

House Bill 1293

By: Representative Parham of the 94th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 15 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated,
2 relating to serious traffic offenses, so as to require hospitals receiving state funds to conduct
3 chemical testing of the blood, breath, or urine of a suspect in a law enforcement officer's
4 custody when such testing is requested by such officer acting within the scope of his or her
5 official duties; to make editorial revisions; to provide for an effective date; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 15 of Chapter 6 of Title 40 of the Official Code of Georgia Annotated, relating to
10 serious traffic offenses, is amended by striking Code Section 40-6-392, relating to implied
11 chemical testing of a driver's blood, breath, or urine, in its entirety and inserting in lieu
12 thereof the following:

13 "40-6-392.

14 (a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged
15 to have been committed by any person in violation of Code Section 40-6-391, evidence of
16 the amount of alcohol or drug in a person's blood, urine, breath, or other bodily substance
17 at the alleged time, as determined by a chemical analysis of the person's blood, urine,
18 breath, or other bodily substance shall be admissible. Where such a chemical test is made,
19 the following provisions shall apply:

20 (1)(A) Chemical analysis of the person's blood, urine, breath, or other bodily
21 substance, to be considered valid under this Code section, shall have been performed
22 according to methods approved by the Division of Forensic Sciences of the Georgia
23 Bureau of Investigation on a machine which was operated with all its electronic and
24 operating components prescribed by its manufacturer properly attached and in good
25 working order and by an individual possessing a valid permit issued by the Division of
26 Forensic Sciences for this purpose. The Division of Forensic Sciences of the Georgia

1 Bureau of Investigation shall approve satisfactory techniques or methods to ascertain
2 the qualifications and competence of individuals to conduct analyses and to issue
3 permits, along with requirements for properly operating and maintaining any testing
4 instruments, and to issue certificates certifying that instruments have met those
5 requirements, which certificates and permits shall be subject to termination or
6 revocation at the discretion of the Division of Forensic Sciences.

7 (B) In all cases where the arrest is made on or after January 1, 1995, and the state
8 selects breath testing, two sequential breath samples shall be requested for the testing
9 of alcohol concentration. For either or both of these sequential samples to be admissible
10 in the state's or plaintiff's case-in-chief, the readings shall not differ from each other
11 by an alcohol concentration of greater than 0.020 grams and the lower of the two results
12 shall be determinative for accusation and indictment purposes and administrative
13 license suspension purposes. No more than two sequential series of a total of two
14 adequate breath samples each shall be requested by the state; provided, however, that
15 after an initial test in which the instrument indicates an adequate breath sample was
16 given for analysis, any subsequent refusal to give additional breath samples shall not
17 be construed as a refusal for purposes of suspension of a driver's license under Code
18 Sections 40-5-55 and 40-5-67.1. Notwithstanding the above, a refusal to give an
19 adequate sample or samples on any subsequent breath, blood, urine, or other bodily
20 substance test shall not affect the admissibility of the results of any prior samples. An
21 adequate breath sample shall mean a breath sample sufficient to cause the breath-testing
22 instrument to produce a printed alcohol concentration analysis.

23 (2) When a person shall undergo a chemical test at the request of a law enforcement
24 officer, only a physician, registered nurse, laboratory technician, emergency medical
25 technician, or other qualified person may withdraw blood for the purpose of determining
26 the alcoholic content therein, provided that this limitation shall not apply to the taking of
27 breath or urine specimens. No physician, registered nurse, or other qualified person or
28 employer thereof acting in good faith shall incur any civil or criminal liability as a result
29 of the ~~medically proper~~ obtaining of such blood specimens when requested in writing by
30 a law enforcement officer. When a law enforcement officer acting within the scope of his
31 or her official duties pursuant to the requirements of this paragraph requests in writing
32 that a hospital or qualified hospital personnel conduct a blood test on a suspect in the
33 officer's custody and such hospital is receiving state funding, the hospital and qualified
34 medical personnel shall be required to make reasonable efforts to perform the requested
35 test;

36 (3) The person tested may have a physician or a qualified technician, chemist, registered
37 nurse, or other qualified person of his or her own choosing administer a chemical test or

1 tests in addition to any administered at the direction of a law enforcement officer. The
2 justifiable failure or inability to obtain an additional test shall not preclude the admission
3 of evidence relating to the test or tests taken at the direction of a law enforcement officer;
4 and

5 (4) Upon the request of the person who shall submit to a chemical test or tests at the
6 request of a law enforcement officer, full information concerning the test or tests shall be
7 made available to ~~him~~ such person or his or her attorney. The arresting officer at the time
8 of arrest shall advise the person arrested of his or her rights to a chemical test or tests
9 according to this Code section.

10 (b) Except as provided in subsection (c) of this Code section, upon the trial of any civil or
11 criminal action or proceeding arising out of acts alleged to have been committed by any
12 person in violation of Code Section 40-6-391, the amount of alcohol in the person's blood
13 at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or
14 other bodily substance, may give rise to inferences as follows:

15 (1) If there was at that time an alcohol concentration of 0.05 grams or less, the trier of
16 fact in its discretion may infer therefrom that the person was not under the influence of
17 alcohol, as prohibited by paragraphs (1) and (4) of subsection (a) of Code Section
18 40-6-391; or

19 (2) If there was at that time an alcohol concentration in excess of 0.05 grams but less
20 than 0.08 grams, such fact shall not give rise to any inference that the person was or was
21 not under the influence of alcohol, as prohibited by paragraphs (1) and (4) of subsection
22 (a) of Code Section 40-6-391, but such fact may be considered by the trier of fact with
23 other competent evidence in determining whether the person was under the influence of
24 alcohol, as prohibited by paragraphs (1) and (4) of subsection (a) of Code Section
25 40-6-391.

26 (c)(1) In any civil or criminal action or proceeding arising out of acts alleged to have
27 been committed in violation of paragraph (5) of subsection (a) of Code Section 40-6-391,
28 if there was at that time or within three hours after driving or being in actual physical
29 control of a moving vehicle from alcohol consumed before such driving or being in actual
30 physical control ended an alcohol concentration of 0.08 or more grams in the person's
31 blood, breath, or urine, the person shall be in violation of paragraph (5) of subsection (a)
32 of Code Section 40-6-391.

33 (2) In any civil or criminal action or proceeding arising out of acts alleged to have been
34 committed by any person in violation of subsection (i) of Code Section 40-6-391, if there
35 was at that time or within three hours after driving or being in actual physical control of
36 a moving vehicle from alcohol consumed before such driving or being in actual physical
37 control ended an alcohol concentration of 0.04 grams or more in the person's blood,

1 breath, or urine, the person shall be in violation of subsection (i) of Code Section
2 40-6-391.

3 (3) In any civil or criminal action or proceeding arising out of acts alleged to have been
4 committed by any person in violation of subsection (k) of Code Section 40-6-391, if there
5 was at that time or within three hours after driving or being in actual physical control of
6 a moving vehicle from alcohol consumed before such driving or being in actual physical
7 control ended an alcohol concentration of 0.02 grams or more in the person's blood,
8 breath, or urine, the person shall be in violation of subsection (k) of Code Section
9 40-6-391.

10 (d) In any criminal trial, the refusal of the defendant to permit a chemical analysis to be
11 made of his or her blood, breath, urine, or other bodily substance at the time of his or her
12 arrest shall be admissible in evidence against him or her.

13 (e)(1) A certification by the office of the Secretary of State or by the Department of
14 Human Resources that a person who drew blood was a licensed or certified physician,
15 physician's assistant, registered nurse, practical nurse, medical technologist, medical
16 laboratory technician, or phlebotomist at the time the blood was drawn;

17 (2) Testimony, under oath, of the blood drawer; or

18 (3) Testimony, under oath, of the blood drawer's supervisor or medical records custodian
19 that the blood drawer was properly trained and authorized to draw blood as an employee
20 of the medical facility or employer

21 shall be admissible into evidence for the purpose of establishing that such person was
22 qualified to draw blood as required by this Code section.

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

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

30 When properly prepared and executed, as prescribed in this subsection, the certificate shall,
31 notwithstanding any other provision of law, be self-authenticating, shall be admissible in
32 any court of law, and shall satisfy the pertinent requirements of paragraph (1) of subsection
33 (a) of this Code section and subparagraph (g)(2)(F) of Code Section 40-5-67.1."

34 SECTION 2.

35 This Act shall become effective upon its approval by the Governor or upon its becoming law
36 without such approval.

1

SECTION 3.

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