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MOTOR VEHICLES AND TRAFFIC Driver's Licenses: Repeal Certain Requirements for Habitual Offender Applicants for Probationary Licenses; Provide Administrative Suspension for First Time Offenders; Limit Driving Permits; Change Allowable Blood Alcohol Content for Drivers Under the Age of Eighteen; Provide for Administrative Suspensions and Service of Notice of Suspensions; Provide for Driving Under the Influence; Prohibit Certain Nolo Contendere Pleas; Require that Testing Machines Work Properly

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MOTOR VEHICLES AND TRAFFIC

Driver's Licenses: Repeal Certain Requirements for Habitual Offender Applicants for Probationary Licenses; Provide Administrative Suspension for First Time Offenders; Limit Driving Permits; Change Allowable Blood Alcohol Content for Drivers Under the Age of Eighteen; Provide for Administrative Suspensions and Service of Notice of Suspensions; Provide for Driving Under the Influence; Prohibit Certain Nolo Contendere Pleas; Require that Testing Machines Work Properly

CODE SECTIONS: O.C.G.A. §§ 40-5-58, -64, -67 to -67.2, 40-6-391, -391.1, -392 (amended)

BILL NUMBERS: HB 1471, SB 418

ACT NUMBERS: 1008, 1209

SUMMARY: Act 1008 eliminates the requirement for the Department of Public Safety to do a criminal records check on habitual violators applying for a probationary license. Act 1209 tightens up Georgia Driving Under the Influence (DUI) laws by changing the provisions relating to limited driving permits. These provisions include the issuance of temporary driving permits; the administration of chemical tests; the suspension of licenses for refusing to submit to a blood alcohol level test; the service of notice of such a suspension; the terms and conditions of an administrative suspension of license; the basic provisions for driving under the influence; the elimination of nolo contendere pleas for serious first time offenders; and the requirement that all the parts in blood alcohol level testing machines be in proper working order.

EFFECTIVE DATES: April 1, 1994, O.C.G.A. § 40-5-58; January 1, 1995, §§ 40-5-64, -67, -67.1, -67.2; July 1, 1994 §§ 40-6-391, -391.1; January 1, 1995, § 40-6-392.

History

HB 1471 was introduced at the behest of the Georgia State Patrol which wanted to eliminate a tedious and duplicative procedure for dealing with habitual traffic violators.¹ Before issuing a probationary driver's license to a habitual offender the Georgia State Patrol is

1. Telephone Interview with Rep. Van Streat, House District No. 167 (Mar. 30, 1994) [hereafter Streat Interview]. Rep. Streat was the main sponsor of HB 1471. *Id.*

required to find out if the applicant has had any DUI convictions within the prior two years.² While this determination is just as easily accomplished by a normal driver's record check, a full criminal records check was required, which could bring back anything from speeding tickets to murder charges.³ Thus, "in the interests of good government, HB 1471 was proposed to simplify the process, saving time and the taxpayer's money."⁴

SB 418 was one bill in a package of DUI legislation pushed by Lt. Governor Pierre Howard.⁵ With the high level of alcohol-related fatalities on Georgia highways each year, the package sought to tighten Georgia's DUI laws to send a message to motorists not to drive under the influence.⁶

HB 1471

Code section 40-5-58(e) outlines a list of requirements for granting a probationary license⁷ to a habitual offender whose license was revoked under Code section 40-5-58(b).⁸ Two years after the revocation of the offender's license, a habitual offender may apply for a probationary license subject to certain conditions, one of which is that the person has not been convicted or entered a plea of *nolo contendere* to a charge relating to alcohol or controlled substances.⁹ The Act amends Code

2. 1992 Ga. Laws 2556 (formerly found at O.C.G.A. § 40-5-58(e)(1)(D) (Supp. 1993)).

3. Streat Interview, *supra* note 1; see 1992 Ga. Laws 2556 (formerly found at O.C.G.A. § 40-5-58(e)(1)(D) (Supp. 1993)).

4. Streat Interview, *supra* note 1.

5. Telephone Interview with Senator J. Tom Coleman, Jr., Senate District No. 1 (Mar. 30, 1994) [hereafter Coleman Interview]. Senator Coleman was one of several sponsors of SB 418. *Id.*

6. *Id.*

7. A habitual violator's license may be revoked for a period of five years. O.C.G.A. § 40-5-58(b)-(c) (1994). After two years the offender may apply for a probationary license for the remaining revocation period if, and only if:

- (a) they have not been convicted or plead *nolo contendere* to any local motor vehicle ordinances;
- (b) they have not been convicted or plead *nolo contendere* to any violation of title 40 of the Code which resulted in a fatality;
- (c) they have successfully completed a DUI driving course;
- (d) they have not been convicted or plead *nolo contendere* to any alcohol related offenses;
- (e) they make a sworn affidavit that they do not excessively use alcohol;
- (f) they provide proof of financial responsibility; and
- (g) they would suffer extreme hardship as a result of the refusal.

Id. § 40-5-58(e) (1994).

8. *Id.*; see *id.* § 40-5-58(d) (1994) (outlining the procedures by which a habitual offender's license is revoked).

9. *Id.* § 40-5-58(e) (1994).

section 40-5-58 by deleting language requiring the Department of Public Safety to do a full criminal records check on each applicant.¹⁰ This check was to look for alcohol-related convictions or *nolo contendere* pleas.¹¹ This function, however, is just as easily performed by a regular check of the applicant's driving record.¹² Thus, the amendment allows the Department of Public Safety to perform its duty relating to probationary licenses for habitual DUI offenders without an unnecessary check of their criminal record.¹³

SB 418

SB 418 was one of numerous bills addressing drunk driving which were either introduced during the 1994 legislative session or which remained pending from the previous year.¹⁴ Provisions in many of these bills conflicted with or were duplicative of provisions in other bills pending.¹⁵ The House Judiciary Committee undertook to load into one bill the points from all the proposals which they considered to be the best, mixing and matching as they chose.¹⁶ SB 418 became that vehicle.¹⁷

Limited Driving Permits

The Act amends Code section 40-5-64(a) relating to limited driving permits¹⁸ for certain DUI offenders by expanding the category of offenders eligible for this permit to include persons whose licenses were suspended under Code section 40-5-67.2.¹⁹ These offenders are those who are involved in accidents resulting in serious injuries or deaths

10. Compare *id.* § 40-5-58(e)(1)(D) (1994) with 1992 Ga. Laws 2556 (formerly found at O.C.G.A. § 40-5-58(e)(1)(D) (Supp. 1993)).

11. See 1992 Ga. Laws 2556 (formerly found at O.C.G.A. § 40-5-58(e)(1)(D) (Supp. 1993)).

12. Streat Interview, *supra* note 1.

13. *Id.*; see O.C.G.A. § 40-5-58(e) (1994) (outlining criteria by which the Department of Public Safety evaluates whether to issue a probationary driver's license to habitual violators).

14. Telephone Interview with Rep. Thomas C. Bordeaux, Jr., House District No. 151 (Oct. 5, 1994). For example, in the 1994 session, thirty-six bills relating to DUI were introduced in either the House or the Senate. Final Composite Status Sheet, Mar. 16, 1994.

15. Bordeaux Interview, *supra* note 14.

16. *Id.*

17. *Id.*

18. Unless the offender fails to complete an alcohol or drug program mandated by a *nolo contendere* plea, violators whose licenses have been suspended under the Code's DUI provisions may obtain a limited driving permit for such activities as going to work, school, or to receive regular medical treatment if not having a license would cause extreme hardship on the offender. *Id.* § 40-5-64 (1994).

19. *Id.* § 40-5-64(a) (1994); see *infra* note 43-49 and accompanying text.

while intoxicated beyond the applicable legal limits.²⁰ The Act also amends Code section 40-5-64(e) relating to the duration of a permit issued for violations of Code section 40-5-67.1, adding language that sets the duration of this permit at thirty days from the administrative suspension of the license.²¹

Issuance of Temporary Driving Permits

The Act amends Code section 40-5-67(b) relating to the issuance of a temporary driving permit²² to someone charged with driving under the influence.²³ The Act extends the length of the temporary permit issued to persons who refuse to take a chemical blood alcohol concentration (BAC) test or persons receiving an administrative suspension under Code section 40-5-67.1 from twenty to thirty days.²⁴ Furthermore, the Act deletes language allowing the issuance of a 180-day permit to offenders who have had their licenses suspended within the previous five years.²⁵

Administration of BAC Test, Suspension of License, and Notice and Hearing Requirements

The Act amends Code section 40-5-67.1(b) by lowering the maximum allowable BAC for persons under the age of eighteen from .06 to .04.²⁶ This virtual zero-tolerance rule, heralded by drunk-driving foes,²⁷ was cited by Georgia Mothers Against Drunk Driving as a means to curtail drunk driving and drinking by underage persons.²⁸

In addition, the Act amends subsection (c) of Code section 40-5-67.1 by deleting the requirement of a review of the offender's driving record before the offender's license may be suspended, leaving only the necessity of positive BAC test results.²⁹ Furthermore, the Act reduces the maximum allowable BAC level for offenders under the age of

20. *Id.* § 40-5-67.1(c) (1994).

21. *Id.* § 40-5-64(e) (1994).

22. When an offender's license is seized for a DUI violation (it is attached to the court's copy of the citation), the officer must issue a temporary driving permit for the offenders to use during a statutory period or until the offender's permanent license is revoked or suspended. *Id.* § 40-5-67 (1994).

23. *Id.* § 40-5-67(b) (1994).

24. *Id.*

25. Compare *id.* § 40-5-67(b)(3) (1994) with 1992 Ga. Laws 2574, § 5.

26. O.C.G.A. § 40-5-67.1(b)(3) (1994).

27. Charles W. Griffin III, *GBI Says New DUI Laws May Hamstring Police*, FULTON COUNTY DAILY REP., Mar. 29, 1994, at A1.

28. Georgia Mothers Against Drunk Driving, 1994 Legislative Goals Sheet (available in Georgia State University College of Law Library).

29. Compare O.C.G.A. § 40-5-67.1(c) (1994) with 1992 Ga. Laws 2564, § 6.

eighteen to .04.³⁰ Most significantly, however, the Act amends this section by eliminating the leniency provision for first-time offenders.³¹ Prior to the passage of SB 418, offenders who had not been convicted or accepted a plea of *nolo contendere* within the past five years did not receive an administrative suspension of their license.³² This provision, which eliminated the need for the records check, is intended to prevent long-time, habitual offenders from slipping through the cracks as well as letting genuine first-time offenders know that drunk driving will no longer be tolerated in Georgia.³³

In connection with the previous amendments, the Act amends subsection (f) of Code section 40-5-67.1 relating to service of notice of an administrative suspension of the offender's license by eliminating reference to the review of the offender's driving record.³⁴ The Act also changes the duration of the temporary permit issued from twenty to thirty days, consistent with the changes to Code section 40-5-67(b).³⁵

Finally, the Act amends subsection (g) of Code section 40-5-67.1 dealing with hearings on the license suspension. First, the Act expands the time to request a hearing from five calendar days after suspension to ten business days.³⁶ Furthermore, the Act alters the list of issues to be considered at the hearing by changing the applicable BAC level for persons under the age of eighteen to .04 and inserting the issue whether the BAC test machine was in proper working order.³⁷ If a hearing is not requested within ten business days, and if this failure is "due in whole or in part to the reasonably avoidable fault of the person," the Act provides that the right to a hearing is waived.³⁸ Additional new language, however, provides that if the hearing is not held before the expiration of the temporary permit and the delay is not the fault of the offender, the suspension will be stayed until the hearing is held and a decision rendered.³⁹ Lastly, the Act adds a new part to subsection (g) mandating that in the event of an acquittal or disposition other than a conviction, "the suspension shall be terminated and deleted from the driver's license record," unless the offender enters a plea of *nolo contendere*.⁴⁰ If a plea of *nolo contendere* is entered, this plea would go on the offender's record to be counted as a conviction in

30. O.C.G.A. § 40-5-67.1(c) (1994).

31. *Id.*

32. 1992 Ga. Laws 2564 (formerly found at O.C.G.A. § 40-5-67.1(c) (Supp. 1993)).

33. Coleman Interview, *supra* note 5.

34. O.C.G.A. § 40-5-67.1(f) (1994).

35. *Id.* § 40-5-67.1(f) (1994); *see supra* note 24 and accompanying text.

36. Compare 1992 Ga. Laws 2564 (formerly found at O.C.G.A. § 40-5-67.1(g)(1) (Supp. 1993)) with O.C.G.A. § 40-5-67.1(g)(1) (1994).

37. O.C.G.A. § 40-5-67.1(g)(2) (1994).

38. *Id.* § 40-5-67.1(g)(3) (1994).

39. *Id.*

40. *Id.* § 40-5-67.1(g)(4) (1994).

the event of any future violations.⁴¹ Regardless of the outcome, unless there is a conviction, the license is to be restored at the expense of the Department of Public Safety.⁴²

Terms and Conditions for Administrative License Suspensions

SB 418 also amends Code section 40-5-67.2 relating to the terms and conditions of administrative license suspensions. The Act amends subsection (a) dealing with administrative suspensions issued to offenders involved in accidents involving serious injuries or deaths under Code section 40-5-67.1 by changing the lengths of suspension and adding new provisions allowing reinstatement of the license.⁴³ First-time offenders receive a one-year suspension, and may apply for reinstatement thirty days after the effective date of this license suspension.⁴⁴ Second-time offenders receive a three-year suspension and may apply for reinstatement after 120 days.⁴⁵ A request for reinstatement, however, will be granted if, and only if, the offender submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program and pays a \$210 restoration fee, which is reduced to \$200 if paid by mail.⁴⁶ For the third or subsequent suspension within five years, the suspension is five years with restoration subject to the same conditions as for the second-time offender, although the offender may apply for a probationary license under Code section 40-5-58 after two years.⁴⁷ Furthermore, the Act provides under subsection (b) that the period of administrative suspension may be counted towards any suspension handed down as a result of a DUI conviction arising from the same violation.⁴⁸ Finally, the Act adds subsection (d) providing that an offender with no DUI offenses in the past five years is eligible for a limited driving permit under Code section 40-5-64.⁴⁹

Driving Under the Influence

The only provisions of the original version of SB 418 to survive the House Judiciary Committee were the amendments to Code section 40-6-391 which sets out the general laws and penalties for driving under the influence.⁵⁰ One setback for the proponents of the bill was the House

41. *Id.*

42. *Id.*

43. *Id.* § 40-5-67.2(a) (1994).

44. *Id.* § 40-5-67.2(a)(1) (1994).

45. *Id.* § 40-5-67.2(a)(2) (1994).

46. *Id.*

47. *Id.* § 40-5-67.2(a)(3) (1994).

48. *Id.* § 40-5-67.2(b) (1994).

49. *Id.* § 40-5-67.2(d) (1994); see *supra* notes 18-21 and accompanying text.

50. SB 418, as introduced, 1994 Ga. Gen. Assem.; SB 418 (HCS), 1994 Ga. Gen.

Committee's reinstatement of language eliminating the five-year cut-off period for prior convictions or nolo contendere pleas.⁵¹ For first-time offenders, the Act adds a requirement of at least forty hours of community service to existing fines and imprisonment.⁵² For second-time offenders, a similar requirement of at least eighty hours of community service was added to the fines and imprisonment.⁵³ Furthermore, a subsection allowing the judge to suspend the jail sentence in lieu of the community service, was deleted.⁵⁴ Likewise, for third or subsequent offenses, thirty days of community service were added to the mandatory penalties.⁵⁵ In addition, consistent with the rest of SB 418, the allowable BAC limit for drivers under the age of eighteen was lowered to .04.⁵⁶ These modifications set a minimum requirement of community service, making punishment more burdensome to many offenders, and taking away one avenue of leniency for the judge, thereby strengthening the law and sending the message that drunk driving will not be tolerated in Georgia.⁵⁷

Nolo Contendere Pleas

Another significant change lauded by drunk-driving opponents⁵⁸ is the amendment of Code section 40-6-391.1(a) relating to the entry of nolo contendere pleas.⁵⁹ Although the decision to accept such a plea had previously been left to the judge's discretion, a provision was added stating that a nolo contendere plea shall not be accepted if the driver's BAC is more than .15 at any time within three hours of driving and no additional alcohol has been consumed.⁶⁰ This means that only a

Assem. The original version of SB 418 also contained substantial revisions of O.C.G.A. § 40-5-58, relating to habitual offenders, and O.C.G.A. § 40-5-63, relating to periods of suspension, which were completely deleted by the House Judiciary Committee. *Compare* SB 418, as introduced, 1994 Ga. Gen. Assem. *with* SB 418 (HCS), 1994 Ga. Gen. Assem.

51. *Compare* SB 418, as introduced, 1994 Ga. Gen. Assem. *with* SB 418 (HCS), 1994 Ga. Gen. Assem. This language was deleted from the previous statute in the version of HB 418 originally introduced. *See* SB 418, as introduced, 1994 Ga. Gen. Assem.

52. O.C.G.A. § 40-6-391(c) (1994).

53. *Id.* § 40-6-391(c)(1)(C) (1994).

54. *Compare id.* § 40-6-391(c)(2)(C) (1994) *with* 1990 Ga. Laws 2048, § 5, at 2313 (formerly found at O.C.G.A. § 40-6-391(c)(2)(B)(ii) (Supp. 1993)).

55. O.C.G.A. § 40-6-391(c)(3)(C) (1994). The Act again deleted a provision allowing the judge to suspend a jail sentence in lieu of community service. *Compare id.* § 40-6-391(c)(3)(B) (1994) *with* 1992 Ga. Laws 2048, § 5, at 2314 (formerly found at O.C.G.A. § 40-6-391(c)(3)(B)(ii) (Supp. 1993)).

56. O.C.G.A. § 40-6-391(k) (1994).

57. Coleman Interview, *supra* note 5.

58. Griffin, *supra* note 27.

59. O.C.G.A. § 40-6-391.1(a) (1994).

60. *Id.*

limited number of offenders now have access to the nolo contendere plea.⁶¹

Chemical Testing Machines

The final provision of SB 418 amending Code section 40-6-392(a)(1) relating to chemical tests administered to determine a driver's BAC level quickly became the most controversial provision.⁶² The Act adds language which requires that BAC tests be done "on a machine which is operated with all its electronic and operating components prescribed by its manufacturer properly attached and in good working order."⁶³ Standard machines used throughout the state had been modified by removing a filter cell because the cell was unnecessary and difficult to maintain.⁶⁴ Experts say that the removal of this particular cell from the machine can throw off a test by as much as .02.⁶⁵ Thus, with the lower BAC levels for drivers under the age of eighteen and the implementation of stricter administrative license suspensions, the "proper working order" requirement is arguably needed to ensure fair and accurate testing.⁶⁶ However, the refitting of the machines will be expensive.⁶⁷ Furthermore, the operators will have to be recertified on the refurbished machines which could take up to four years.⁶⁸ In essence, what the provision means is that, for the time being, a DUI offender may be able to avoid conviction if the machine is not in proper working order and the test administrator is not certified for the refitted machine.⁶⁹

Martin A. Shelton

61. Coleman Interview, *supra* note 5.

62. Griffin, *supra* note 27.

63. O.C.G.A. § 40-6-392(a)(1) (1994).

64. Griffin, *supra* note 27, at A4.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* The Georgia Bureau of Investigation must certify all operators of the new machines. *Id.*; see O.C.G.A. § 40-5-67.1(g) (1994).