

AN ACT

To amend Article 2 of Chapter 3 of Title 3 of the Official Code of Georgia Annotated, relating to prohibited acts regarding alcoholic beverages, so as to revise penalties for a violation of Code Section 3-3-23; to amend Article 2 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against public order, so as to prohibit any person from causing a minor to be identified as the individual in an obscene depiction; to provide for definitions; to provide for venue; to provide for exceptions; to provide for penalties; to amend Article 2 of Chapter 4 of Title 17 of the Official Code of Georgia Annotated, relating to arrest by law enforcement officers generally, so as to revise procedures for arrest by citation; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 3 of Title 3 of the Official Code of Georgia Annotated, relating to prohibited acts regarding alcoholic beverages, is amended by revising subsections (d) and (e) of Code Section 3-3-23.1, relating to procedure and penalties upon violation of Code Section 3-3-23, as follows:

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

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

(e) A law enforcement officer arresting a person by the issuance of a citation under paragraph (1) of subsection (d) of this Code section may require any such person having a driver's license or instruction permit to deposit such license or permit with the arresting officer in order to ensure the appearance of such person to answer the charges against him or her. The procedures and rules connected with the acceptance of such license or permit and subsequent disposition of the case shall be the same as provided for the acceptance of a driver's license as bail on arrest for traffic offenses pursuant to Code Section 17-6-11."

SECTION 1A.

Article 2 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against public order, is amended by adding a new Code section to read as follows:
"16-11-40.1.

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

(1) 'Minor' means an individual who is under the age of 18 years.

(2) 'Nudity' shall have the same meaning as set forth in Code Section 16-11-90.

(3) 'Obscene depiction' means a visual depiction of an individual displaying nudity or sexually explicit conduct.

(4) 'Sexually explicit conduct' shall have the same meaning as set forth in Code Section 16-12-100.

(b) No person shall intentionally cause a minor to be identified as the individual in an obscene depiction in such a manner that a reasonable person would conclude that the image depicted was that of such minor. Such identification shall include, without limitation, the minor's name, address, telephone number, e-mail address, username, or other electronic

identification. Such identification shall also include the electronic imposing of the facial image of a minor onto an obscene depiction.

(c) Any person convicted of violating this Code section shall be guilty of a misdemeanor; provided, however, that upon a second or subsequent violation of this Code section, he or she shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one nor more than five years, a fine of not more than \$100,000.00, or both.

(d) A person shall be subject to prosecution in this state pursuant to Code Section 17-2-1 for any conduct made unlawful by this Code section in which such person engages while:

- (1) Either within or outside of this state if, by such conduct, the person commits a violation of this Code section which involves an individual who resides in this state; or
- (2) Within this state if, by such conduct, the person commits a violation of this Code section which involves an individual who resides within or outside this state.

(e) The provisions of subsection (b) of this Code section shall not apply to:

- (1) The activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses; or
- (2) An image and identification made pursuant to or in anticipation of a civil action.

(f) Any violation of this Code section shall constitute a separate offense and shall not merge with any other crimes set forth in this title."

SECTION 2.

Article 2 of Chapter 4 of Title 17 of the Official Code of Georgia Annotated, relating to arrest by law enforcement officers generally, is amended by revising subsection (a) of Code Section 17-4-23, relating to procedure for arrests by citation for motor vehicle violations, issuance of warrants for arrest for failure of persons charged to appear in court, and bond, as follows:

"(a) A law enforcement officer may arrest a person accused of violating any law or ordinance governing the operation, licensing, registration, maintenance, or inspection of motor vehicles or violating paragraph (2), (3), or (5) of subsection (a) of Code Section 3-3-23 by the issuance of a citation, provided that the offense is committed in his presence or information constituting a basis for arrest concerning the operation of a motor vehicle or a violation of paragraph (2), (3), or (5) of subsection (a) of Code Section 3-3-23 was received by the arresting officer from a law enforcement officer observing the offense being committed, except that, where the offense results in an accident, an investigating officer may issue citations regardless of whether the offense occurred in the presence of a law enforcement officer. The arresting officer shall issue to such person a citation which shall enumerate the specific charges against the person and the date upon which the person

is to appear and answer the charges or a notation that the person will be later notified of the date upon which the person is to appear and answer the charges. Whenever an arresting officer makes an arrest concerning the operation of a motor vehicle based on information received from another law enforcement officer who observed the offense being committed, the citation shall list the name of each officer and each must be present when the charges against the accused person are heard."

SECTION 3.

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