It shall be unlawful for the owner of any vessel knowingly to allow or authorize any person to operate such vessel or to manipulate any water skis, aquaplane, surfboard, or similar device being towed by such vessel when the owner knows or has reasonable grounds to believe that said person is intoxicated or under the influence of alcohol, toxic vapors, or drugs in violation of this Code section.

(j) In any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of subsection (k) of this Code section, if there was at that time or within three hours after operating, navigating, steering, driving, or being in actual physical control of a moving vessel or personal watercraft from alcohol consumed before such operating, navigating, steering, driving, or being in actual physical control

ended an alcohol concentration of 0.02 grams or more in the person's blood, breath, or urine, the person shall be in violation of subsection (k) of this Code section.

(k)(1) A person under the age of 21 years shall not operate, navigate, steer, drive, or be in actual physical control of any moving vessel, moving water skis, moving aquaplane, moving surfboard or similar moving device, or personal watercraft while ~~the~~ such person's alcohol concentration is 0.02 grams or more at any time within three hours after such operating, navigating, steering, driving, or being in actual physical control from alcohol consumed before such operating, navigating, steering, driving, or being in actual physical control ended.

(2) No plea of nolo contendere shall be accepted for any person under the age of 21 years charged with a violation of this Code section.

(l) A person who violates this Code section while transporting in a moving vessel or personal watercraft or towing on water skis, an aquaplane, a surfboard, or similar device a child under the age of 14 years ~~is~~ shall be guilty of the separate offense of endangering a child by operating a moving vessel or personal watercraft under the influence of alcohol, toxic vapors, or drugs. The offense of endangering a child by operating a moving vessel or personal watercraft under the influence of alcohol, toxic vapors, or drugs shall not be merged with the offense of operating a vessel under the influence of alcohol, toxic vapors, or drugs for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished in accordance with the provisions of subsection (d) of Code Section 16-12-1, relating to the offense of contributing to the delinquency, unruliness, or deprivation of a child.

(m) Every person convicted of violating this Code section shall, upon a first or second conviction thereof, be guilty of a misdemeanor; upon a third conviction thereof, be guilty of a high and aggravated misdemeanor; and upon a fourth or subsequent conviction thereof, be guilty of a felony except as otherwise provided in paragraph (4) of this subsection and shall be punished as follows:

(1) For the first conviction with no conviction of and no plea of nolo contendere accepted to a charge of violating this Code section within the previous ten years, 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 \$300.00 and not more than \$1,000.00, which fine shall not, except as provided in subsection (n) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not fewer than ten days nor more than 12 months, which period of imprisonment may, at the sole discretion of the judge, be suspended,

383 stayed, or probated, except that if the offender's alcohol concentration at the time of the
384 offense was 0.08 grams or more, the judge may suspend, stay, or probate all but 24
385 hours of any term of imprisonment imposed under this subparagraph;

386 (C) Not fewer than 40 hours of community service, except that for a conviction for
387 violation of subsection (k) of this Code section where the person's alcohol concentration
388 at the time of the offense was less than 0.08 grams, the period of community service
389 shall be not fewer than 20 hours;

390 (D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program as defined in
391 Code Section 40-5-1. The sponsor of any such program shall provide written notice of
392 the Department of Drivers Service's approval of the program to the person upon
393 enrollment in the program;

394 (E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as
395 a part of such evaluation, completion of a substance abuse treatment program as defined
396 in Code Section 40-5-1; provided, however, that in the court's discretion, such
397 evaluation may be waived; and

398 (F) If the person is sentenced to a period of imprisonment for fewer than 12 months,
399 a period of probation of 12 months less any days during which the person is actually
400 incarcerated;

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

405 (A) A fine of not less than \$600.00 and not more than \$1,000.00, which fine shall not,
406 except as provided in subsection (n) of this Code section, be subject to suspension, stay,
407 or probation;

408 (B) A period of imprisonment of not fewer than 90 days and not more than 12 months.
409 The judge shall probate at least a portion of such term of imprisonment, in accordance
410 with subparagraph (F) of this paragraph, and to such other terms and conditions as the
411 judge may impose; provided, however, that the offender shall be required to serve not
412 fewer than 72 hours of actual incarceration;

413 (C) Not fewer than 30 days of community service;

414 (D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program as defined in
415 Code Section 40-5-1. The sponsor of any such program shall provide written notice of
416 the Department of Drivers Service's approval of the program to the person upon
417 enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the person is actually incarcerated;

(3) For the third conviction within a ten-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 (n) of this Code section, be subject to suspension, stay, or probation;

(B) A mandatory period of imprisonment of not fewer than 120 days and not more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not fewer than 15 days of actual incarceration;

(C) Not fewer than 30 days of community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program as defined in Code Section 40-5-1. The sponsor of any such program shall provide written notice of the Department of Drivers Service's approval of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the person is actually incarcerated;

(4) For the fourth or subsequent conviction within a ten-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 (n) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not less than one year and not more than five years; provided, however, that the judge may suspend, stay, or probate all but 90 days of any term of imprisonment imposed under this paragraph. The judge shall probate at least

a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, and to such other terms and conditions as the judge may impose;

(C) Not fewer than 60 days of community service; provided, however, that if a defendant is sentenced to serve three years of actual imprisonment, the judge may suspend the community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program as defined in Code Section 40-5-1. The sponsor of any such program shall provide written notice of the Department of Driver Service's approval of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of five years less any days during which the person is actually imprisoned;

provided, however, that if the ten-year period of time as measured in this paragraph commenced prior to May 15, 2013, then such fourth or subsequent conviction shall be a misdemeanor of a high and aggravated nature and punished as provided in paragraph (3) of this subsection;

(5) For the purpose of imposing a sentence under this subsection, a plea of nolo contendere based on a violation of this Code section shall constitute a conviction; and

(6) For purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of this subsection, only those offenses for which a conviction is obtained or a plea of nolo contendere is accepted on or after May 15, 2013, shall be considered; provided, however, that nothing in this subsection shall be construed as limiting or modifying in any way sentence enhancement provisions under Georgia law, including, but not limited to, provisions relating to punishment of recidivist offenders pursuant to Title 17.

(n)(1) If the payment of the fine required under subsection (m) 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 such fine in installments, and such order may be enforced through a contempt proceeding or a revocation of any probation otherwise authorized by this Code section.

(2) In the sole discretion of the judge, he or she may suspend up to one-half of the fine imposed under subsection (m) of this Code section conditioned upon the defendant's undergoing treatment in a substance abuse treatment program as defined in Code Section 40-5-1.

491 (o) As used in this Code section, the term 'personal watercraft' shall have the same
492 meaning as set forth in Code Section 52-7-8.2."

493 **SECTION 9.**

494 Said chapter is further amended by revising Code Section 52-7-12.5, relating to ordering
495 drug or alcohol tests, as follows:

496 "52-7-12.5.

497 (a) The test or tests required under Code Section 52-7-12 shall be administered as soon as
498 possible at the request of a law enforcement officer having reasonable grounds to believe
499 that the person has been operating or was in actual physical control of a moving vessel
500 upon the waters of this state in violation of Code Section 52-7-12 and the officer has
501 arrested such person for a violation of Code Section 52-7-12, any federal law in conformity
502 with Code Section 52-7-12, or any local ordinance which is identical to Code Section
503 52-7-12 in accordance with Code Section 52-7-21 or the person has been involved in a
504 boating accident resulting in serious injuries or fatalities. Subject to Code Section 52-7-12,
505 the requesting law enforcement officer shall designate which test shall be administered;
506 ~~provided that the officer shall require a breath test or a blood test and may require a urine~~
507 ~~test initially and may subsequently require a test or tests for any substance not initially~~
508 ~~tested.~~

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

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

512 'Georgia law requires you to submit to state administered chemical tests of your blood,
513 breath, urine, or other bodily substances for the purpose of determining if you are under
514 the influence of alcohol or drugs. If you refuse this testing, your privilege to operate
515 a vessel on the waters of this state will be suspended for a minimum period of one year.
516 Your refusal to submit to the required testing may be offered into evidence against you
517 at trial. If you submit to testing; and the results of that test or tests may be used against
518 ~~you. If the results of such test or tests indicate an alcohol concentration of 0.02 grams~~
519 ~~or more or the presence of any illegal drug, your privilege to operate a vessel on the~~
520 ~~waters of this state may be suspended for a minimum period of one year. After first~~
521 ~~submitting to the required state tests, you are entitled to additional chemical tests of~~
522 ~~your blood, breath, urine, or other bodily substances at your own expense and from~~
523 ~~qualified personnel of your own choosing. Will you submit to the state administered~~
524 ~~chemical tests of your~~ (designate which tests) under the implied consent law?'; or

525 (2) Implied consent notice for suspects age 21 years of age or over older:

'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 privilege to operate a vessel on the waters of this state will be suspended for a minimum period of one year. Your refusal to submit to the required testing may be offered into evidence against you at trial. If you submit to testing, ~~and the results of that test or tests may be used against you.~~ If the results of such test or tests indicate an alcohol concentration of ~~0.10~~ 0.08 grams or more or the presence of any illegal drug, your privilege to operate a vessel on the waters of this state may be suspended for a minimum period of one year. After first submitting to the required state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which tests) under the implied consent law?'

If any such notice is used by a law enforcement officer to advise a person of his or her rights regarding the administration of chemical testing, such person shall be deemed to have been properly advised of his or her rights under this Code section and under Code Section 52-7-12.6, and the results of any chemical test, or the refusal to submit to a test, shall be admitted into evidence against such person. ~~This notice shall be deemed sufficient if such notice read by an arresting officer is substantially complied with~~ Such notice shall be read in its entirety but need not be read exactly so long as the substance of the notice remains unchanged.

~~(c) Subsection (b) of this Code section shall apply to any case wherein the request for chemical testing is made regarding an offense committed on or after June 1, 1998. Subsection (b) of this Code section shall not apply to any case wherein the request for chemical testing was made regarding an offense committed prior to June 1, 1998, in which case those provisions of former Code Section 52-7-12 governing the admissibility of evidence of results of chemical testing or refusal to submit to chemical testing which were in effect at the time the offense was committed shall apply~~ Nothing in this Code section shall be deemed to preclude the acquisition or admission of evidence of a violation of Code Section 52-7-12 if such evidence was obtained by voluntary consent or a search warrant as authorized by the Constitution or laws of this state or the United States.

(d) If a person under arrest or a person who was involved in any boating accident resulting in serious injuries or fatalities submits to a chemical test upon the request of a law enforcement officer and the test results indicate that a suspension of the privilege of operating a vessel on the waters of this state is required under this Code section, the results shall be reported to the department. Upon the receipt of a ~~sworn~~ report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person

had been operating or was in actual physical control of a moving vessel upon the waters of this state in violation of Code Section 52-7-12 or that such person had been operating or was in actual physical control of a moving vessel upon the waters of this state and was involved in a boating accident involving serious injuries or fatalities and that the person submitted to a chemical test at the request of the law enforcement officer and the test results indicate either an alcohol concentration of ~~0.10~~ 0.08 grams or more or, for a person under the age of 21 years, an alcohol concentration of 0.02 grams or more, and the vessel being operated was a motorized vessel having ten or more horsepower or was a sailboat more than 12 feet in length, the department shall suspend the person's privilege to operate a vessel upon the waters of this state pursuant to Code Section 52-7-12.6, subject to review as provided for in this Code section.

(e) If a person under arrest or a person who was involved in any boating accident resulting in serious injuries or fatalities refuses, upon the request of a law enforcement officer, to submit to a chemical test designated by the law enforcement officer as provided in subsection (a) of this Code section, no test shall be given; but the law enforcement officer shall report the refusal to the department. Upon the receipt of a ~~sworn~~ report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been operating or was in actual physical control of a moving vessel upon the waters of this state in violation of Code Section 52-7-12 or that such person had been operating or was in actual physical control of a moving vessel upon the waters of this state and was involved in a boating accident which resulted in serious injuries or fatalities and that the person had refused to submit to the test upon the request of the law enforcement officer, and the vessel being operated was a motorized vessel having ten or more horsepower or was a sailboat more than 12 feet in length, the department shall suspend the person's privilege of operating a vessel on the waters of this state for a period of one year.

(f)(1) The law enforcement officer, acting on behalf of the department, shall personally serve the notice of intention to suspend or disqualify the privilege of operating a vessel on the waters of this state of the arrested person or other person refusing such test on such person at the time of the person's refusal to submit to a test or at the time at which such a test indicates that suspension or disqualification is required under this Code section. The officer shall forward to the department the notice of intent to suspend and the ~~sworn~~ report required by subsection (d) or (e) of this Code section within ten calendar days after the date of the arrest of such person. The failure of the officer to transmit the sworn report required by this Code section within ten calendar days shall not prevent the department from accepting such report and utilizing it in the suspension of an operator's privilege as provided in this Code section.

(2) If notice has not been given by the arresting officer, the department, upon receipt of the sworn report of such officer, shall suspend the person's privilege to operate a vessel and, by regular mail, at the last known address, notify such person of such suspension. The notice shall inform the person of the grounds of suspension, the effective date of the suspension, and the right to review. The notice shall be deemed received three days after mailing.

(g)(1) A person whose operator's privilege is suspended pursuant to this Code section shall request, in writing, a hearing within ten business days from the date of personal notice or receipt of notice sent by certified mail or statutory overnight delivery, return receipt requested, or the right to said hearing shall be deemed waived. Within 30 days after receiving a written request for a hearing, the department shall hold a hearing as is provided in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The hearing shall be recorded. For purposes of such hearing, a copy of the report required by subsection (d) or (e) of this Code section shall be made a part of the hearing record and shall create a rebuttable presumption that the vessel being operated was a motorized vessel having ten or more horsepower or was a sailboat more than 12 feet in length.

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

(A)(i) Whether the law enforcement officer had reasonable grounds to believe the person was operating or in actual physical control of a moving vessel while under the influence of alcohol or a controlled substance and was lawfully placed under arrest for violating Code Section 52-7-12.

(ii) Whether the person was involved in a vessel accident or collision resulting in serious injury or fatality;

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

(i) Whether the person refused the test; or

(ii) Whether a test or tests were administered and the results indicated an alcohol concentration of ~~0.10~~ 0.08 grams or more or, for a person under the age of 21 years, an alcohol concentration of 0.02 grams or more; and

(C) Whether the test or tests were properly administered by an individual possessing a valid permit issued by the Division of Forensic Sciences of the Georgia Bureau of Investigation on an instrument approved by the Division of Forensic Sciences or a test conducted by the Division of Forensic Sciences, including whether the machine at the time of the test was operated with all its electronic and operating components prescribed by its manufacturer properly attached and in good working order, which shall be required. A copy of the operator's permit showing that the operator has been

trained on the particular type of instrument used and one of the original copies of the test results or, where the test is performed by the Division of Forensic Sciences, a copy of the crime lab report shall satisfy the requirements of this subparagraph.

(3) The hearing officer shall, within five calendar days after such hearing, forward a decision to the department to rescind or sustain the suspension of the person's privilege to operate a vessel on the waters of this state. If no hearing is requested within the ten business days specified in paragraph (1) of this subsection, and the failure to request such hearing is due in whole or in part to the reasonably avoidable fault of the person, the right to a hearing shall have been waived. The request for a hearing shall not stay the suspension of the person's privilege to operate a vessel on the waters of this state; provided, however, that if the hearing is timely requested and is not held within 60 days and the delay is not due in whole or in part to the reasonably avoidable fault of the person, the suspension shall be stayed until such time as the hearing is held and the hearing officer's decision is made.

(4) In the event the person is acquitted of a violation of Code Section 52-7-12 or such charge is initially disposed of other than by a conviction or plea of nolo contendere, then the suspension shall be terminated. An accepted plea of nolo contendere shall be entered on the operator's record and shall be considered and counted as a conviction for purposes of any future violations of Code Section 52-7-12.

(h) If the suspension is sustained after such a hearing, the person whose privilege to operate a vessel on the waters of this state has been suspended under this Code section shall have a right to file for a judicial review of the department's final decision, as provided for in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act'; while such appeal is pending, the order of the department shall not be stayed.

(i) Each time an approved breath-testing instrument is inspected, the inspector shall prepare a certificate which shall be signed under oath by the inspector and which shall include the following language:

"This breath-testing instrument (serial no. _____) was thoroughly inspected, tested, and standardized by the undersigned on (date _____) and all of its electronic and operating components prescribed by its manufacturer are properly attached and are in good working order."

When properly prepared and executed, as prescribed in this subsection, the certificate shall, notwithstanding any other provision of law, be self-authenticating, shall be admissible in any court of law, and shall satisfy the pertinent requirements of paragraph (1) of subsection (c) of Code Section 52-7-12 and subparagraph (g)(2)(C) of this Code section."

SECTION 10.

Said chapter is further amended by revising Code Section 52-7-12.6, relating to terms of suspension, as follows:

"52-7-12.6.

(a) Any operator's privilege to operate a vessel on the waters of this state required to be suspended under subsection (d) of Code Section 52-7-12.5 shall be suspended subject to the following terms and conditions:

(1) Upon the first suspension pursuant to subsection (d) of Code Section 52-7-12.5 within the previous five years, as measured from the dates of previous arrests for which a suspension was obtained to the date of the current arrest for which a suspension is obtained, the period of suspension shall be for one year. Not sooner than ~~30~~ 120 days following the effective date of suspension, the person may apply to the department for reinstatement of his or her operator's privilege. Such privilege shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Driver Services and pays a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00. An operator's privilege suspended pursuant to Code Section 52-7-12.5 shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Driver Services and pays a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00;

(2) Upon the second suspension pursuant to subsection (d) of Code Section 52-7-12.5 within five years, as measured from the dates of previous arrests for which suspensions were obtained to the date of the current arrest for which a suspension is obtained, the period of suspension shall be for three years. Not sooner than ~~120 days~~ 18 months following the effective date of suspension, the person may apply to the department for reinstatement of the person's operator's privilege. Such privilege shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Driver Services and pays a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00; and

(3) Upon the third or subsequent suspension pursuant to subsection (d) of Code Section 52-7-12.5 within five years, as measured from the dates of previous arrests for which

suspensions were obtained to the date of the current arrest for which a suspension is obtained, the period of suspension shall be for not less than five years and until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the Department of Driver Services and pays a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00; and

(4) Any person convicted of violating Code Section 52-7-12.2, 52-7-12.3, or 52-7-12.4 shall have his or her privilege to operate a vessel on the waters of this state suspended for three years. Such privilege shall be reinstated after the expiration of the three-year period if such person submits proof of completion of a boating education course approved by the department and pays a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00.

(b) In all cases in which the department may return the privilege to operate a vessel on the waters of this state to an operator prior to the termination of the full period of suspension, the department may require such tests of operating skill and knowledge as it determines to be proper, and the department's discretion shall be guided by the operator's past operating record and performance and the operator's payment of a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00.

(c) Any person who operates a vessel or personal watercraft on any of the waters of this state at a time when such person's privilege to do so has been suspended shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$500.00 nor more than \$1,000.00; provided, however, that for a second and each subsequent conviction within a five-year period measured from the date of the previous arrest upon which a conviction was obtained to the date of the current arrest, such person shall be guilty of a misdemeanor of a high and aggravated nature and shall be punished by a fine of not less than \$1,000.00 nor more than \$1,500.00. The period suspension of the privilege to operate a vessel on the waters of the state of any person convicted under this subsection shall be extended for an additional six months for each such conviction."

SECTION 11.

Said chapter is further amended by revising Code Section 52-7-22, relating to safety and educational programs, as follows:

"52-7-22.

(a) The department is authorized to inaugurate a comprehensive boating safety and boating shall establish a comprehensive boating education program and to may seek the cooperation of boatmen, the federal government, and other states. The department may

accept moneys made available under federal safety programs and may issue ~~safety~~ boating certificates to persons who complete courses in boating ~~safety~~ education.

(b) Effective July 1, 2014, and except as otherwise provided by this chapter, anyone born on or after January 1, 1998, who operates any motorized vessel on the waters of this state shall complete a boating education course approved by the department prior to the operation of such vessel.

(c) A person shall be exempt from the provisions of subsection (b) of this Code section if he or she is:

(1) Licensed by the United States Coast Guard as a master of a vessel;

(2) Operating such vessel on a private lake or pond; or

(3) A nonresident who has in his or her possession proof that he or she has completed a National Association of State Boat Licensed Administrators approved boater education course or the equivalency from another state."

SECTION 12.

Said chapter is further amended by revising Code Section 52-7-26, relating to penalty for violations relative to registration, operation, and sale of watercraft generally, as follows:

"52-7-26.

Except as otherwise provided in this article, any person who violates this article or any rule or regulation promulgated hereunder shall be guilty of a misdemeanor. For purposes of establishing criminal violations of the rules and regulations promulgated by the Board of Natural Resources as provided in this article, the term 'rules and regulations' ~~shall mean~~ means those rules and regulations of the Board of Natural Resources in force and effect on ~~January 1, 2012~~ February 5, 2013."

SECTION 13.

Said chapter is further amended by revising subsection (a) of Code Section 52-7-51, relating to penalty for violations relative to displaying of watercraft information, as follows:

"(a) Any person who violates this article or any rules and regulations issued hereunder shall be guilty of a misdemeanor. For purposes of establishing criminal violations of the rules and regulations promulgated by the Board of Natural Resources as provided in this article, the term 'rules and regulations' ~~shall mean~~ means those rules and regulations of the Board of Natural Resources in force and effect on ~~January 1, 2012~~ February 5, 2013."

SECTION 14.

This Act shall become effective on May 15, 2013, and shall apply to all offenses occurring on or after May 15, 2013; provided, however, that for purposes of determining the number

778 of prior convictions or pleas of nolo contendere pursuant to the felony provisions of
779 paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a
780 conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be
781 considered.

782 **SECTION 15.**

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