

House Bill 485

By: Representatives Yearata of the 152nd, Efstration of the 104th, Scoggins of the 14th, Smith of the 18th, and Barrett of the 24th

A BILL TO BE ENTITLED
AN ACT

1 To amend the Official Code of Georgia Annotated, so as to repeal various provisions enacted
2 prior to 2013 which are contingent upon funding and which remain unfunded; to revise
3 various provisions to update outdated terminology or references; to repeal various Code
4 sections or portions thereof held to be unconstitutional; to repeal and replace Code
5 Sections 10-1-254, 40-13-60, 48-7-2, and 48-13-6, relating to prohibited acts in sale of
6 octane or cetane fuels and burden of rebutting prima-facie case, disposition of traffic
7 violations and jurisdiction of bureau, unlawful failure to pay income tax, file return, keep
8 records, supply information, or exhibit books and penalty, and levy of occupation tax by
9 counties and municipalities on businesses and practitioners of professions and occupations
10 and hearing on tax increase, respectively, so as to correct unconstitutional provisions; to
11 provide for conforming changes; to amend an Act revising the "Georgia Veterinary Practice
12 Act," approved June 3, 2003 (Ga. L. 2003, p. 615/HB 347), so as to repeal provisions which
13 are contingent upon funding and which remain unfunded; to provide for related matters; to
14 repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 485

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PART I*Contingency provisions***SECTION 1-1.**

19 The Official Code of Georgia Annotated is amended by repealing and reserving the
20 following:

21 (1) Article 12 of Chapter 4 of Title 26, relating to prescription medication integrity.

22 (2) Chapter 30 of Title 31, relating to reports on veterans exposed to Agent Orange.

23 (3) Subsections (d) and (f) of Code Section 35-8-26, relating to TASER and electronic
24 control weapons, requirements for use, establishment of policies, and training.

25 (4) Subsection (k) of Code Section 43-34-8, relating to authority of Georgia Composite
26 Medical Board to refuse license, certificate, or permit or issue discipline, suspension,
27 restoration, investigations, hearings on fitness, immunity, and publication of final
28 disciplinary actions.

SECTION 1-2.

29 Said Code is further amended in Code Section 31-8-302, relating to procedures for donation
30 and dispensing of unused over-the-counter and prescription drugs, by revising subsection (i)
31 as follows:
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33 "(i) The donation, brokering, or other facilitation of a donation of a drug pursuant to this
34 program shall not be considered wholesale distribution ~~as defined in Code Section~~
35 ~~26-4-201~~ and shall not be subject to or require licensure as a wholesale distributor pursuant
36 to Chapter 4 of Title 26."

SECTION 1-3.

37 An Act revising the "Georgia Veterinary Practice Act," approved June 3, 2003
38 (Ga. L. 2003, p. 615/HB 347), is amended by repealing Part II.
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PART II

41

Terminology modernizations and various clean up

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SECTION 2-1.

43 The Official Code of Georgia Annotated is amended by revising Code Section 7-4-8, relating
44 to commission to third person does not make lawful interest usurious, as follows:

45 "7-4-8.

46 ~~Except as the application of this Code section is modified by Code Section 7-3-5, where~~
47 Where the lender neither takes nor contracts to take more than lawful interest, the loan is
48 not rendered usurious by money paid or agreed to be paid others by the borrower in order
49 to obtain the loan."

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SECTION 2-2.

51 Said Code is further amended in Code Section 12-7-6, relating to best management practices,
52 compliance with federal law, and minimum requirements for rules, regulations, ordinances,
53 or resolutions, by revising paragraph (16) of subsection (b) and subsection (c) as follows:

54 "(16) There is established a 50 foot buffer, as measured horizontally from the point
55 where vegetation has been wrested by normal stream flow or wave action, along the
56 banks of any state waters classified as ~~'trout streams' pursuant to Article 2 of Chapter 5~~
57 ~~of this title~~ trout waters pursuant to Code Section 27-4-51 except where a roadway
58 drainage structure must be constructed; provided, however, that small springs and streams
59 classified as trout ~~streams~~ waters which discharge an average annual flow of 25 gallons
60 per minute or less shall have a 25 foot buffer or they may be piped, at the discretion of
61 the landowner, pursuant to the terms of a rule providing for a general variance
62 promulgated by the board providing for notice to the division or local issuing authority
63 of the location and extent of the piping and prescribed methodology for minimizing the
64 impact of such piping and for measuring the volume of water discharged by the stream.

65 Any such pipe ~~must~~ shall stop short of the downstream landowner's property, and the
66 landowner ~~must~~ shall comply with the buffer requirement for any adjacent trout ~~streams~~
67 waters. The director may grant a variance from such buffer to allow land-disturbing
68 activity, provided that adequate erosion control measures are incorporated in the project
69 plans and specifications and are implemented. The following requirements shall apply
70 to any such buffer:

71 (A) No land-disturbing activities shall be conducted within a buffer and a buffer shall
72 remain in its natural, undisturbed state of vegetation until all land-disturbing activities
73 on the construction site are completed. Once the final stabilization of the site is
74 achieved, a buffer may be thinned or trimmed of vegetation as long as a protective
75 vegetative cover remains to protect water quality and aquatic habitat and a natural
76 canopy is left in sufficient quantity to keep shade on the stream bed; provided, however,
77 that any person constructing a single-family residence, when such residence is
78 constructed by or under contract with the owner for his or her own occupancy, may thin
79 or trim vegetation in a buffer at any time as long as protective vegetative cover remains
80 to protect water quality and aquatic habitat and a natural canopy is left in sufficient
81 quantity to keep shade on the stream bed;

82 (B) On or before December 31, 2000, the board shall adopt rules which contain
83 specific criteria for the grant or denial by the director of requests for variances. After
84 such date, no variance shall be granted by the director which is not consistent with the
85 criteria contained in such rules; provided, however, that, should the board fail to adopt
86 rules which contain specific criteria for the grant or denial of requests for variances by
87 the director on or before December 31, 2000, the authority of the director to issue such
88 variances shall be suspended until the board adopts such rules; and

89 (C) The buffer shall not apply to the following land-disturbing activities, provided that
90 they occur at an angle, as measured from the point of crossing, within 25 degrees of
91 perpendicular to the stream; they cause a width of disturbance of not more than 50 feet

92 within the buffer; and adequate erosion control measures are incorporated into the
93 project plans and specifications and are implemented:

94 (i) Stream crossings for water lines; or

95 (ii) Stream crossings for sewer lines; and"

96 "(c) Nothing contained in this chapter shall prevent any local issuing authority from
97 adopting rules and regulations, ordinances, or resolutions which contain ~~stream~~ buffer
98 requirements that exceed the minimum requirements in subsection (b) of this Code
99 section."

100 SECTION 2-3.

101 Said Code is further amended in Code Section 12-7-12, relating to orders directed to
102 violators and stop work order procedures, by revising subsection (d) as follows:

103 "(d) When a violation of this chapter in the form of taking action without a permit, failure
104 to maintain ~~a stream~~ the required buffer, or significant amounts of sediment, as determined
105 by the local issuing authority or by the director or his or her designee, have been or are
106 being discharged into state waters and where best management practices have not been
107 properly designed, installed, and maintained, a stop work order shall be issued by the local
108 issuing authority or by the director or his or her designee. All such stop work orders shall
109 be effective immediately upon issuance and shall be in effect until the necessary corrective
110 action or mitigation has occurred. Such stop work orders shall apply to all land-disturbing
111 activity on the site with the exception of the installation and maintenance of temporary or
112 permanent erosion and sediment controls."

113 SECTION 2-4.

114 Said Code is further amended in Code Section 12-7-17, relating to exemptions relative to
115 control of soil erosion and sedimentation, by revising paragraph (4) as follows:

116 "(4) The construction of single-family residences, when such construction disturbs less
117 than one acre and is not a part of a larger common plan of development or sale with a
118 planned disturbance of equal to or greater than one acre and not otherwise exempted
119 under this paragraph; provided, however, that construction of any such residence shall
120 conform to the minimum requirements as set forth in subsection (b) of Code Section
121 12-7-6 and this paragraph. For single-family residence construction covered by the
122 provisions of this paragraph, there shall be a buffer zone between the residence and any
123 state waters classified as trout ~~streams pursuant to Article 2 of Chapter 5 of this title~~
124 waters pursuant to Code Section 27-4-51. In any such buffer zone, no land-disturbing
125 activity shall be constructed between the residence and the point where vegetation has
126 been wrested by normal stream flow or wave action from the banks of the trout waters.
127 For primary trout waters, the buffer zone shall be at least 50 horizontal feet, and no
128 variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone
129 shall be at least 50 horizontal feet, but the director may grant variances to no less than 25
130 feet. Regardless of whether ~~a trout stream is~~ trout waters are primary or secondary, for
131 first order trout waters, which are streams into which no other streams flow except for
132 springs, the buffer shall be at least 25 horizontal feet, and no variance to a smaller buffer
133 shall be granted. The minimum requirements of subsection (b) of Code Section 12-7-6
134 and the buffer zones provided by this paragraph shall be enforced by the issuing
135 authority;"

136 **SECTION 2-5.**

137 Said Code is further amended in Code Section 20-2-206, relating to alternative teacher
138 certification program and creditable service, by revising subsection (b) as follows:

139 "(b)(1) Each local school system may provide an alternative teacher certification program
140 upon approval by the Professional Standards Commission for a secondary school teacher
141 candidate to teach a course or courses in a core academic subject who:

- 142 (A) Possesses a master's degree, doctoral degree, or Juris Doctor in each academic
 143 subject in which the candidate will teach;
- 144 (B) Receives high-quality professional development that is sustained, intensive, and
 145 classroom focused in order to have a positive and lasting impact on classroom
 146 instruction, before and while teaching;
- 147 (C) Participates in a program of intensive supervision that consists of structured
 148 guidance and regular ongoing support for teachers or a teacher mentoring program;
- 149 (D) Assumes functions as a teacher only for a specified period of time not to exceed
 150 three years; and
- 151 (E) Demonstrates satisfactory progress toward full certification as prescribed by the
 152 Professional Standards Commission.
- 153 (2) The Professional Standards Commission shall apply the least restrictive standards
 154 when approving a school system developed program under this subsection.
- 155 ~~(3) Any teacher certified pursuant to this subsection shall be considered a highly~~
 156 ~~qualified teacher for purposes of the federal No Child Left Behind Act (P.L. 107-110)."~~

157 **SECTION 2-6.**

158 Said Code is further amended in Code Section 20-2-1160, relating to local boards to be
 159 tribunals to determine school law controversies, appeals, and special provisions for disabled
 160 children, by revising subsection (f) as follows:

161 "(f) The procedures provided in subsections (a) through (e) of this Code section shall not
 162 be applicable to disabled children when a hearing is necessary to decide a complaint made
 163 under the federal ~~Education for All Handicapped Children Act of 1975~~ Individuals with
 164 Disabilities Education Act. The state board shall promulgate by rules and regulations an
 165 impartial due process procedure for hearing and determining any matter of local
 166 controversy in reference to the construction or administration of the school law with respect
 167 to disabled children as such term is defined by the state board. Any tribunal which the state

168 board shall empower to hear such cases shall have the power to summon witnesses and take
169 testimony as such tribunal deems it necessary. In promulgating such rules and regulations,
170 the state board shall consult with local boards of education and other local school officials
171 in order to establish procedures required by this subsection which will coordinate, to the
172 extent practicable, with the administrative practices of such local boards."

173 **SECTION 2-7.**

174 Said Code is further amended in Code Section 20-2-2116, relating to amount of scholarship
175 for special needs students and method of payments, by revising subsection (c) as follows:

176 "(c) Scholarship students shall be counted in the enrollment of their resident school system;
177 provided, however, that this count shall only be for purposes of determining the amount of
178 the scholarship and the scholarship students shall not be included as enrolled for purposes
179 of state or federal accountability requirements, including, but not limited to, the federal
180 Elementary and Secondary Education Act, as amended by the ~~No Child Left Behind Act~~
181 ~~of 2001 (P.L. 107-110)~~ federal Every Student Succeeds Act of 2015, 20 U.S.C. Section
182 6301. The funds needed to provide a scholarship shall be subtracted from the allotment
183 payable to the resident school system."

184 **SECTION 2-8.**

185 Said Code is further amended in Code Section 20-2-2131, relating to enrollment of students
186 in school to which not originally assigned, procedure, annual notification, and exception, by
187 revising paragraph (4) of subsection (a) as follows:

188 "(4) This subsection shall not be construed to affect any student currently attending a
189 school other than the school to which the student has been assigned by the local board of
190 education pursuant to a transfer authorized under the federal ~~No Child Left Behind Act~~
191 ~~(P.L. 107-110)~~ Every Student Succeeds Act of 2015, 20 U.S.C. Section 6301."

192 **SECTION 2-9.**

193 Said Code is further amended by repealing Code Section 40-5-4.1, relating to authorized
194 delay in compliance with federal Real ID Act.

195 **SECTION 2-10.**

196 Said Code is further amended by revising Code Section 40-6-56, relating to procedure for
197 passing a bicyclist, as follows:

198 "40-6-56.

199 (a) The operator of a motor vehicle approaching a bicycle shall approach the bicycle with
200 due caution and, when traveling in the same direction, shall proceed as follows:

201 (1) Make a lane change into a lane not adjacent to the bicycle if possible in the existing
202 road and traffic conditions; or

203 (2) If a lane change under paragraph (1) of this subsection would be impossible,
204 prohibited by law, or unsafe, reduce the speed of the motor vehicle to a reasonable and
205 proper speed for the existing road and traffic conditions, which speed shall be at least ten
206 miles per hour less than the posted speed limit or 25 miles per hour, whichever is more,
207 and proceed around the bicycle with at least three feet between such vehicle and the
208 bicycle at all times.

209 (b) Any violation of this Code section shall be a misdemeanor punished by a fine of not
210 more than \$250.00."

211 **SECTION 2-11.**

212 Said Code is further amended in Code Section 43-15-13.1, relating to requirements for
213 professional land surveyors engaged in design of storm-water management plans, facilities,
214 water distribution lines, and sanitary sewer collection systems, by revising paragraph (2) as
215 follows:

216 "(2) Complete an additional three semester hours of coursework in hydrology, possess
217 the requisite experience required by the board, and pass the hydrology exam. The
218 licensing record for such individual as available to the public shall be marked as
219 'hydrology and design authorized.'"

220 **SECTION 2-12.**

221 Said Code is further amended by revising Code Section 43-20-11, relating to apprentice
222 dispenser's permit and training permits, as follows:

223 "43-20-11.

224 (a) An apprentice dispenser's permit shall be issued by the division director on behalf of
225 the board only when:

226 (1) Application has been made;

227 (2) A statement of supervision has been provided by a licensed dispenser;

228 (3) A statement has been made by the supervising dealer that the applicant is capable of
229 making the tests and applying the techniques required to dispense hearing aids in
230 accordance with this chapter;

231 (4) Proof of age has been made. ~~Apprentice dispensers' permits are limited to one year
232 in duration and shall not be renewed;~~ and

233 (5) The applicant has passed the practical portion of the examination.

234 (b) Apprentice dispensers' permits are limited to one year in duration and shall not be
235 renewed.

236 (c) Training permits shall be issued by the division director on behalf of the board only
237 when application has been made and a statement of supervision has been provided by a
238 licensed dispenser. The permit should authorize the person to dispense hearing aids only
239 under direct supervision and immediate observation of the licensed dispenser who shall be
240 responsible for the trainees' compliance with this chapter. Proof of age shall also be made.
241 Training permits should be for a duration of six months and may be renewed as often as

242 necessary for additional six-month time periods so long as the requirements of this Code
 243 section for issuance of permits are met for each renewal."

244 **SECTION 2-13.**

245 Said Code is further amended by revising Code Section 44-3-234, relating to application of
 246 article relative to property owners' associations, as follows:

247 "44-3-234.

248 The limitations provided in subsection (b) and paragraphs (1), (2), and (4) of subsection (d)
 249 of Code Section 44-5-60 shall not apply to any covenants contained in any instrument
 250 created pursuant to or submitted pursuant to this article."

251 **SECTION 2-14.**

252 Said Code is further amended in Code Section 50-8-60, relating to definitions relative to
 253 conflicts of interest in contract administration by the Department of Community Affairs, by
 254 revising paragraph (4) as follows:

255 "(4) Reserved. ~~'Council member' means any member of the council of a regional~~
 256 ~~commission established under Article 2 of this chapter."~~

257 **PART III**

258 *Unconstitutional provisions*

259 **SECTION 3-1.**

260 Said Code is further amended by repealing the following:

261 (1) Code Section 3-7-43, relating to issuance of alcoholic beverage licenses to private clubs
 262 by governing authorities of certain counties and municipalities, privileges conferred by
 263 licenses, rules and regulations, and sale by wholesalers to licensees.

264 (2) Code Section 10-1-256, relating to legislative intent in construction of Code
265 Section 10-1-254.

266 **SECTION 3-2.**

267 Said Code is further amended by repealing and reserving the following:

268 (1) Paragraph (6) of Code Section 10-1-233, relating to acts of gasoline distributor violating
269 article relative to gasoline marketing practices.

270 (2) Code Section 16-11-34, relating to preventing or disrupting lawful meetings, gatherings,
271 or processions.

272 (3) Code Section 16-15-9, relating to commission of offense admissible as evidence of
273 existence of criminal street gang.

274 (4) Code Section 20-2-1182, relating to persons other than students who insult or abuse
275 school teachers in presence of pupils may be ordered to leave school premises.

276 (5) Code Section 36-1-16, relating to garbage, trash, waste, or refuse not to be transported
277 across state or county boundaries for dumping without permission and exemption.

278 (6) Code Section 36-6-27, relating to execution against county treasurer for failure to pay
279 over money.

280 (7) Code Section 40-1-4, relating to stickers, decals, or emblems upon motor vehicles
281 containing profane or lewd words describing sexual acts, excretory functions, or parts of the
282 human body.

283 (8) Code Section 40-2-111, relating to highway use permit required for certain unregistered
284 motor trucks, application, fee, and identification tag to be displayed and permit to be carried
285 in truck.

286 (9) Code Section 40-2-112, relating to additional fee for each round trip by an unregistered
287 motor truck into state.

288 (10) Paragraph (1) of subsection (a) of Code Section 40-2-114, relating to unlawful acts and
289 penalties.

290 (11) Subparagraph (B.1) of paragraph (3) of Code Section 48-5-2, relating to definitions
291 relative to ad valorem taxation of property.

292 **SECTION 3-3.**

293 Said Code is further amended by repealing Code Section 10-1-254, relating to prohibited acts
294 in sale of octane or cetane fuels and burden of rebutting prima-facie case, and enacting a new
295 Code Section 10-1-254 to read as follows:

296 "10-1-254.

297 It shall be unlawful for any person engaged in the sale of octane or cetane fuels in this state,
298 in the course of such sales, to pay, grant, receive, or accept any thing of value as a
299 commission or other compensation, or any allowance or discount in lieu thereof, except for
300 services rendered in connection with the sale or purchase of product, either to the other
301 party to such transaction or to an agent, representative, or other intermediary therein where
302 such intermediary is acting in fact for or in behalf of or is subject to the direct or indirect
303 control of any party to such transaction other than the person by whom such compensation
304 is granted or paid."

305 **SECTION 3-4.**

306 Said Code is further amended by revising Code Section 15-11-703, relating to use of
307 disposition and evidence in juvenile courts, as follows:

308 "15-11-703.

309 Except as provided in subsection (d) of Code Section 24-6-609, the disposition of a child
310 and evidence adduced in a hearing in the juvenile court shall not be used against such child
311 in any proceeding in any court other than as provided in Code Section ~~16-15-9~~ or 24-4-418
312 or for a proceeding for delinquency or a child in need of services, whether before or after
313 reaching 18 years of age, except in the establishment of conditions of bail, plea
314 negotiations, and sentencing in criminal offenses; and, in such excepted cases, such records

315 of dispositions and evidence shall be available to prosecuting attorneys, superior or state
316 court judges, and the accused and may be used in the same manner as adult records.
317 Whenever such record of disposition is filed in a superior or state court or admitted into
318 evidence in a superior or state court proceeding, it shall be filed under seal."

319 **SECTION 3-5.**

320 Said Code is further amended by repealing Code Section 40-13-60, relating to disposition of
321 traffic violations and jurisdiction of bureau, and enacting a new Code Section 40-13-60 to
322 read as follows:

323 "40-13-60.

324 Any traffic violation under the jurisdiction of the traffic violations bureau shall be
325 characterized and classified as a traffic violation and shall not be considered as a
326 misdemeanor. Whenever any traffic violation is transferred from another court to a court
327 which has a traffic violations bureau, if such offense is classified as a traffic violation on
328 the traffic violations bureau schedule of the receiving court, such violation shall be handled
329 and disposed of by such traffic violations bureau. Where a defendant demands a trial on
330 a traffic violation, it shall be transferred to a court in the jurisdiction which established the
331 traffic violations bureau; provided, however, that such request for a trial shall not result in
332 a loss of jurisdiction by the traffic violations bureau."

333 **SECTION 3-6.**

334 Said Code is further amended by repealing Code Section 48-7-2, relating to unlawful failure
335 to pay income tax, file return, keep records, supply information, or exhibit books and penalty,
336 and enacting a new Code Section 48-7-2 to read as follows:

337 "48-7-2.

338 (a) It shall be unlawful for any person who is required under this chapter to pay any tax,
339 make any return, keep any records, supply any information, or exhibit any books or records

340 for the purpose of computation, assessment, or collection of any tax imposed by this
341 chapter to fail to:
342 (1) Pay the tax;
343 (2) Make the return;
344 (3) Keep the records; or
345 (4) When requested to do so by the commissioner:
346 (A) Supply the information; or
347 (B) Exhibit the books or records.
348 (b) In addition to other penalties provided by law, any person who violates subsection (a)
349 of this Code section shall be guilty of a misdemeanor; provided, however, that punishment
350 for failure to pay tax owed shall be limited to a fine of not more than \$1,000.000."

351 **SECTION 3-7.**

352 Said Code is further amended by repealing Code Section 48-13-6, relating to levy of
353 occupation tax by counties and municipalities on businesses and practitioners of professions
354 and occupations and hearing on tax increase, and enacting a new Code Section 48-13-6 to
355 read as follows:

356 "48-13-6.

357 (a) Except as to those businesses and practitioners of professions and occupations excluded
358 by subsection (a) of Code Section 48-13-16, those persons excluded by Code
359 Section 43-12-1, and those persons engaged in the authorized practice of law, the
360 governing authority of each county shall be authorized but not required to:

361 (1) Provide by local ordinance or resolution for the levy, assessment, and collection of
362 occupation tax on those businesses and practitioners of professions and occupations with
363 one or more locations or offices in the unincorporated part of the county and to provide
364 for the punishment of violation of such a local ordinance or resolution;

365 (2) Classify businesses and practitioners of professions and occupations and to assess
366 different taxes on different classes of businesses and practitioners; and
367 (3) Provide by local ordinance or resolution for requiring information from businesses
368 and practitioners of professions and occupations doing business in the unincorporated
369 part of the county regarding the site of any location or office and payment of occupation
370 taxes or regulatory fees to other local governments and to provide for the punishment for
371 violation of such a local ordinance or resolution.

372 (b) Except as to those businesses and practitioners of professions and occupations
373 excluded by subsection (a) of Code Section 48-13-16, those persons excluded by Code
374 Section 43-12-1, and those persons engaged in the authorized practice of law, the
375 governing authority of each municipal corporation shall be authorized but not required to:

376 (1) Provide by local ordinance or resolution for the levy, assessment, and collection of
377 occupation tax on those businesses and practitioners of professions and occupations with
378 one or more locations or offices within the corporate limits of the municipality and to
379 provide for the punishment of violation of such a local ordinance or resolution;

380 (2) Classify businesses and practitioners of professions and occupations and to assess
381 different taxes on different classes of businesses and practitioners; and
382 (3) Provide by local ordinance or resolution for requiring information from businesses
383 and practitioners of professions and occupations doing business within the corporate
384 limits of the municipality regarding the site of any location or office and payment of
385 occupation taxes or regulatory fees to other local governments and to provide for the
386 punishment for violation of such a local ordinance or resolution.

387 (c) After April 11, 1995, any local government shall conduct at least one public hearing
388 prior to the adoption of any ordinance or resolution regarding an occupation tax authorized
389 by this Code section.

390 (d) This Code section shall supercede any provision of local law or city charter that
391 authorizes taxes upon professions set forth in this Code section."

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PART IV
Repealer
SECTION 4-1.

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