

House Bill 701

By: Representatives Hatfield of the 177th and Lunsford of the 110th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and
2 traffic, so as to provide for reading the Georgia implied consent warning prior to testing
3 rather than at the time of arrest; to provide that no state administered test shall be requested
4 absent reasonable suspicion to believe the driver was under the influence of alcohol or any
5 other drug; to provide an effective date; to provide for applicability; to repeal conflicting
6 laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is
10 amended by striking Code Section 40-5-55, relating to implied consent to chemical tests, and
11 inserting in its place the following:

12 "40-5-55.

13 (a) The State of Georgia considers that any person who drives or is in actual physical
14 control of any moving vehicle in violation of any provision of Code Section 40-6-391
15 constitutes a direct and immediate threat to the welfare and safety of the general public.
16 Therefore, any person who operates a motor vehicle upon the highways or elsewhere
17 throughout this state shall be deemed to have given consent, subject to Code Section
18 40-6-392, to a chemical test or tests of his or her blood, breath, urine, or other bodily
19 substances for the purpose of determining the presence of alcohol or any other drug, if
20 reasonable suspicion exists to believe that the driver may have violated any of the
21 provisions ~~arrested for any offense arising out of acts alleged to have been committed in~~
22 ~~violation of Code Section 40-6-391 or if such person is involved in any traffic accident~~
23 ~~resulting in serious injuries or fatalities.~~ The test or tests shall be administered within a
24 reasonable time at the request of a law enforcement officer having reasonable grounds to
25 believe that the person has been driving or was in actual physical control of a moving
26 motor vehicle upon the highways or elsewhere throughout this state in violation of Code

1 Section 40-6-391. ~~The test or tests shall be administered as soon as possible to any person~~
 2 ~~who operates a motor vehicle upon the highways or elsewhere throughout this state who~~
 3 ~~is involved in any traffic accident resulting in serious injuries or fatalities.~~ Subject to Code
 4 Section 40-6-392, the requesting law enforcement officer shall designate which of the test
 5 or tests shall be administered, ~~provided a blood test with drug screen may be administered~~
 6 ~~to any person operating a motor vehicle involved in a traffic accident resulting in serious~~
 7 ~~injuries or fatalities.~~

8 (b) Any person who is dead, unconscious, or otherwise in a condition rendering such
 9 person incapable of refusal shall be deemed not to have withdrawn the consent provided
 10 by subsection (a) of this Code section, and the test or tests may be administered, subject to
 11 Code Section 40-6-392.

12 ~~(c) As used in this Code section, the term 'traffic accident resulting in serious injuries or~~
 13 ~~fatalities' means any motor vehicle accident in which a person was killed or in which one~~
 14 ~~or more persons suffered a fractured bone, severe burns, disfigurement, dismemberment,~~
 15 ~~partial or total loss of sight or hearing, or loss of consciousness."~~

16 SECTION 2.

17 Said title is further amended by striking subsections (a), (c), (d), (g), and (j) of Code Section
 18 40-5-67.1, relating to chemical tests, implied consent notices, rights of motorists, test results,
 19 refusal to submit, suspension or denial, hearings and reviews, compensation of officers, and
 20 inspection and certification of breath-testing instruments, and inserting in their respective
 21 places the following:

22 "(a) The test or tests required under Code Section 40-5-55 shall be administered ~~as soon~~
 23 ~~as possible~~ within a reasonable time at the request of a law enforcement officer having
 24 reasonable grounds to believe that the person has been driving or was in actual physical
 25 control of a moving motor vehicle upon the highways or elsewhere throughout this state
 26 in violation of Code Section 40-6-391 ~~and the officer has arrested such person for a~~
 27 ~~violation of Code Section 40-6-391, any federal law in conformity with Code Section~~
 28 ~~40-6-391, or any local ordinance which adopts Code Section 40-6-391 by reference or the~~
 29 ~~person has been involved in a traffic accident resulting in serious injuries or fatalities.~~
 30 Subject to Code Section 40-6-392, the requesting law enforcement officer shall designate
 31 which test or tests shall be administered initially and may subsequently require a test or
 32 tests of any substances not initially tested."

33 "(c) If a person ~~under arrest or a person who was involved in any traffic accident resulting~~
 34 ~~in serious injuries or fatalities~~ submits to a chemical test upon the request of a law
 35 enforcement officer and the test results indicate that a suspension or disqualification is
 36 required under this Code section, the results shall be reported to the department. Upon the

1 receipt of a sworn report of the law enforcement officer that the officer had reasonable
 2 grounds to believe the arrested person had been driving or was in actual physical control
 3 of a moving motor vehicle upon the highways or elsewhere throughout this state in
 4 violation of Code Section 40-6-391 ~~or that such person had been driving or was in actual~~
 5 ~~physical control of a moving motor vehicle upon the highways or elsewhere throughout this~~
 6 ~~state and was involved in a traffic accident involving serious injuries or fatalities~~ and that
 7 the person submitted to a chemical test at the request of the law enforcement officer and
 8 the test results indicate either an alcohol concentration of 0.08 grams or more or, for a
 9 person under the age of 21, an alcohol concentration of 0.02 grams or more, the department
 10 shall suspend the person's driver's license, permit, or nonresident operating privilege
 11 pursuant to Code Section 40-5-67.2, subject to review as provided for in this chapter. Upon
 12 the receipt of a sworn report of the law enforcement officer that the arrested person had
 13 been operating or was in actual physical control of a moving commercial motor vehicle and
 14 the test results indicate an alcohol concentration of 0.04 grams or more, the department
 15 shall disqualify the person from operating a motor vehicle for a minimum period of one
 16 year.

17 (d) If a person ~~under arrest or a person who was involved in any traffic accident resulting~~
 18 ~~in serious injuries or fatalities~~ refuses, upon the request of a law enforcement officer, to
 19 submit to a chemical test designated by the law enforcement officer as provided in
 20 subsection (a) of this Code section, no test shall be given; but the law enforcement officer
 21 shall report the refusal to the department. Upon the receipt of a sworn report of the law
 22 enforcement officer that the officer had reasonable grounds to believe the arrested person
 23 had been driving or was in actual physical control of a moving motor vehicle upon the
 24 highways or elsewhere throughout this state in violation of Code Section 40-6-391 ~~or that~~
 25 ~~such person had been driving or was in actual physical control of a moving motor vehicle~~
 26 ~~upon the highways or elsewhere throughout this state and was involved in a traffic accident~~
 27 ~~which resulted in serious injuries or fatalities~~ and that the person had refused to submit to
 28 the test upon the request of the law enforcement officer, the department shall suspend the
 29 person's driver's license, permit, or nonresident operating privilege for a period of one year
 30 or if the person was operating or in actual physical control of a commercial motor vehicle,
 31 the department shall disqualify the person from operating a commercial motor vehicle and
 32 shall suspend the person's driver's license, permit, or nonresident operating privilege,
 33 subject to review as provided for in this chapter."

34 "(g)(1) A person whose driver's license is suspended or who is disqualified from
 35 operating a commercial motor vehicle pursuant to this Code section shall request, in
 36 writing, a hearing within ten business days from the date of personal notice or receipt of
 37 notice sent by certified mail or statutory overnight delivery, return receipt requested, or

1 the right to said hearing shall be deemed waived. Within 30 days after receiving a written
 2 request for a hearing, the department shall hold a hearing as is provided in Chapter 13 of
 3 Title 50, the 'Georgia Administrative Procedure Act.' The hearing shall be recorded.

4 (2) The scope of the hearing shall be limited to the following issues:

5 (A) Whether the law enforcement officer had reasonable grounds to believe the person
 6 was driving or in actual physical control of a moving motor vehicle while under the
 7 influence of alcohol or a controlled substance and was lawfully placed under arrest for
 8 violating Code Section 40-6-391; ~~or~~

9 ~~(B) Whether the person was involved in a motor vehicle accident or collision resulting~~
 10 ~~in serious injury or fatality; and~~

11 ~~(C)~~(B) Whether at the time of the request for the test or tests the officer informed the
 12 person of the person's implied consent rights and the consequence of submitting or
 13 refusing to submit to such test; and

14 ~~(D)~~(C)(i) Whether the person refused the test; or

15 ~~(E)~~(ii)(I) Whether a test or tests were administered and the results indicated an
 16 alcohol concentration of 0.08 grams or more or, for a person under the age of 21,
 17 an alcohol concentration of 0.02 grams or more or, for a person operating or having
 18 actual physical control of a commercial motor vehicle, an alcohol concentration of
 19 0.04 grams or more; and

20 ~~(F)~~(II) Whether the test or tests were properly administered by an individual
 21 possessing a valid permit issued by the Division of Forensic Sciences of the Georgia
 22 Bureau of Investigation on an instrument approved by the Division of Forensic
 23 Sciences or a test conducted by the Division of Forensic Sciences, including
 24 whether the machine at the time of the test was operated with all its electronic and
 25 operating components prescribed by its manufacturer properly attached and in good
 26 working order, which shall be required. A copy of the operator's permit showing
 27 that the operator has been trained on the particular type of instrument used and one
 28 of the original copies of the test results or, where the test is performed by the
 29 Division of Forensic Sciences, a copy of the crime lab report shall satisfy the
 30 requirements of this subparagraph.

31 (3) The hearing officer shall, within five calendar days after such hearing, forward a
 32 decision to the department to rescind or sustain the driver's license suspension or
 33 disqualification. If no hearing is requested within the ten business days specified above,
 34 and the failure to request such hearing is due in whole or in part to the reasonably
 35 avoidable fault of the person, the right to a hearing shall have been waived. The request
 36 for a hearing shall not stay the suspension of the driver's license; provided, however, that
 37 if the hearing is timely requested and is not held before the expiration of the temporary

1 permit and the delay is not due in whole or in part to the reasonably avoidable fault of the
 2 person, the suspension shall be stayed until such time as the hearing is held and the
 3 hearing officer's decision is made.

4 (4) In the event the person is acquitted of a violation of Code Section 40-6-391 or such
 5 charge is initially disposed of other than by a conviction or plea of nolo contendere, then
 6 the suspension shall be terminated and deleted from the driver's license record. However,
 7 an acquittal or any disposition other than a conviction will not terminate an administrative
 8 license suspension which is based upon a refusal to submit to a breath test. An accepted
 9 plea of nolo contendere shall be entered on the driver's license record and shall be
 10 considered and counted as a conviction for purposes of any future violations of Code
 11 Section 40-6-391. In the event of an acquittal or other disposition other than by a
 12 conviction or plea of nolo contendere, the driver's license restoration fee shall be
 13 promptly returned by the department to the licensee."

14 "(j) Each time an approved breath-testing instrument is inspected, the inspector shall
 15 prepare a certificate which shall be signed under oath by the inspector and which shall
 16 include the following language:

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

21 When properly prepared and executed, as prescribed in this subsection, the certificate shall,
 22 notwithstanding any other provision of law, be self-authenticating, shall be admissible in
 23 any court of law, and shall satisfy the pertinent requirements of paragraph (1) of subsection
 24 (a) of Code Section 40-6-392 and ~~subparagraph (g)(2)(F)~~ subdivision (g)(2)(C)(ii)(II) of
 25 this Code section."

26 SECTION 3.

27 Said title is further amended by striking paragraph (4) of subsection (a) and subsections (d)
 28 and (f) of Code Section 40-6-392, relating to chemical tests for alcohol or drugs in blood, and
 29 inserting in their respective places the following:

30 "(4) Upon the request of the person who shall submit to a chemical test or tests at the
 31 request of a law enforcement officer, full information concerning the test or tests shall be
 32 made available to him or her or his or her attorney. The ~~arresting~~ officer at the time of
 33 ~~arrest~~ request shall advise the person ~~arrested~~ of his or her rights to a chemical test or
 34 tests according to this Code section prior to the administration of the state administered
 35 chemical test."

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

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

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

11 When properly prepared and executed, as prescribed in this subsection, the certificate shall,
 12 notwithstanding any other provision of law, be self-authenticating, shall be admissible in
 13 any court of law, and shall satisfy the pertinent requirements of paragraph (1) of subsection
 14 (a) of this Code section and ~~subparagraph (g)(2)(F)~~ subdivision (g)(2)(C)(ii)(II) of Code
 15 Section 40-5-67.1."

16 **SECTION 4.**

17 This Act shall become effective on July 1, 2005, and shall apply to all offenses committed
 18 on or after that date.

19 **SECTION 5.**

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