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ALCOHOL

Motor Vehicles: DUI Penalties: Conditional Licenses

CODE SECTIONS:	O.C.G.A. §§ 40-5-26 (amended), 40-5-55 (amended), 40-5-57 (amended), 40-5-57.1 (new), 40-5-58 (amended), 40-5-63 (amended), 40-5-64 (amended), 40-5-70 (amended), 40-5-71 (amended), 40-5-83 (amended), 40-5-84 (amended), 40-5-87 (amended), 40-5-88 (new), 40-6-3 (amended), 40-6-270 (amended) and 40-6-391 (amended)
BILL NUMBER:	HB 90
ACT NUMBER:	563
SUMMARY:	The Act makes several changes in the laws regarding drivers' licenses.
EFFECTIVE DATE:	September 1, 1985

History

The earliest Georgia legislation concerning automobile driving dealt primarily with the registration of vehicles and the use of headlights.[1] No mention was made of the licensing of drivers; the law merely prohibited persons who were intoxicated or under sixteen years of age from operating motor vehicles.[2]

By 1915 chauffeurs employed to operate motor vehicles were required to obtain a license.[3] The only requirement for obtaining a chauffeur's license was the signed endorsement of at least three people who owned motor vehicles and employed chauffeurs. By 1937 the number of automobiles had risen substantially, and the legislation, which had been primarily concerned with the raising of revenue through registration, began to focus on regulating operators of motor vehicles. The Department of Public Safety, whose principal duty is the licensing of motor vehicle operators, was created in that year.[4]

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1. 1910 Ga. Laws 90 §§ 2 and 4.
2. *Id.* at § 9.
3. 1915 Ga. Laws, Extra. Sess. 107 § 13.
4. 1937 Ga. Laws 322 § 1.

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HB 90

Under prior law, persons under the age of eighteen were issued instruction permits or driver's licenses which were easily distinguished from other licenses. In 1983 the age for distinctive licenses was changed from eighteen to nineteen. O.C.G.A. § 40-5-26 changes the age from nineteen to twenty-one and deletes subsections added in 1982.[5]

The constitutionality of the implied consent law was upheld in *Cox v. Burson*.[6] Since implied consent to chemical tests is "in derogation of the common law," the courts require strict construction of the law.[7] Prior law imposed an implied consent to chemical tests on anyone driving on a Georgia highway who is arrested for an offense allegedly in violation of the provision regulating driving under the influence of alcohol or drugs.[8] The Attorney General has stated that the arresting officer may choose which chemical test is to be administered, but that the driver must be informed of his right to have an additional test conducted by a qualified person selected by the driver. In that instance, the person would be free to select the type of test to be used.[9] O.C.G.A. § 40-5-55(a) merely extends the implied consent rule from drivers "upon the highways" to drivers "upon the highways or elsewhere throughout this state."

Under prior law, a driver, who during a twenty-four month period accumulated a total of fifteen points for moving traffic violations, had his license suspended.[10] The Code provision was silent as to whether the twenty-four month period began with the driver's arrest or with his conviction. O.C.G.A. § 40-5-57(c)(1)(B) specifies that the period is to be measured from the date of arrest, provided that there is a subsequent conviction. The same rule applies to pleas of *nolo contendere*.

O.C.G.A. § 40-5-57.1(a) requires that the period of suspension of a driver's license increase with each subsequent assessment of the requisite number of points. Upon the first assessment, the suspension period is one year, and the person may apply to have his license reinstated after sixty days. If there is a second assessment within a five-year period, there is a three-year suspension, and the person may apply for the return of his license after ninety days. In all cases, O.C.G.A. § 40-5-57.1(b) provides that the period of suspension begins on the date that the license is surrendered to a court or received by the Department of Public Safety,

5. O.C.G.A. §§ 40-5-26(c), (d), (e) and (f) (Supp. 1984). (The deleted subsections had been added in 1982 and provided that the licenses for sixteen and seventeen year olds be conditional licenses. The licenses would be suspended if the licensees were convicted of a mandatory suspension violation or of speeding more than twenty-five miles over the speed limit.)

6. 226 Ga. 13, 172 S.E.2d 406 (1970).

7. Hardison v. Chastain, 151 Ga. App. 678, 679, 261 S.E.2d 425, 427 (1979).

8. O.C.G.A. § 40-5-55 (1982).

9. 1977 Op. Att'y Gen. No. 77-21.

10. O.C.G.A. § 40-5-57 (1982).

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whichever occurs first. In the event that the license cannot be surrendered, the period of suspension shall begin on the date on which the Department receives an affidavit explaining why the license cannot be surrendered. O.C.G.A. § 40-5-57.1(d) allows the Commissioner of the Department of Public Safety to require that any person who is granted an early return of a license must maintain an automobile insurance policy during the remaining suspension period.

O.C.G.A. § 40-5-58(a)(1) requires that the date of arrest for which a conviction is obtained, rather than the date of conviction, be used to compare the number of violations for habitual violators within any five-year period. An habitual offender is a person who is arrested and convicted of certain designated offenses three or more times in a five-year period.

Formerly, an habitual violator whose probationary license was also revoked could not apply for another probationary license for five-years.[11] O.C.G.A. § 40-5-58(e)(6)(B) provides that if a probationary license is revoked for a mandatory suspension violation, or for driving under the influence of drugs or alcohol, the person is eligible to reapply for a license either two years after the conviction or at the end of the original five year period, whichever is longer.

O.C.G.A. § 40-5-63 sets a 120-day period of time a person within the mandatory suspension provisions must wait before applying for reinstatement of a suspended license. The provision requires the completion of a defensive driving course as a precondition for reinstatement of the license. O.C.G.A. § 40-5-84 provides that a person whose license is suspended for point accumulation may still have his license reinstated immediately upon showing a certificate of completion of a defensive driving course and paying a twenty-five dollar restoration fee.

O.C.G.A. § 40-5-88 provides an alternative to criminal or civil enforcement of Article 5 of Title 40. The Commissioner has the discretion to impose a fine of up to $1,000 for each violation of an Article 5 provision. A hearing is provided in accordance with the Georgia Administrative Procedure Act. An unfavorable administrative final order may be followed by judicial review.

Under prior law, the provisions governing the operation of motor vehicles were applicable when such vehicles were on the highways, at shopping centers or parking lots or areas generally used by the public as through streets. Reckless driving, driving under the influence, and homocide provisions applied to vehicles operated throughout the state.[12] O.C.G.A. § 40-6-3(4) makes the provisions applicable on the highways, in parking areas and all areas to which the public generally has access, as well as all areas within 200 feet of these specified areas.

Under prior law, leaving the scene of an accident resulting in death,

11. O.C.G.A. § 40-5-58(e)(6)(D) (Supp. 1984).
12. O.C.G.A. § 40-6-3 (1982).

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injury or damage to any attended vehicle was a misdemeanor.[13] O.C.G.A. § 40-6-270(b)(1) adds specific penalties for leaving the scene of an accident. A first conviction will carry a fine of $300 to $1,000 and/or probation or imprisonment up to one year. A second and third conviction within a five year period will carry fines of $600 to $1,000 respectively, and/or one year of probation or imprisonment. No suspended or stayed sentences are allowed. The amendment also provides that the judge may allow that payments be made in installments if the fine would result in economic hardship for the defendant.

Under O.C.G.A. § 40-6-391(c), the first conviction in a five-year period for driving under the influence of alcohol or drugs requires the imposition of a fine of $600 to $1,000 and imprisonment for ten days to one year, with the judge having the discretion to suspend or stay the period of imprisonment. A second conviction within a five-year period requires a fine of $600 to $1,000 and imprisonment for ninety days to one year. All but forty-eight hours of the prison term may be suspended, stayed or probated. However, the judge may at his discretion suspend, stay or probate the minimum forty-eight hour imprisonment term upon the condition that the defendant perform eighty hours of community services.

With the third and subsequent convictions in a five-year period, a fine of $1,000 is imposed along with a mandatory term of 120 days' imprisonment. All but ten days of this term may be suspended, stayed or probated by the judge on the condition that the defendant perform thirty days of community service. The new amendment provides that the five-year period be measured from the date of the previous arrest for which there was a conviction to the date of the current arrest followed by conviction. It also provides that a plea of *nolo contendere* be considered a conviction.

Prior law providing penalties for injuries caused by a person driving under the influence of alcohol or drugs limited the injuries covered to loss of an arm, leg or eye.[14] O.C.G.A. § 40-6-394 expands the injuries to include those which render any member of another's body useless or which cause disfigurement or brain damage. The prescribed punishment for this felony is one to five years' imprisonment.

Under prior law, failure to stop upon being signalled to do so by a pursuing police vehicle was a misdemeanor.[15] O.C.G.A. § 40-6-395(b)(1) makes it a misdemeanor to refuse to stop upon being signalled by either a police vehicle or a police officer. The penalties are similar to those for leaving the scene of an accident: first conviction - $300 to $1,000 and/or probation or imprisonment for up to one year; second conviction - $600 to $1,000 and/or probation or imprisonment for up to one year; third and subsequent convictions - $1,000 and/or probation or imprisonment for up to one year.

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13. O.C.G.A. § 40-6-270 (1982).
14. O.C.G.A. § 40-6-394 (1982).
15. O.C.G.A. § 40-6-395(a) (Supp. 1984).

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Two new Code sections deal with driver improvement clinics. O.C.G.A. § 40-5-85.1 prohibits probation officers and other employees of the Department of Corrections, as well as their spouses, from operating or being employed at a driver improvement clinic. However, anyone affected who owns or is employed at a driver improvement clinic as of June 1, 1985, is expressly exempted from the provision.

O.C.G.A. § 40-5-85.2 prohibits officers of the court from specifying any particular driver improvement clinic to anyone planning to attend. They may, however, upon request, furnish the names of certified clinics.

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