

Senate Bill 633

By: Senator Bearden of the 30th

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 repeal and reenact implied consent provisions; to provide for chemical testing
3 of saliva to determine the presence of alcohol or another drug for purposes of driving under
4 the influence violations; to revise informed consent provisions to include chemical testing
5 of saliva and to require probable cause for chemical testing of persons involved in certain
6 traffic accidents; to provide for the admissibility of evidence of the refusal of chemical
7 testing of saliva; to provide for a definition; to provide for related matters; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is
12 amended in Code Section 40-5-55, relating to implied consent to chemical tests, by repealing
13 subsection (a) in its entirety and enacting a new subsection (a) to read as follows:

14 "(a) The State of Georgia considers that any person who drives or is in actual physical
15 control of any moving vehicle in violation of any provision of Code Section 40-6-391
16 constitutes a direct and immediate threat to the welfare and safety of the general public.
17 Therefore, any person who operates a motor vehicle upon the highways or elsewhere

18 throughout this state shall be deemed to have given consent, subject to Code
19 Section 40-6-392, to a chemical test or tests of his or her blood, breath, saliva, urine, or
20 other bodily substances for the purpose of determining the presence of alcohol or any other
21 drug, if 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 a traffic accident
23 resulting in serious injuries or fatalities and the requesting law enforcement officer has
24 probable cause to believe that such person was driving under the influence of alcohol or
25 other drugs. The test or tests shall be administered as soon as possible at the request of a
26 law enforcement officer having probable cause to believe that such person was driving
27 under the influence of alcohol or other drugs. Subject to Code Section 40-6-392, the
28 requesting law enforcement officer shall designate which of the test or tests shall be
29 administered."

30

SECTION 2.

31 Said title is further amended by revising subsection (b) Code Section 40-5-67.1, relating to
32 chemical tests, implied consent notices, rights of motorists, test results, refusal to submit,
33 suspension or disqualifications, administrative license suspension hearing and review, and
34 inspection and certification of breath-taking instruments, as follows:

35 "(b) At the time a chemical test or tests are requested, the arresting officer shall select and
36 read to the person the appropriate implied consent notice from the following:

37 (1) Implied consent notice for suspects under age 21:

38 'The State of Georgia has conditioned your privilege to drive upon the highways of this
39 state upon your submission to state administered chemical tests of your blood, breath,
40 saliva, urine, or other bodily substances for the purpose of determining if you are under
41 the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's
42 license or privilege to drive on the highways of this state will be suspended for a
43 minimum period of one year. Your refusal to submit to blood, saliva, or urine testing

44 may be offered into evidence against you at trial. If you submit to testing and the
45 results indicate an alcohol concentration of 0.02 grams or more, your Georgia driver's
46 license or privilege to drive on the highways of this state may be suspended for a
47 minimum period of one year. After first submitting to the requested state tests, you are
48 entitled to additional chemical tests of your blood, breath, saliva, urine, or other bodily
49 substances at your own expense and from qualified personnel of your own choosing.
50 Will you submit to the state administered chemical tests of your (designate which test)?'

51 (2) Implied consent notice for suspects age 21 or over:

52 'The State of Georgia has conditioned your privilege to drive upon the highways of this
53 state upon your submission to state administered chemical tests of your blood, breath,
54 saliva, urine, or other bodily substances for the purpose of determining if you are under
55 the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's
56 license or privilege to drive on the highways of this state will be suspended for a
57 minimum period of one year. Your refusal to submit to blood, saliva, or urine testing
58 may be offered into evidence against you at trial. If you submit to testing and the
59 results indicate an alcohol concentration of 0.08 grams or more, your Georgia driver's
60 license or privilege to drive on the highways of this state may be suspended for a
61 minimum period of one year. After first submitting to the requested state tests, you are
62 entitled to additional chemical tests of your blood, breath, saliva, urine, or other bodily
63 substances at your own expense and from qualified personnel of your own choosing.
64 Will you submit to the state administered chemical tests of your (designate which test)?'

65 (3) Implied consent notice for commercial motor vehicle driver suspects:

66 'The State of Georgia has conditioned your privilege to drive upon the highways of this
67 state upon your submission to state administered chemical tests of your blood, breath,
68 saliva, urine, or other bodily substances for the purpose of determining if you are under
69 the influence of alcohol or drugs. If you refuse this testing, you will be disqualified
70 from operating a commercial motor vehicle for a minimum period of one year. Your

71 refusal to submit to blood, saliva, or urine testing may be offered into evidence against
 72 you at trial. If you submit to testing and the results indicate the presence of any alcohol,
 73 you will be issued an out-of-service order and will be prohibited from operating a
 74 commercial motor vehicle for 24 hours. If the results indicate an alcohol concentration
 75 of 0.04 grams or more, you will be disqualified from operating a commercial motor
 76 vehicle for a minimum period of one year. After first submitting to the requested state
 77 tests, you are entitled to additional chemical tests of your blood, breath, saliva, urine,
 78 or other bodily substances at your own expense and from qualified personnel of your
 79 own choosing. Will you submit to the state administered chemical tests of your
 80 (designate which test)?'

81 If any such notice is used by a law enforcement officer to advise a person of his or her
 82 rights regarding the administration of chemical testing, such person shall be deemed to
 83 have been properly advised of his or her rights under this Code section and under Code
 84 Section 40-6-392 and the results of any chemical test, or the refusal to submit to a test of
 85 such person's blood, saliva, or urine, shall be admitted into evidence against such person.
 86 Such notice shall be read in its entirety but need not be read exactly so long as the
 87 substance of the notice remains unchanged."

88

89

SECTION 3.

90 Said title is further amended by revising paragraph (2) of Code Section 40-5-142, relating
 91 to definitions relative to commercial drivers' licenses, as follows:

92 "(2) 'Alcohol concentration' means:

93 (A) The number of grams of alcohol per 100 milliliters of blood;

94 (B) The number of grams of alcohol per 210 liters of breath; or

95 (C) The number of grams of alcohol per 100 milliliters of saliva; or

96 (D) The number of grams of alcohol per 67 milliliters of urine."

97

SECTION 4.

98 Said title is further amended by revising subsection (a) of Code Section 40-5-153, relating
99 to implied consent to chemical test, administration of test, and procedure, as follows:

100 "(a) Any person who drives a commercial motor vehicle anywhere in the state shall be
101 deemed to have given consent, subject to the provisions of Code Sections 40-5-55 and
102 40-6-392, to a test or tests of that person's blood, breath, saliva, or urine for the purpose of
103 determining that person's alcohol concentration or the presence of other drugs."

104

SECTION 5.

105 Said title is further amended by revising subsections (a) and (i) of Code Section 40-6-391,
106 relating to driving under the influence of alcohol, drugs, or other intoxicating substances,
107 penalties, publication of notice of conviction for persons convicted for second time, and
108 endangering a child, as follows:

109 "(a) A person shall not drive or be in actual physical control of any moving vehicle while:
110 (1) Under the influence of alcohol to the extent that it is less safe for the person to drive;
111 (2) Under the influence of any drug to the extent that it is less safe for the person to
112 drive;
113 (3) Under the intentional influence of any glue, aerosol, or other toxic vapor to the extent
114 that it is less safe for the person to drive;
115 (4) Under the combined influence of any two or more of the substances specified in
116 paragraphs (1) through (3) of this subsection to the extent that it is less safe for the person
117 to drive;
118 (5) The person's alcohol concentration is 0.08 grams or more at any time within three
119 hours after such driving or being in actual physical control from alcohol consumed before
120 such driving or being in actual physical control ended; or
121 (6) Subject to the provisions of subsection (b) of this Code section, there is any amount
122 of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in

123 the person's blood, saliva, or urine, ~~or both~~, including the metabolites and derivatives of
124 each or ~~both~~ all without regard to whether or not any alcohol is present in the person's
125 breath or blood."

126 "(i) A person shall not drive or be in actual physical control of any moving commercial
127 motor vehicle while there is 0.04 percent or more by weight of alcohol in such person's
128 blood, breath, saliva, or urine. Every person convicted of violating this subsection shall be
129 guilty of a misdemeanor and, in addition to any disqualification resulting under Article 7
130 of Chapter 5 of this title, the 'Uniform Commercial Driver's License Act,' shall be fined as
131 provided in subsection (c) of this Code section."

132

SECTION 6.

133 Said title is further amended by revising subsections (a) through (d) of Code
134 Section 40-6-392, relating to chemical tests for alcohol or drugs, as follows:

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

141 (1)(A) Chemical analysis of the person's blood, ~~urine~~, breath, saliva, urine, or other
142 bodily substance, to be considered valid under this Code section, shall have been
143 performed according to methods approved by the Division of Forensic Sciences of the
144 Georgia Bureau of Investigation on a machine which was operated with all its
145 electronic and operating components prescribed by its manufacturer properly attached
146 and in good working order and by an individual possessing a valid permit issued by the
147 Division of Forensic Sciences for this purpose. The Division of Forensic Sciences of
148 the Georgia Bureau of Investigation shall approve satisfactory techniques or methods

149 to ascertain the qualifications and competence of individuals to conduct analyses and
150 to issue permits, along with requirements for properly operating and maintaining any
151 testing instruments, and to issue certificates certifying that instruments have met those
152 requirements, which certificates and permits shall be subject to termination or
153 revocation at the discretion of the Division of Forensic Sciences.

154 (B) In all cases where the arrest is made on or after January 1, 1995, and the state
155 selects breath testing, two sequential breath samples shall be requested for the testing
156 of alcohol concentration. For either or both of these sequential samples to be
157 admissible in the state's or plaintiff's case-in-chief, the readings shall not differ from
158 each other by an alcohol concentration of greater than 0.020 grams and the lower of the
159 two results shall be determinative for accusation and indictment purposes and
160 administrative license suspension purposes. No more than two sequential series of a
161 total of two adequate breath samples each shall be requested by the state; provided,
162 however, that after an initial test in which the instrument indicates an adequate breath
163 sample was given for analysis, any subsequent refusal to give additional breath samples
164 shall not be construed as a refusal for purposes of suspension of a driver's license under
165 Code Sections 40-5-55 and 40-5-67.1. Notwithstanding the above, a refusal to give an
166 adequate sample or samples on any subsequent breath, blood, saliva, urine, or other
167 bodily substance test shall not affect the admissibility of the results of any prior
168 samples. An adequate breath sample shall mean a breath sample sufficient to cause the
169 breath-testing instrument to produce a printed alcohol concentration analysis.

170 (2) When a person shall undergo a chemical test at the request of a law enforcement
171 officer, only a physician, registered nurse, laboratory technician, emergency medical
172 technician, or other qualified person may withdraw blood for the purpose of determining
173 the alcoholic content therein, provided that this limitation shall not apply to the taking of
174 breath, saliva, or urine specimens. No physician, registered nurse, or other qualified
175 person or employer thereof shall incur any civil or criminal liability as a result of the

176 medically proper obtaining of such blood specimens when requested in writing by a law
177 enforcement officer;

178 (3) The person tested may have a physician or a qualified technician, chemist, registered
179 nurse, or other qualified person of his or her own choosing administer a chemical test or
180 tests in addition to any administered at the direction of a law enforcement officer. The
181 justifiable failure or inability to obtain an additional test shall not preclude the admission
182 of evidence relating to the test or tests taken at the direction of a law enforcement officer;
183 and

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

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

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

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

203 influence of alcohol, as prohibited by paragraphs (1) and (4) of subsection (a) of Code
204 Section 40-6-391.

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

212 (2) In any civil or criminal action or proceeding arising out of acts alleged to have been
213 committed by any person in violation of subsection (i) of Code Section 40-6-391, if there
214 was at that time or within three hours after driving or being in actual physical control of
215 a moving vehicle from alcohol consumed before such driving or being in actual physical
216 control ended an alcohol concentration of 0.04 grams or more in the person's blood,
217 breath, saliva, or urine, the person shall be in violation of subsection (i) of Code
218 Section 40-6-391.

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

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

229

SECTION 7.

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