

House Bill 860

By: Representatives Dunahoo of the 30th, Dubnik of the 29th, Hawkins of the 27th, Barr of the 103rd, Chandler of the 105th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 3 of Title 3 of the Official Code of Georgia Annotated,
2 relating to prohibited acts involving alcoholic beverages, so as to provide for a social host's
3 criminal responsibility; to provide for exceptions; to expand criminal responsibility for
4 providing or allowing individuals under 21 years of age to consume alcoholic beverages; to
5 provide for penalties and conditional discharge; to amend Code Section 17-4-23 of the
6 Official Code of Georgia Annotated, relating to the procedure for arrest by citation for motor
7 vehicle violations, so as to allow for arrest by citation for a social hosting offense; to amend
8 Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to criminal history
9 information, so as to allow for record restriction when an individual is given a conditional
10 discharge for a social hosting offense; to provide for related matters; to repeal conflicting
11 laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 To amend Article 2 of Chapter 3 of Title 3 of the Official Code of Georgia Annotated,
15 relating to prohibited acts involving alcoholic beverages, by revising paragraph (1) of
16 subsection (a) and subsections (d) and (j) of code Section 3-3-23, relating to furnishing to,
17 purchase of, or possession by persons under 21 years of age of alcoholic beverages, as
18 follows:

19 "(1)(A) No person knowingly, directly or through another person, shall furnish, cause
20 to be furnished, or permit any person in such person's employ to furnish any alcoholic
21 beverage to any ~~person~~ individual under 21 years of age;

22 (B)(i) No person shall with criminal negligence organize, permit, allow, or host any
23 social gathering of two or more individuals on any property or in any vehicle or vessel
24 that such person owns, rents, or borrows or over which such person otherwise
25 exercises any control and furnish, cause to be furnished, or allow the furnishing of any
26 alcoholic beverage to any individual under 21 years of age.

- 27 (ii) A person shall not be guilty of a violation of this subparagraph if such person:
 28 (I) Took reasonable action to prevent such violation, including, but not limited to,
 29 controlling, supervising, and monitoring access to and consumption of alcoholic
 30 beverages, verifying the age of individuals who appear to be under 21 years of age,
 31 and complying with subsection (d) of this Code section; or
 32 (II) Took immediate and effective action to stop such violation as soon as it was
 33 discovered as well as reporting such violation to the appropriate law enforcement
 34 agency.
- 35 (iii) This subparagraph shall not be deemed or construed to affect or limit the powers
 36 of a county, municipality, or other political subdivision of this state to adopt
 37 ordinances or resolutions prohibiting the conduct described in this subparagraph
 38 within their respective limits.
- 39 (iv) This subparagraph shall not apply to an owner or landlord of a multifamily
 40 property in which a tenant is involved in the furnishing of alcoholic beverages,
 41 provided that such owner or landlord, as applicable, was not involved in the
 42 organizing of the social gathering and did not participate in or affirmatively allow
 43 such social gathering knowing that illegal consumption of alcoholic beverages would
 44 likely occur;"

45 "(d) The prohibition contained in paragraph (1) of subsection (a) of this Code section shall
 46 not apply ~~with respect to sale of alcoholic beverages by a person when such~~ when the
 47 person has been furnished with proper identification showing that the person individual to
 48 whom the alcoholic beverage is sold or furnished is 21 years of age or older. For purposes
 49 of this subsection, the term 'proper identification' means any document issued by a
 50 governmental agency containing a description of the person, such person's individual, such
 51 individual's photograph, or both, and giving such person's individual's date of birth and
 52 includes, without being limited to, a passport, military identification card, driver's license,
 53 or an identification card authorized under Code Sections 40-5-100 through 40-5-104.
 54 'Proper identification' shall not include a birth certificate and shall not include any traffic
 55 citation and complaint form."

56 "(j)(1) As used in this subsection, the term:

- 57 (A) 'Alcohol related overdose' means an acute condition, including, but not limited to,
 58 extreme physical illness, decreased level of consciousness, respiratory depression,
 59 coma, mania, or death, resulting from the consumption or use of alcohol or that a
 60 layperson would reasonably believe to be resulting from the consumption or use of
 61 alcohol for which medical assistance is required.
- 62 (B) 'Medical assistance' means aid provided to ~~a person~~ an individual believed to be
 63 experiencing an alcohol related overdose by a health care professional licensed,

64 registered, or certified under the laws of this state who, acting within his or her lawful
 65 scope of practice, may provide diagnosis, treatment, or emergency services relative to
 66 such overdose.

67 (C) 'Seeks medical assistance' means accesses or assists in accessing the 9-1-1 system
 68 or otherwise contacts or assists in contacting law enforcement or a poison control center
 69 or provides care to ~~a person~~ an individual experiencing or believed to be experiencing
 70 an alcohol related overdose while awaiting the arrival of medical assistance to aid such
 71 ~~person~~ individual.

72 (2) Any ~~person~~ individual who in good faith seeks medical assistance for someone who
 73 is experiencing an alcohol related overdose shall not be arrested, charged, or prosecuted
 74 for a violation of paragraphs (2) through (5) of subsection (a) or subparagraph (a)(1)(B)
 75 of this Code section if the evidence for the arrest, charge, or prosecution of such violation
 76 resulted from seeking such medical assistance. Any ~~person~~ individual who is
 77 experiencing an alcohol related overdose and, in good faith, seeks medical assistance for
 78 himself or herself or is the subject of such a request shall not be arrested, charged, or
 79 prosecuted for a violation of paragraphs (2) through (5) of subsection (a) or subparagraph
 80 (a)(1)(B) of this Code section if the evidence for the arrest, charge, or prosecution of such
 81 violation resulted from seeking such medical assistance. Any such ~~person~~ individual
 82 shall also not be subject to:

83 (A) Penalties for a violation of a permanent or temporary protective order or
 84 restraining order; or

85 (B) Sanctions for a violation of a condition of pretrial release, condition of probation,
 86 or condition of parole based on a violation of paragraphs (2) through (5) of subsection
 87 (a) or subparagraph (a)(1)(B) of this Code section.

88 (3) Nothing in this subsection shall be construed to limit the admissibility of any
 89 evidence in connection with the investigation or prosecution of a crime with regard to a
 90 defendant who does not qualify for the protections of paragraph (2) of this subsection or
 91 with regard to other crimes committed by ~~a person~~ an individual who otherwise qualifies
 92 for protection pursuant to paragraph (2) of this subsection. Nothing in this subsection
 93 shall be construed to limit any seizure of evidence or contraband otherwise permitted by
 94 law. Nothing herein shall be construed to limit or abridge the authority of a law
 95 enforcement officer to detain or take into custody ~~a person~~ an individual in the course of
 96 an investigation or to effectuate an arrest for any offense except as provided in
 97 paragraph (2) of this subsection."

98

SECTION 2.

99 Said article is further amended by revising Code Section 3-3-23.1, relating to the procedure
100 and penalties upon violation of Code Section 3-3-23, as follows:

101 "3-3-23.1.

102 (a) It is unlawful for any person knowingly to violate any prohibition contained in Code
103 Section 3-3-23, relating to furnishing alcoholic beverages to, and purchasing, attempting
104 to purchase, and possession of alcoholic beverages by, ~~a person~~ an individual under 21
105 years of age.

106 (b)(1) Any person convicted of violating any prohibition contained in subsection (a) of
107 Code Section 3-3-23 shall, upon the first conviction, be guilty of a misdemeanor, except
108 that any person convicted of violating paragraph (2) of subsection (a) or subparagraph
109 (a)(1)(B) of Code Section 3-3-23 shall, upon the first conviction, be guilty of a
110 misdemeanor and shall be punished by not more than six months' imprisonment or a fine
111 of not more than \$300.00, or both and except that any person convicted of violating
112 paragraph (4) of subsection (a) of Code Section 3-3-23 shall, upon the first conviction,
113 be guilty of a misdemeanor of a high and aggravated nature.

114 (2) Any person convicted of violating any prohibition contained in subsection (a) of
115 Code Section 3-3-23 shall, upon the second or subsequent conviction, be guilty of a
116 misdemeanor of a high and aggravated nature, except that any person convicted of
117 violating paragraph (2) of subsection (a) or subparagraph (a)(1)(B) of Code Section
118 3-3-23 shall, upon the second or subsequent conviction, be guilty of a misdemeanor.

119 (c) Whenever any person who has not been previously convicted of any offense under this
120 Code section or under any other law of the United States or this or any other state relating
121 to alcoholic beverages pleads guilty to or is found guilty of a violation of paragraph (2) or
122 (3) of subsection (a) or subparagraph (a)(1)(B) of Code Section 3-3-23, the court, without
123 entering a judgment of guilt and with the consent of such person, may defer further
124 proceedings and place such person on probation upon such reasonable terms and conditions
125 as the court may require. The terms of probation shall preferably be such as to require the
126 person to undergo a comprehensive rehabilitation program, (including, if necessary,
127 medical treatment), not to exceed three years, designed to acquaint such person with the
128 ill effects of alcohol abuse and with knowledge of the gains and benefits which can be
129 achieved by being a good member of society. Upon violation of a term or condition of
130 probation, the court may enter an adjudication of guilt and proceed accordingly. Upon
131 fulfillment of the terms and conditions of probation, the court shall discharge such person
132 and dismiss the proceedings against him or her. Discharge and dismissal under this
133 subsection shall be without court adjudication of guilt and shall not be deemed a conviction
134 for purposes of this subsection or for purposes of disqualifications or disabilities imposed

135 by law upon conviction of a crime. Discharge and dismissal under this subsection may
136 occur only once with respect to any person.

137 (d)(1) Except as provided for in paragraph (2) of this subsection, a law enforcement
138 officer shall arrest by issuance of a citation, pursuant to Code Section 17-4-23, any person
139 accused of violating paragraph (2), (3), or (5) of subsection (a) or subparagraph (a)(1)(B)
140 of Code Section 3-3-23. The citation shall enumerate the specific charges against the
141 person and either the date upon which the person is to appear and answer the charges or
142 a notation that the person will be later notified of the date upon which the person is to
143 appear and answer the charges. If the person charged shall fail to appear as required, the
144 judge having jurisdiction of the offense may issue a warrant or other order directing the
145 apprehension of such person and commanding that such person be brought before the
146 court to answer the charges contained within the citation and the charge of his or her
147 failure to appear as required. Nothing in this paragraph shall be construed to invalidate
148 an otherwise valid arrest by citation, summons, or accusation of a person who is
149 intoxicated and who has committed an offense under the laws of this state other than that
150 provided for in Code Section 3-3-23. Nothing in this paragraph shall be construed to
151 restrict the discretion of the prosecuting attorney to use a uniform traffic citation as the
152 formal charging document.

153 (2) If the arresting officer provided for in paragraph (1) of this subsection has probable
154 cause to believe that a person accused of violating paragraph (2), (3), or (5) of subsection
155 (a) or subparagraph (a)(1)(B) of Code Section 3-3-23 is intoxicated to the extent that he
156 or she poses a danger to himself or herself or to the person or property of another, the
157 arresting officer may effect a custodial arrest of such person in addition to the issuance
158 of a citation, summons, or accusation. The citation, summons, or accusation shall
159 enumerate the specific charges against the person and either the date upon which the
160 person is to appear and answer the charges or a notation that the person will be later
161 notified of the date upon which the person is to appear and answer the charges. In all
162 such cases provided for under this subsection, the provisions of Code Section 17-6-1 shall
163 apply. Nothing in this paragraph shall be construed to invalidate an otherwise valid arrest
164 by citation, summons, or accusation of a person who is intoxicated and who has
165 committed an offense under the laws of this state other than that provided for in Code
166 Section 3-3-23.

167 (e) A law enforcement officer arresting a person by the issuance of a citation under
168 paragraph (1) of subsection (d) of this Code section may require any such person having
169 a driver's license or instruction permit to deposit such license or permit with the arresting
170 officer in order to ensure the appearance of such person to answer the charges against him
171 or her. The procedures and rules connected with the acceptance of such license or permit

172 and subsequent disposition of the case shall be the same as provided for the acceptance of
 173 a driver's license as bail on arrest for traffic offenses pursuant to Code Section 17-6-11.
 174 (f) In addition to any other punishment or sentence, the court may order all persons
 175 convicted under subsection (b) of this Code section or sentenced under subsection (c) of
 176 this Code section to complete a DUI Alcohol or Drug Use Risk Reduction Program
 177 certified by the Department of Driver Services within 120 days of such conviction or
 178 sentence. Failure to complete such program within 120 days shall be contempt of court and
 179 shall be punished by a fine of not more than \$300.00 or 20 days' imprisonment, or both.
 180 If the conviction or sentence results from a charge of unlawful possession of alcoholic
 181 beverages while operating a motor vehicle, the court shall report such conviction or
 182 sentence to the Department of Driver Services within ten days after conviction or
 183 sentencing."

184

SECTION 3.

185 Code Section 17-4-23 of the Official Code of Georgia Annotated, relating to the procedure
 186 for arrest by citation for motor vehicle violations, issuance of warrants for arrest for failure
 187 of persons charged to appear in court, and bond, is amended by revising subsection (a) as
 188 follows:

189 "(a) A law enforcement officer may arrest a person accused of violating any law or
 190 ordinance governing the operation, licensing, registration, maintenance, or inspection of
 191 motor vehicles or violating paragraph (2), (3), or (5) of subsection (a) or subparagraph
 192 (a)(1)(B) of Code Section 3-3-23 by the issuance of a citation, provided that the offense is
 193 committed in his or her presence or information constituting a basis for arrest concerning
 194 the operation of a motor vehicle or a violation of paragraph (2), (3), or (5) of subsection (a)
 195 or subparagraph (a)(1)(B) of Code Section 3-3-23 was received by ~~the~~ such arresting
 196 officer from a law enforcement officer observing the offense being committed, except that,
 197 ~~where~~ when the offense results in an accident, an investigating officer may issue citations
 198 regardless of whether the offense occurred in the presence of a law enforcement officer.
 199 The arresting officer shall issue to such person a citation which shall enumerate the specific
 200 charges against ~~the~~ such person and the date upon which ~~the~~ such person is to appear and
 201 answer the charges or a notation that ~~the~~ such person will be later notified of the date upon
 202 which ~~the~~ such person is to appear and answer ~~the~~ said charges. Whenever an arresting
 203 officer makes an arrest concerning the operation of a motor vehicle based on information
 204 received from another law enforcement officer who observed the offense being committed,
 205 the citation shall list the name of each officer and each must be present when the charges
 206 against the accused person are heard."

207 **SECTION 4.**

208 Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of
209 individual's criminal history record information, definitions, privacy considerations, written
210 application requesting review, and inspection, is amended by revising subparagraph (h)(2)(C)
211 as follows:

212 "(C) The individual pleaded guilty to or was found guilty of a violation of paragraph
213 (2) or (3) of subsection (a) or subparagraph (a)(1)(B) of Code Section 3-3-23 and was
214 sentenced in accordance with the provisions of subsection (c) of Code Section 3-3-23.1,
215 and the individual successfully completed the terms and conditions of his or her
216 probation;"

217 **SECTION 5.**

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