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MOTOR VEHICLE AND TRAFFIC Operating While Under the Influence: Provide a Comprehensive Revision, Modernization, and Reform of the Laws of this State Relating to Operating Motor Vehicles While Under the Influence of Alcohol, Drugs, or Other Substances; to Provide for Implied Consent to Chemical Testing; to Provide Definitions; to Provide for the Adoption of Such Laws by Ordinance by Political Subdivisions; to Provide for the Discretion of the Court to Accept Certain Pleas; to Provide for the Publication of the Photographs and Fact of Conviction for Certain Offenders; to Amend

Various Provisions of the Official Code of Georgia Annotated, so as to Conform Such Provisions to the Provisions of this Act; to Provide for the Applicability and Effect of this Act; to Provide for the Applicability and Effect of this Act; to Provide an Effective date; to Repeal Conflicting Laws; and for Other Purposes

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MOTOR VEHICLES AND TRAFFIC

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CODE SECTIONS:	O.C.G.A. § 6-2-5.1 (amended); 12-3-315 (amended); 15-11-66 (amended); 15-21-112, 149 (amended); 16-10-51 (amended); 17-6-1, 2 (amended); 17-10-3.1 (amended); 17-15-7, 8, 10 (amended); 20-2-984.2 (amended); 33-9-43 (amended); 40-1-8 (new); 40-2-136 (amended); 40-5-1, 2, 24, 52, 55, 57.1, 58, 62, 63, 63.1, 64, 66, 67, 69, 75, 85, 142, 148.1, 151, 152, 153 (amended); 40-5-67.1, 67.2 (repealed); 40-6-3, 291, 391, 392, 393, 393.1, 394 (amended); 40-6-391.2 to -391.3 (repealed); 40-6-410 to -25 (new); 42-4-7 (amended), 42-8-34, 111, 112 (amended); 50-5-200 to -210 (new)
BILL NUMBER:	SB 502
SUMMARY:	The bill proposed the consolidation of existing DUI laws in Georgia and the addition of new sections to the Georgia Code that would address perceived ambiguities caused by recent Georgia

court decisions. Specifically, the bill was intended to facilitate the collection of admissible evidence by law enforcement officers in DUI cases. For example, the bill proposed the availability of implied consent chemical testing where there is "probable cause" to believe that a suspect is operating a motor vehicle while under the influence of alcohol, drugs, or other substances in certain circumstances. Further, the bill would have allowed for the admissibility of chemical test results where the defendant driver did not consent to the testing, but a valid warrant was obtained. Additionally, the bill would have allowed for the admissibility of chemical test results where the law enforcement officer misread or failed to read portions of the implied consent notice.

History

The current DUI laws in Georgia span multiple titles and sections of the Georgia Code.[1] Georgia's implied consent provisions in its DUI laws were at the forefront of the proposed legislation in the 2006 term.[2] The history of the DUI laws in Georgia and recent court cases interpreting the existing law shed light on the reasons for the proposal of Senate Bill 502.[3]

1. *See, e.g.*, O.C.G.A. §§ 6-2-5.1 (2005); 15-21-112 (2005); 17-10-3.1 (2005); 40-5-52 (2005).
2. *See* SB 502, as passed by the Senate, 2006 Ga. Gen. Assem.; HB 1222, as introduced, 2006 Ga. Gen. Assem.
3. *See* 1968 Ga. Laws 448; O.C.G.A. §§ 40-5-55, -67.1 (2005).

Schmerber v. California[4]

In 1966, the United States Supreme Court held that a police officer can forcibly take blood from a suspect, so long as the officer has probable cause to believe that a suspect has committed the criminal offense of driving an automobile while intoxicated.[5] In the case of *Schmerber v. California*, the petitioner was arrested while he was at a hospital seeking treatment for injuries suffered in a car accident.[6] At the direction of a police officer, a hospital physician withdrew a sample of his blood.[7] The report of his blood alcohol percentage was admitted at trial, and he was convicted.[8] The petitioner objected to the admissibility of the report, claiming that it violated his Fourth Amendment right to be free of unreasonable searches and seizures.[9]

The Court first noted that a suspect's Fourth Amendment right to be free of unreasonable searches and seizures applies to the compelled withdrawal of blood.[10] The Court then asked whether the police were justified in requiring petitioner to submit to the test, and whether the means and procedures employed in taking petitioner's blood were reasonable.[11] Finding the ends justified (there was probable cause to suspect petitioner of a criminal violation) and the means reasonable (the attempt to secure evidence was an appropriate incident to his arrest), the Court concluded that no violation had taken place.[12]

Implied Consent Laws

In the wake of this decision, Georgia adopted "implied consent" laws to minimize the risk of violent confrontations between police, medical personnel, and suspected impaired drivers.[13] These laws

4. Schmerber v. California, 384 U.S. 757 (1966).
5. *Id.* at 767-68.
6. *Id.* at 758.
7. *Id.*
8. *Id.* at 759.
9. *Id.*
10. *Schmerber*, 384 U.S. at 767.
11. *Id.* at 768.
12. *Id.* at 768-72.
13. *See* 1968 Ga. Laws 448; Adam Ferrell, Rodriguez v. State*: Addressing Georgia's Implied Consent Requirements for Non-English-Speaking Drivers*, 54 MERCER L. REV. 1253, 1257 (2003)

provide for consequences such as license suspension if the driver refuses to consent to testing, and the laws provide for the admission into evidence of the fact that the driver refused testing.[14] In Georgia, a defendant's refusal to submit to testing gives rise to an inference that a test would have shown the presence of a prohibited substance.[15]

An often-cited section of Georgia's implied consent laws reads:

> [A]ny person who operates a motor vehicle upon the highways or elsewhere throughout this state shall be deemed to have given consent, subject to Code Section 40-6-392, to a chemical test or tests of his or her blood, breath, urine, or other bodily substances for the purpose of determining the presence of alcohol or any other drug, if arrested for any offense arising out of acts alleged to have been committed in violation of Code Section 40-6-391 or if such person is involved in any traffic accident resulting in serious injuries or fatalities.[16]

Several recent cases have called into question the meaning and application of these laws.[17]

Cooper v. State[18]

In 2003, the Georgia Supreme Court held a portion of Georgia's implied consent law unconstitutional.[19] In August of 2000, two drivers were involved in a head-on collision in Barrow County, Georgia.[20] The trooper investigating the scene discovered that one driver had suffered a broken arm and, pursuant to Georgia law, administered a blood test to both drivers.[21] The trooper was acting

(stating that Georgia's original implied consent laws have changed very little since first introduced in 1968).

14. *See* Ferrell, *supra* note 13, at 1257.

15. *See* Kelly v. State, 528 S.E.2d 812 (Ga. Ct. App. 2000).

16. O.C.G.A. § 40-5-55 (2005).

17. *See* Audio Recording of Senate Proceedings, Feb. 23, 2006 (remarks by Sen. William Hamrick), http://www.georgia.gov/00/article/0,2086,4802_6107103_47120055,00.html, [hereinafter Senate Audio].

18. Cooper v. State, 587 S.E.2d 605 (Ga. 2003).

19. *Id.* at 607.

20. *Id.*

21. *Id.* at 607-08.

under Code section 40-5-55, which dictates that a person involved in any traffic accident resulting in serious injuries or fatalities has, by operation of law, given consent to chemical testing.[22] One of the drivers, Carey Don Cooper, tested positive for cocaine, and was convicted for driving under the influence of cocaine.[23]

Prior to trial Cooper moved to suppress the blood test results, arguing that "to the extent that O.C.G.A. [section] 40-5-55 allowed the state to require a person to consent to a [blood test] without probable cause, the statute was unconstitutional under the State and Federal Constitutions."[24] The trial court denied the motion.[25] On appeal, the Georgia Supreme Court concluded that the relevant provision of Code section 40-5-55 was unconstitutional under "Article I, Section I, Paragraph XIII of the 1983 Georgia Constitution and the Fourth and Fourteenth Amendments of the Constitution of the United States because it authorizes a search and seizure without probable cause."[26] The Court emphasized that "[a] suspect's Fourth Amendment right to be free of unreasonable searches and seizures applies to the compelled withdrawal of blood."[27] Because the statute authorized a search without probable cause, based solely on the occurrence of a traffic accident, the court deemed it unconstitutional.[28]

State v. Collier[29]

In 2005, the Georgia Supreme Court held that, under Georgia law, if a suspect refuses to submit to chemical testing, a police officer cannot obtain a search warrant to compel him to submit to such testing.[30] In *State v. Collier*, the evidence at trial showed that the defendant drove through a red light and collided with another car,

22. *Id.* at 608.
23. *Id.* at 607-08.
24. *Cooper*, 587 S.E.2d at 608.
25. *Id.*
26. *Id.* at 607.
27. *Id.* at 608 (citing Welch v. State, 331 S.E.2d 573 (Ga. 1985)).
28. *Id.* at 612.
29. State v. Collier, 612 S.E.2d 281 (Ga. 2005).
30. *Id.* at 284.

killing both passengers of that car.[31] The defendant fled the scene, but was later caught by police.[32] After police gave the implied consent warning, the defendant refused to submit to testing.[33] When the police threatened to get a search warrant and use a catheter to collect the necessary samples, Collier consented, and was later convicted of vehicular homicide.[34]

On appeal, the defendant argued that he was misled by police because they could not compel him to submit to testing if he would not consent.[35] The Georgia Supreme Court agreed.[36] The court pointed to the language of Code section 40-5-67.1, which provides, "If a person . . . refuses, upon the request of a law enforcement officer, to submit to a chemical test . . . *no test shall be given.*"[37] The court held under the plain meaning of this law that if an individual does not consent to the designated test, then no test can be administered, under warrant or otherwise.[38] Georgia's implied consent statute, therefore, provides greater protection for citizens than either the Georgia Constitution or the U.S. Constitution.[39]

Hough v. State[40]

Again, in 2005, the Georgia Supreme Court was asked to rule on the applicability of Georgia's implied consent laws.[41] In January of 2003, Bryan Reid Handschuh drove off the side of the road and his truck flipped into an embankment.[42] The investigating officer noticed that the truck smelled like alcohol and he discovered a half gallon bottle of Crown Royal, most of which had been consumed.[43] At the

31. *Id.* at 282; *see also* Bill Hamrick, Editorial, *Keeping Drunks off Road*, DOUGLAS DAILY NEWS, Feb. 10, 2006.
32. *Collier*, 612 S.E.2d at 282.
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.* at 284.
37. *Collier*, 612 S.E.2d at 283 (quoting O.C.G.A. § 40-5-67.1 (2005) (emphasis in original)).
38. *Id.* at 283-84.
39. *See id.* at 284.
40. Hough v. State, 620 S.E.2d 380 (Ga. 2005) (affirming in part and disapproving in part of the judgment of the Court of Appeals in Handschuh v. State, 607 S.E.2d 899 (Ga. Ct. App. 2004)).
41. *Id.* at 382-83.
42. *Id.* at 386.
43. *Id.*

hospital, the officer informed Handschuh of his implied consent rights and asked him to submit to a blood test.[44] Handschuh refused to submit, and six days later he was arrested for driving under the influence of alcohol.[45] Evidence of his refusal to submit to the blood test was introduced at trial, and Handschuh was convicted.[46]

On appeal, Handschuh argued that the language of Georgia's implied consent statutes, the implied consent warning cannot be given until suspect is actually arrested.[47] The Georgia Supreme Court agreed, noting that the plain and unambiguous wording of the statute's language mandates that a suspect must be under arrest before his implied consent rights are read to him.[48] The statute limits that requirement, however, to situations in which the suspect has not been involved in an accident involving serious injury or fatalities.[49] If the suspect has been in such an accident, held the court, nothing in Georgia's implied consent laws required arrest as a precondition to implied consent testing — probable cause alone is sufficient to lead to warning of implied consent.[50]

Response to Cooper, Collier, and Hough

In the 2006 session of the General Assembly, several groups supported legislation to respond to these recent court decisions.[51] Senator Bill Hamrick, a sponsor of SB 502, noted that these decisions severely restrict law enforcement officers in their efforts to gather the evidence necessary to convict drunk drivers.[52] Specifically, Senator Hamrick pointed to an incident in his home district in which the

44. *Id.*

45. *Id.* (Handschuh would not respond directly to the officer's requests, but he told a nurse that he would not allow his blood to be drawn).

46. Handschuh v. State, 607 S.E.2d 899, 902 (Ga. Ct. App. 2005), *aff'd in part*, Hough v. State, 620 S.E.2d 380 (Ga. 2005).

47. *Hough*, 620 S.E.2d at 384-87.

48. *Id.*

49. *Id.*

50. *Id.* at 382. The limitations of *Cooper* are no longer at issue when there is probable cause. *Id.* at 386.

51. *See* Interview with Irene Munn, Douglas County District Attorney's Office, Mar. 22, 2006 [hereinafter Munn Interview] (stating that Governor's Office of Highway Safety, the District Attorneys Association, and the Solicitor's Association were all in favor of new legislation).

52. *See* Hamrick, *supra* note 31; *see also* Telephone Interview with Sen. Bill Hamrick, Senate Dist. No. 30 (Apr. 17, 2006) [hereinafter Hamrick Interview]; Senate Audio, *supra* note 17.

Georgia Supreme Court excluded evidence needed to convict a man who killed a child and grandmother while driving under the influence of cocaine.[53] That incident, culminating in the *Collier* decision, prompted Senator Hamrick to take action.[54]

At the same time, the Governor's Office of Highway Safety was conducting a five-month study to focus on the controversies and issues involved in Georgia's DUI laws.[55] The study found that over five hundred Georgia drivers are killed in alcohol-related crashes annually, and that over thirty percent of the fatal crashes in Georgia involve alcohol.[56] Working with that office, Senator Hamrick proposed SB 502 to serve as a comprehensive overhaul of Georgia's DUI laws, gathering all DUI-related provisions together in one section, and to address and correct the obstacles presented under current implied consent laws.[57]

Bill Tracking

HB 1222

At the same time that SB 502 was introduced in the Senate, HB 1222 was introduced in the House.[58] HB 1222 was introduced by Representatives Mark Hatfield, Barry Fleming, David Ralston, Timothy Bearden, Charlice Byrd, and Stan Watson of the 177th, 117th, 7th, 68th, 20th, and 91st districts, respectively.[59] HB 1222 was described as an implied consent bill that proposed to provide a comprehensive revision and reform of DUI laws in Georgia.[60] HB 1222 was first read in the House on February 2, 2006.[61] The House Committee on Judiciary Non-Civil reported favorably on a substitute

53. *See* Hamrick interview, *supra* note 52.
54. *See id.*
55. Press Release, Governor's Office of Highway Safety, Why Is SB 502 Needed? (undated) (on file with The Georgia State University Law Review).
56. *Id.*
57. *See* Hamrick interview, *supra* note 52.
58. *See* State of Georgia Final Composite Status Sheet, HB 1222, Feb. 2, 2006 (Mar. 30, 2006).
59. *See* HB 1222, as introduced, 2006 Ga. Gen. Assem; *Georgia General Assembly – HB 1222*, http://www.legis.ga.gov/legis/2005_06/sum/hb1222.htm (last visited November 16, 2006).
60. *See* HB 1222, as introduced, 2006 Ga. Gen. Assem.
61. *See* State of Georgia Final Composite Status Sheet, HB 1222, Feb. 2, 2006 (Mar. 30, 2006).

bill on March 8, 2006.[62] Following the third reading of the bill on March 13, 2006, the bill failed to pass by a narrow margin.[63] This vote foreshadowed the fate of Senate Bill 502.[64]

SB 502

Senate Bill 502 was introduced by Senators Bill Hamrick, Joseph Carter, Preston Smith, Judson Hill, and John Wiles of the 30th, 13th, 52nd, 32nd, and 37th districts, respectively.[65] Like HB 1222, SB 502 was read for the first time on February 2, 2006.[66] On February 15, 2006, the Senate Committee on Public Safety and Homeland Security favorably reported the committee substititute to SB 502.[67] Following a second reading of the bill on February 16, 2006 and a third reading on February 22, 2006, on February 23, 2006 in a near-unanimous vote the Senate passed and adopted SB 502 by committee substitute.[68]

SB 502 was read for first time in the House on February 28, 2006, and was read again the following day.[69] After much delay and deliberation, the bill could not garner enough support in the House and was eventually taken off the table.[70]

62. *See* State of Georgia Final Composite Status Sheet, HB 1222, Mar. 8, 2006 (Mar. 30, 2006); *Georgia General Assembly – HB 1222*, http://www.legis.ga.gov/legis/2005_06/sum/hb1222.htm (last visited November 16, 2006).

63. Georgia House of Representatives Voting Record, HB 1222 (Mar. 13, 2006) (76 Yea, 84 Nay, 13 Not Voting, 7 Excused); Georgia House of Representatives Voting Record, HB 1222 (Mar. 13, 2006) (Motion to Reconsider) (66 Yea, 92 Nay, 15 Not Voting, 7 Excused).

64. *See* SB 502, as introduced, 2006 Ga. Gen. Assem.

65. SB 502, as introduced, 2006 Ga. Gen. Assem.

66. State of Georgia Final Composite Status Sheet, SB 502, Feb. 2, 2006 (Mar. 30, 2006).

67. State of Georgia Final Composite Status Sheet, SB 502, Feb. 15, 2006 (Mar. 30, 2006); *Georgia General Assembly – SB 502*, http://www.legis.ga.gov/legis/2005_06/sum/sb502.htm (last visited November 16, 2006).

68. State of Georgia Final Composite Status Sheet, SB 502, Feb. 16, 2006 (Mar. 30, 2006); State of Georgia Final Composite Status Sheet, SB 502, Feb. 22, 2006 (Mar. 30, 2006); *see also* Georgia Senate Voting Record, SB 502 (Feb. 22, 2006) (reflecting that only Sen. Gloria Butler of the 55th District voted against the Bill). The committee substitute is discussed *infra* at text accompanying notes 79-130.

69. State of Georgia Final Composite Status Sheet, SB 502, Feb. 28, 2006 (Mar. 30, 2006); State of Georgia Final Composite Status Sheet, SB 502, Mar. 01, 2006 (Mar. 30, 2006).

70. State of Georgia Final Composite Status Sheet, SB 502, Mar. 01, 2006 (Mar. 30, 2006); Munn Interview, *supra* note 51.

HB 1275

Even though HB 1222 and SB 502 were both defeated, proponents of stricter and more clarified DUI legislation won a small victory when an implied consent-related amendment was approved in HB 1275.[71] HB 1275 was sponsored by Representatives Vance Smith, Johnny Floyd, Ed Rynders, Tom Graves and Mickey Channell of the 129th, 147th, 152nd, 12th, and 116th districts, respectively.[72] HB 1275 was a bill purporting to require the revocation of a commercial drivers license if the holder of the license was in violation of Code sections 16-8-2 through 16-8-9, defining crimes of theft.[73] HB 1275 was passed and adopted by the House on March 2, 2006 and adopted by the Senate on March 27, 2006.[74]

Following the termination of SB 502, Senators Joseph Carter of the 13th District, Ronnie Chance of the 16th District, and Jim Whitehead, Sr. of the 24th District proposed an amendment to HB 1275.[75] As amended, HB 1275 would insert new Code section 40-5-67.1 that would read: "Nothing in this Code Section shall be deemed to preclude the acquisition or admission of evidence of a violation of Code Section 40-6-391 if obtained by voluntary consent or a search warrant as authorized by the Constitution or laws of this state or the United States."[76] The amenedment was adopted by the Senate and amended HB 1275 was passed by the Senate on March 27th, 2006.[77] The House adopted HB 1275 as passed by the Senate, including the floor amendment, on March 28, 2006.[78] Presumably, this amendment was in response to the Georgia Supreme Court's holding in *State v. Collier* that evidence obtained by search warrants after implied consent is refused is not admissible.[79]

71. *See* HB 1275, as passed, 2006 Ga. Gen. Assem.
72. *See* HB 1275, as introduced, 2006 Ga. Gen. Assem.
73. *Id*; O.C.G.A. §§16-8-2 through 16-8-9 (2006 Supp.).
74. State of Georgia Final Composite Status Sheet, HB 1275, Mar. 2, 2006 (Mar. 30, 2006); State of Georgia Final Composite Status Sheet, HB 1275, Mar. 27, 2006 (Mar. 30, 2006).
75. HB 1275, (SFA), 2006 Ga. Gen. Assem.
76. HB 1275, as passed, 2006 Ga. Gen. Assem.
77. State of Georgia Final Composite Status Sheet, HB 1275, Mar. 27, 2006 (Mar. 30, 2006).
78. State of Georgia Final Composite Status Sheet, HB 1275, Mar. 28, 2006 (Mar. 30, 2006).
79. *See* Hamrick Interview, *supra* note 52; *see also* State v. Collier, 612 S.E.2d 281 (Ga. 2005).

The Act

Section 1, if passed, would have provided legislative intent.[80] Section 1-1, if passed, would have amended Title 40 by adding new Code Section 40-1-8.[81] This new section would have prohibited the operation of motor vehicles while under the influence of alcohol, drugs, or other substances.[82] This new section would have also provided for implied consent for chemical testing.[83]

Section 1-2 would have amended Title 40 by adding new Article 9 to Chapter 5.[84] This new section would have provided relevant definitions.[85] This new section would have provided for chemical testing for persons suspected of driving under the influence of alcohol, drugs, or other substances.[86]

This new section would have provided for the procedures to obtain and perform such tests.[87] This new section would have provided for the administration of warnings in regard to such tests.[88] If passed, this new section would have provided for independent tests under certain circumstances.[89]

Section 1-2 would have provided for certain qualifications for persons performing such tests and certain instruments used in said testing.[90] This new section would also have provided for the admission into evidence of the results of such tests and certifications of such testing instruments.[91] If passed, this new section would also have provided for certain immunities.[92]

If passed, section 1-2 would have provided for certain disclosures.[93] This new section would have also provided for the taking of the driver's license of the person thought to be operating a

80. SB 502, as passed by the Senate, 2006 Ga. Gen. Assem.
81. *Id.*
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.*
86. SB 502, as passed by the Senate, 2006 Ga. Gen. Assem.
87. *Id.*
88. *Id.*
89. *Id.*
90. *Id.*
91. *Id.*
92. SB 502, as passed by the Senate, 2006 Ga. Gen. Assem.
93. *Id.*

motor vehicle while under the influence of alcohol, drugs, or other substances.[94] This new section would also have provided for temporary driving permits under certain circumstances.[95]

Section 1-2 would have also provided for certain reports for law enforcement officers and court.[96] This new section would have provided for the suspension and revocation of a driver's license under certain circumstances.[97] This new section would have provided for procedures for such revocations and suspensions.[98]

This new section would have provided for hearings in certain circumstances.[99] If passed, this new section would have provided for reinstatement of a driver's license in certain circumstances.[100] This new section would have provided for compensation for law enforcement officers for attending hearings.[101]

Section 1-3, if passed, would have amended Title 40 by redesignating the existing provisions of Article 15 of Chapter 6, relating to serious traffic offenses, as Part I, and inserting a new Part II.[102] This new section would have provided for sanctions and penalties for operating a motor vehicle while under the influence of alcohol, drugs, or other substances.[103] This new section would have prohibited the operation of a motor vehicle while under the influence of alcohol, drugs, or other substances while transporting a child under the age of 14 years.[104]

Section 1-3 would have prohibited the operation of a school bus while under the influence of alcohol, drugs, or other substances.[105] The new section would have provided that legal entitlement to use alcohol, marijuana, or other drugs shall not constitute a defense.[106]

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94. *Id.*
95. *Id.*
96. *Id.*
97. *Id.*
98. SB 502, as passed by the Senate, 2006 Ga. Gen. Assem.
99. *Id.*
100. *Id.*
101. *Id.*
102. *Id.*
103. *Id.*
104. SB 502, as passed by the Senate, 2006 Ga. Gen. Assem.
105. *Id.*
106. *Id.*

Furthermore, this new section would have provided that certain pleas shall constitute prior convictions for sentencing purposes.[107]

If passed, section 1-3 would have provided for the discretion of the court to accept certain pleas.[108] This new section would have provided for the adoption of such laws by ordinance by political subdivisions.[109] In addition, this new section would have provided for the publication of the photographs and fact of conviction for certain offenders.[110]

If passed, section 1-3 would have provided for the admissibility of certain evidence.[111] Additionally, this new section would have provided for the seizure and forfeiture of certain vehicles operated by certain violators.[112]

Sections 2-1 to 2-19, if passed, would have amended various code sections by updating citations in order to remain consistent with the sections of this proposed Act.[113]

Section 2-20, if passed, would have amended Title 40 of the Georgia Code by striking Code section 40-5-55, relating to implied consent to chemical tests, and renders that Code section reserved.[114] Section 2-21 to 2-27, if passed, would have updated various Code sections so that citations would remain consistent.[115] Section 2-28, if passed, would have amended Title 40 of the O.C.G.A. by striking Code section 40-5-67, rendering it reserved.[116]

Section 2-29, if passed, would have amended Title 40 of the Georgia Code by repealing Code Section 40-5-67.1, relating to

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107. *Id.*
108. *Id.*
109. *Id.*
110. SB 502, as passed by the Senate, 2006 Ga. Gen. Assem.
111. *Id.*
112. *Id.*
113. *See* SB 502, as passed by the Senate, 2006 Ga. Gen. Assem., §§ 2.1 – 2.19, amending Code sections 6-2-5.1 (Supp. 2005), 12-3-315 (Supp. 2005), 15-11-66 (Supp. 2005), 15-21-112 (Supp. 2005), 12-3-315 (Supp. 2005), 15-11-66 (Supp. 2005), 15-21-112 (Supp. 2005), 15-21-149 (Supp. 2005), 17-6-1 (Supp. 2005), 17-6-2 (Supp. 2005), 17-10-3.1 (Supp. 2005), 17-15-7 (Supp. 2005), 17-15-8 (Supp. 2005), 17-15-10 (Supp. 2005), 20-2-984.2 (Supp. 2005), 33-9-43 (Supp. 2005), 40-2-136 (Supp. 2005), 40-5-1 (Supp. 2005), 40-5-2 (Supp. 2005), 40-5-24 (Supp. 2005), 40-5-52 (Supp. 2005).
114. *Compare* SB 502, as passed by the Senate, 2006 Ga. Gen. Assem., *with* O.C.G.A. § 40-5-55 (Supp. 2005).
115. *See* SB 502 as passed by the Senate, §§ 2-21 – 2-27, amending Code sections 40-5-57.1 (Supp. 2005), 40-5-58 (Supp. 2005), 40-5-62 (Supp. 2005), 40-5-63 (Supp. 2005), 40-5-63.1 (Supp. 2005), 40-5-64 (Supp. 2005), 40-5-66 (Supp. 2005).
116. *Compare* SB 502, as passed by the Senate, 2006 Ga. Gen. Assem., *with* O.C.G.A. § 40-5-67 (Supp. 2005).

chemical tests.[117] Section 2-30, if passed, would have amended Title 40 of the Georgia Code by repealing Code section 40-5-67.2, relating to terms and conditions for suspension of license under subsection (c) of Code section 40-5-67.1.[118]

Section 2-31, if passed, would have amended Title 40 of the Georgia Code by striking Code section 40-5-69, relating to circumstances not affecting suspension by operation of law, and replacing it with a new Code Section 40-5-69.[119] Sections 2-32 to 2-37, if passed, would have amended various Code sections to be consistent with the applicable sections of the proposed Act[120]

Section 2-38, if passed, would have amended Title 40 of the Georgia Code by striking Code section 40-5-153, rendering the section reserved.[121] Section 2-39 to 2-40, if passed, would have amended Title 40 of the Georgia Code by updating Code citations.[122]

Section 2-41, if passed, would have amended Title 40 by striking Code section 40-6-391, rendering it reserved.[123] Section 2-42, if passed, would have amended Title 40 by repealing Code section 40-6-391.1, relating to entry of plea of nolo contendre.[124]

Section 2-43, if passed, would have amended Title 40 by repealing Code section 40-6-391.2, relating to seizure and forfeiture of a motor vehicle by a habitual violator.[125] Section 2-44, if passed, would have amended Title 40 by repealing Code section 40-6-391.3, relating to the penalty for a conviction for driving under the influence of alcohol

117. *Compare* SB 502, as passed by the Senate, 2006 Ga. Gen. Assem., *with* O.C.G.A. § 40-5-67.1 (Supp. 2005).

118. *Compare* SB 502, as passed by the Senate, 2006 Ga. Gen. Assem., *with* O.C.G.A. § 40-5-67.2 (Supp. 2005).

119. *Compare* SB 502, as passed by the Senate, 2006 Ga. Gen. Assem., *with* O.C.G.A. § 40-5-69 (Supp. 2005).

120. *See* SB 502, as passed by the Senate, §§ 2.32 – 2.37, amending Code sections 40-5-85 (Supp. 2005), 40-5-142 (Supp. 2005), 40-5-148.1 (Supp. 2005), 40-5-151 (Supp. 2005), 40-5-152 (Supp. 2005).

121. *Compare* SB 502, as passed by the Senate, 2006 Ga. Gen. Assem., *with* O.C.G.A. § 40-5-153 (Supp. 2005).

122. *See* SB 502, as passed by the Senate, §§ 2.39 to 2.40, amending Code sections 40-6-3 (Supp. 2005), 40-6-291 (Supp. 2005).

123. *Compare* SB 502, as passed by the Senate, 2006 Ga. Gen. Assem., *with* O.C.G.A. § 40-6-391 (Supp. 2005).

124. *Compare* SB 502, as passed by the Senate, 2006 Ga. Gen. Assem., *with* O.C.G.A. § 40-6-391.1 (Supp. 2005).

125. *Compare* SB 502, as passed by the Senate, 2006 Ga. Gen. Assem., *with* O.C.G.A. § 40-6-391.2 (Supp. 2005).

or drugs while driving a school bus.[126] Section 2-45, if passed, would have amended Title 40 by striking Code section 40-6-392, rendering it reserved.[127]

Section 2-46 to 2-52, if passed, would have amended Title 40 by updating applicable citations.[128]

Section 3-1, if passed, would have ensured that new Code sections would not alter any existing proceedings, sentences, etc.[129] Section 3-2, if passed, this section would have provided an effective date.[130] Section 3-3, if passed, would have repealed conflicting laws.[131]

Analysis

SB 502 was introduced to the Senate as a comprehensive "implied consent" bill.[132] Senator Bill Hamrick, who co-sponsored SB 502, classified the purpose of the bill during the March 13, 2006 Senate floor debate as "renumbering and recomposing current law as it is applied in DUI cases" in Georgia.[133] According to Senator Hamrick, SB 502 would close loopholes used by criminals who break DUI laws, prevent criminals from avoiding punishment due to technicalities, and respond to recent appellate court decisions whose interpretations of DUI laws have severely restricted law enforcement officers in their efforts to obtain needed evidence to convict drunk drivers.[134]

The proponents of SB 502 expressed that they were primarily concerned with technicalities in the existing DUI laws that were

126. *Compare* SB 502, as passed by the Senate, 2006 Ga. Gen. Assem., *with* O.C.G.A. § 40-6-391.3 (Supp. 2005).

127. *Compare* SB 502, as passed by the Senate, 2006 Ga. Gen. Assem., *with* O.C.G.A. § 40-6-392 (Supp. 2005).

128. *See* SB 502, as passed by the Senate, 2006 Ga. Gen. Assem., amending Code sections 40-6-393 (Supp. 2005), 40-6-393.1 (Supp. 2005), 40-6-394 (Supp. 2005), 42-4-7 (Supp. 2005), 42-8-34 (Supp. 2005), 42-8-111 (Supp. 2005), 42-8-112 (Supp. 2005).

129. SB 502, as passed by the Senate, 2006 Ga. Gen. Assem.

130. *Id.*

131. *Id.*

132. Interview with Sen. Gloria Butler, Senate Dist. No. 55 (Mar. 22, 2006) [hereinafter Butler Interview].

133. See Senate Audio, *supra* note 17 ("Currently, it's more difficult to try a DUI case than it is a murder case because there's a lot of technicalities in the law, and because it's spread out through a lot of code sections.").

134. *Id.; see also* Governor's Office of Highway Safety, *supra* note 55.

allowing motorists to evade DUI convictions for seemingly trivial reasons.[135] Particularly, SB 502 aimed to relieve confusion in the area of implied consent notices.[136] The current DUI laws provide three different implied consent warnings that law enforcement officers must read to drivers prior to seeking their consent for testing.[137] In the past, courts have routinely suppressed important test results from evidence in situations where the wrong consent notice was read to the accused, or where the court determined that a portion of the notice was misleading.[138] SB 502 proposed that the three warnings of the current law be streamlined into one warning to avoid confusion and provide fewer loopholes for DUI suspects.[139] The proposed bill would not differentiate between drivers based on age or drivers license classification.[140] The bill also emphasized that the warning would not be required to be read exactly as it appears in the statute, "so long as the substance of the notice remains unchanged."[141]

135. *See* Senate Audio, *supra* note 17 (remarks of Sen. Hamrick).

136. *See id.; see also* SB 502, §§ 1-2, as passed by the Senate, 2006 Ga. Gen. Assem. (proposing the addition of Code section 40-5-202).

137. *See* O.C.G.A. § 40-5-67.1(b) (2004) (providing three various warnings to be read depending on whether the suspect is (a) over the age of 21; (b) under the age of 21; or (c) driving a commercial motor vehicle).

138. *See* Cooper v. State, 587 S.E.2d 605 (Ga. 2003) (holding that a driver's consent to withdraw blood was invalid where officer misled defendant concerning his implied consent rights); Richards v. State, 500 S.E.2d 581, 582-83 (Ga. 1998) (holding that evidence of chemical breath test was inadmissible where officer did not give proper implied consent warning); State v. Chun, 594 S.E.2d 732, 733 (Ga. Ct. App. 2004); State v. Peirce, 571 S.E.2d 826 (2002); State v. Terry, 511 S.E.2d 608, 610-11 (Ga. Ct. App. 1999); Parrish v. State, 456 S.E.2d 283, 283 (Ga. Ct. App. 1995); Carswell v. State, 320 S.E.2d 249, 252 (Ga. Ct. App. 1984) (holding that where defendant was never informed of his right to refuse testing, defendant's blood alcohol test results were inadmissible).

139. *See* SB 502, §§ 1-2, as passed by the Senate, 2006 Ga. Gen. Assem. (proposing the insertion of Code subsection 40-5-202(c)); *see also*, Senate Audio, supra note 17. Code subsection 40-5-202(c) would have read as the following:

> At the time a chemical test or tests are requested, the following implied consent notice shall be read to the person: Georgia law requires you to submit to state administered chemical tests of your blood, breath, urine, or other bodily substance for the purpose of determining if you are operating a motor vehicle under the influence of alcohol or drugs or with a prohibited substance in your body. If you submit to this testing, the results may be used against you in a court of law or in an administrative proceeding. If you refuse to submit to this testing, your Georgia driver's license or privilege to drive on the highways of this state may be suspended for a minimum period of one year and your refusal may be used as evidence against you. If you submit to the state's testing, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substance at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered testing under the implied consent law?

SB 502, §§ 1-2, as passed by the Senate, 2006 Ga. Gen. Assem.

140. *See* SB 502, §§ 1-2, as passed by the Senate, 2006 Ga. Gen Assem.

141. *See id.* (proposing the addition of Code subsection 40-5-202(b) to the existing Code).

Specifically, SB 502 expressly emphasizes that "[t]he informing of or failure to inform the accused person concerning the implied consent law shall not affect the admissibility of such results in any case."[142] These additions were expected to result in greater admissibility of pertinent evidence, and reduce acquittals on the basis of mere technicalities in notice procedures.[143] These additions, however, may have ultimately played a significant role in the bill's inability to garner sufficient support in the Georgia House of Representatives, as skeptics questioned the motive of such a change.[144]

According to proponents of SB 502, another problem with existing DUI laws is that the arrest requirement in the current law places financial burdens on the cities and counties in Georgia.[145] After the holding in *Hough v. State*, cities and counties are required to actually arrest drivers prior to invoking implied consent for testing.[146] SB 502 would have allowed officers to invoke implied consent testing if there were "reasonable grounds to believe" that the suspect was driving under the influence of alcohol, drugs, or other substances.[147] SB 502 thus removed the requirement that an actual arrest be made before implied consent warnings are read and prevented law enforcement officers from having to bring suspects to city and county facilities prior to testing.[148] The bill also proposed the elimination the portion of Code section 40-5-55 that does not require an arrest prior to testing, which the Georgia Supreme Court held unconstitutional in *Cooper v. State*.[149] The bill proposed the addition of a new section emphasizing that in all circumstances, a finding of reasonable grounds to believe a person was operating a motor vehicle under the influence alcohol or drugs will authorize a law enforcement officer to

142. *See id.*
143. *See* Governor's Office of Highway Safety, *supra* note 55; Senate Audio, *supra* note 17 (remarks of Sen. Hamrick).
144. *See* Interview with Sen. Bill Hamrick, *supra* note 52.
145. *See* Governor's Office of Highway Safety, *supra* note 55.
146. *Id.*
147. *See* SB 502, §§ 1-2, as passed by the Senate, 2006 Ga. Gen Assem. (proposing the insertion of new Code section 40-5-201 into existing DUI laws).
148. *See* Senate Audio, *supra* note 17; *see also* SB 502, §§ 1-2, as passed by the Senate, 2006 Ga. Gen. Assem. (requiring a finding of probable cause prior to invoking implied consent).
149. *See* SB 502, §§ 1-2, as passed by the Senate, 2006 Ga. Gen Assem.

"obtain . . . chemical tests of a person's blood, breath, urine, or other bodily substance."[150]

Proponents of SB 502 also believe that the current law inhibits law enforcement officers from gathering sufficient actual evidence to convict drunk drivers.[151] Under existing common law, once a DUI suspect refuses to consent to DUI testing, law enforcement officials cannot use any other means of gathering evidence, and thus proving that a driver was intoxicated becomes difficult.[152] SB 502 seeks to allow for easier collection of evidence for the purposes of DUI convictions by allowing for testing if a warrant is obtained, regardless of whether consent is given by the driver.[153] If adopted, this addition would make it more difficult for impaired drivers to avoid chemical testing, and would thus make it easier for law enforcement officers to collect incriminating evidence.[154] There do not appear to be any constitutional restraints on such testing without actual consent, as long as probable cause is present.[155]

According to proponents of SB 502, further confusion exists in the current DUI law as to when testing must occur in order to be admissible.[156] Under the current Georgia Code section 40-5-55, testing must occur "as soon as possible" for any person operating a motor vehicle who is involved in any traffic accident resulting in

150. *See* SB 502, §§ 1-2, as passed by the Senate, 2006 Ga. Gen Assem. (proposing that a law enforcement officer be authorized to conduct testing for the presence of alcohol or other drugs if there are "reasonable grounds" to believe that the person operated a motor vehicle while impaired); *see also* Cooper v. State, 587 S.E.2d 605, 607 (2003) (holding that to the extent that the implied consent statute required chemical testing of the operator of a motor vehicle involved in a traffic accident resulting in serious injuries or fatalities, regardless of any determination of probable cause, it authorized unreasonable searches and seizures in violation of the State and Federal Constitutions).

151. *See* Governor's Office of Highway Safety, *supra* note 55.

152. State v. Collier, 612 S.E.2d 281, 284 (Ga. 2005); *see* Senate Audio, *supra* note 17 ("This bill will allow law enforcement to get a warrant just as they can in any other case following constitutional procedure to gather evidence.").

153. *See* SB 502, §§ 1-2, as passed by the Senate, 2006 Ga. Gen. Assem. (proposing the insertion of a new Code subsection 40-5-202(f), which reads, "[i]f the person refuses to submit to the state administered test authorized by this Code section, nothing in this article shall be deemed to preclude the acquisition or admission of such evidence by any means authorized by the Constitution or laws of this state or of the United States"); *see also* Senate Audio, *supra* note 17.

154. *See* SB 502, §§ 1-2, as passed by the Senate, 2006 Ga. Gen. Assem.

155. *See* Schmerber v. California, 384 U.S. 757, 767 (1966) (holding that the withdrawal of blood and the use of a blood analysis do not violate a person's Fifth Amendment right against self-incrimination); *see also* State v. Collier, 612 S.E.2d 281, 283 (Ga. 2004) (stating that the Georgia Constitution generally does not protect citizens from the compelled testing of certain bodily substances and the use at trial of the results of such compelled testing).

156. *See* O.C.G.A. § 40-5-55(a) (2005) (stating that testing must occur "as soon as possible").

"serious injuries" or fatalities.[157] Under the language in the existing law, there are discrepancies as to the meaning of "as soon as possible" and "serious injuries."[158] Courts have suppressed evidence of test results where the State was unable to demonstrate that testing occurred "as soon as practicable" under the circumstances, thus allowing defendants to avoid convictions.[159] SB 502 removes the "as soon as possible" and "serious injuries" language from the law completely by striking existing Code section 40-5-55(a).[160]

Not everyone is convinced that the current DUI laws require dramatic textual changes.[161] Opponents of SB 502 insist that there is little ambiguity in Georgia's current implied consent laws and that the drastic changes in the law proposed by SB 502 are unnecessary.[162] DUI attorney Robert Chestney believes that the motivation behind SB 502 was that prosecutors did not want drivers to be able to refuse testing, as they are able to do under Georgia's current implied consent laws.[163] Mr. Chestney insists that legislators went too far in eliminating the need for arrest in non-injury cases prior to testing and eliminating the right to full disclosure about such testing.[164] Further, Mr. Chestney points to the fact that SB 502 does not include penalties for officers who fail to properly advise drivers of their implied consent rights.[165] This omission, Chestney insists, eliminates the incentive for law enforcement officers to read the implied consent warning at all, and thus leaves motorists with less protection.[166]

157. *Id.*

158. *See* Governor's Office of Highway Safety, *supra* note 55.

159. *See* State v. Becker, 523 S.E.2d 98, 100-01 (1999) (holding that the trial court had insufficient evidence for determining whether urine and blood tests were given "as soon as practicable" under the circumstances, absent evidence of how much time passed after the accident, and absent evidence as to whether state patrol could have obtained urine sample at a closer patrol post).

160. *See* SB 502, §§ 2-20, as passed by the Senate, 2006 Ga. Gen. Assem. (removing from the Code the text of the existing version of Code section 40-5-55).

161. *See* Interview with Robert Chestney, Mar. 22, 2006 [hereinafter Chestney Interview].

162. *Id.* (stating that the implied consent laws have "worked well for 40 years, and didn't need fixing").

163. *Id.*

164. *Id.*; *see* SB 502, §§ 2-20, as passed by the Senate, 2006 Ga. Gen. Assem. (striking Code subsection 40-5-55(a), which was interpreted in Cooper v. State, 587 S.E.2d 605 (Ga. 2003) as being unconstitutional absent a showing of probable cause); *see also* SB 502, §§ 1-2, as passed by the Senate, 2006 Ga. Gen. Assem. (adding Code section 40-5-202, which proposes that evidence cannot be suppressed if the wrong implied consent notice is read to the defendant).

165. Chestney Interview, *supra* note 161.

166. *Id.*

Robert Chestney's partner in the Atlanta-based Chestney-Hawkins Law Firm, Michael M. Hawkins, expresses similar concerns about SB 502 and the motivations behind the bill.[167] Mr. Hawkins predicts that the 68-page bill would actually complicate the current state of DUI laws, rather than simplify the laws as the proponents of the bill suggest.[168] Senator Gloria Butler of the 55th District, the only Senator who voted against the bill, expressed similar concern with the length of the bill, stating that she was uncertain how such a lengthy bill could simplify the law.[169]

Mr. Hawkins also questions the legislature's motive in attempting to alleviate burdens on police officers in obtaining evidence in DUI cases.[170] The current law provides for drivers license suspensions when a suspect refuses a test, as well as the admission into evidence of the fact that the suspect refused.[171] According to Mr. Hawkins, there is no empirical evidence to show that the conviction rate in DUI cases is lower in cases where the suspect refuses to take the test, and thus the change is unnecessary.[172]

Specifically, Hawkins finds that SB 502 is "far too broad" for a variety of reasons: (1) The bill allows a police officer to have a blood test forcibly administered without the citizen's consent;[173] (2) the bill eliminates liability for medical personnel who participate in the forced blood and urine withdrawals;[174] (3) the bill eliminates the

167. Comments of Attorney Michael M. Hawkins on Behalf of the Criminal Defense Bar [hereinafter Comments by Michael Hawkins] ("The proponents of SB 502 have not provided any evidence that the proposed legislation will have any impact on reducing highway fatalities [or that] the changes proposed are necessary to the prosecution of DUI cases.").

168. Comments by Michael Hawkins, *supra* note 167 ("The only results that SB 502 will achieve are an increase in uncertainty for police officers and the driving public, and litigation that will ultimately do more harm than good to the state's ability to hold impaired drivers responsible.").

169. Butler Interview, *supra* note 132 (stating that the bill was proposed as an implied consent bill, but upon further review, it appeared that the majority of the bill did not pertain to implied consent at all).

170. Comments by Michael Hawkins, *supra* note 167.

171. *Id.; see also* O.C.G.A. § 40-6-392(d) (2005) ("In any criminal trial, the refusal of the defendant to permit a chemical analysis to be made of his blood, breath, urine, or other bodily substance at the time of his arrest shall be admissible in evidence against him.").

172. Comments by Michael Hawkins, *supra* note 167.

173. *Id.* (stating that the bill will result in increased violence and tensions between citizens and police officers); *see* SB 502 as passed, 2006 Ga. Gen. Assem., §1-2.

174. *Id.* (noting that because there are no statutes or regulations governing such conduct, a person who is injured or dies as a result of such testing will have no legal redress); *see also* O.C.G.A. § 40-6-392(a)(2) (2005) ("No physician, registered nurse, or other qualified person or employer thereof shall incur any civil or criminal liability as a result of the medically proper obtaining of such blood specimens when requested in writing by a law enforcement officer.").

requirement that a citizen be placed under arrest before testing can be required;[175] (4) the bill eliminates notice of Georgia's "legal limit" when an officer requests a driver's consent to testing;[176] (5) the bill eliminates the requirement that a law enforcement officer notify a driver that his license will be suspended if his blood/alcohol content is over the legal limit;[177] (6) the bill removes the requirement that a driver be advised of his implied consent rights at the time of his arrest;[178] (7) the bill excludes all remedies for citizens who were not properly advised of their implied consent rights;[179] (8) the bill does not allow a citizen a reasonable amount of time to contact an attorney prior to deciding whether to submit to a chemical test;[180] and (9) the bill eliminates the requirement that a defendant be entitled to obtain "full information" from the Georgia Bureau of Investigation (GBI) regarding chemical testing.[181]

Hawkins emphasizes that the original intent of Georgia's initial implied consent laws, as written in 1968, was to minimize tensions between law enforcement officers and citizens.[182] In Hawkins' opinion, SB 502 would have actually resulted in increased violence and tensions between citizens and police officers, as officers would have been held to lower standards in informing drivers of their rights, and officers would have been permitted to personally withdraw blood

175. Comments by Michael Hawkins, *supra* note 167 (emphasizing that a person can be subdued by police and forced to submit to a blood test, even where the person has not yet been arrested by police); *see* SB 502, § 1-2, as passed by the Senate, 2006 Ga. Gen. Assem. (proposing the addition of Code Section 40-5-201, which would allow for testing if there are "reasonable grounds" to believe that a person was driving a motor vehicle while impaired).

176. Comments by Michael Hawkins, *supra* note 167 ("How can a person make an informed choice about whether to submit to a chemical test when they are not told what is prohibited?"); *see* SB 502, as passed by the Senate, 2006 Ga. Gen. Assem. (proposing the addition of O.C.G.A. § 40-5-202, which includes the text for the implied consent notice).

177. Comments by Michael Hawkins, *supra* note 167 (noting that the current implied consent notice informs drivers that if their blood alcohol content is over the legal limit, they will lose their license for a minimum of one year, and asking why the legislature is "deciding to keep that a secret"). *Id.*

178. Comments by Michael Hawkins, *supra* note 167 (questioning the rationale behind not notifying a citizen that he is under arrest until after his implied consent rights are invoked).

179. *Id.* (quoting SB 502 as stating that, "failure to inform the accused person concerning the implied consent law shall not affect the admissibility of such results in any case"); *see also* SB 502, §§ 1-2, as passed by the Senate, 2006 Ga. Gen. Assem. (proposing to add Code section 40-5-202(b)).

180. Comments by Michael Hawkins, *supra* note 167 (noting that at least ten states currently allow citizens reasonable access to counsel prior to deciding whether to submit to a chemical test).

181. *Id.* (noting that the GBI is no longer required to publish its rules and regulations, and thus citizens are deprived of full information regarding testing procedures).

182. *Id.; see also* 1968 Ga. Laws 448.

for testing purposes.[183] Tensions between law enforcement officers and citizens may also have been heightened due to the fact that, under the proposed bill, a citizen could be subdued by police and forced to submit to a blood test, even where the person had not yet been arrested by police.[184] Further, SB 502 would have left motorists without legal redress if they were injured as the result of chemical testing procedures.[185]

Conclusion

In the end, the opponents of SB 502 prevailed, but the battle is far from over.[186] While the House did not pass SB 502, the proponents of SB 502 and HB 1222 won a victory with the passage of an amendment to HB 1275.[187] HB 1275 specifically expresses that nothing in the Georgia DUI laws precludes the admission into evidence of any test results obtained by voluntary consent or valid search warrants.[188] This amendment is a direct response to the holding in *State v. Collier* that where a one refuses to consent to chemical testing, the State may not force chemical testing.[189] Under the amendment to HB 1275, evidence of chemical testing is admissible despite a defendant refusing to consent, provided that a valid warrant is obtained.[190]

Senator Hamrick, one of the co-sponsors of SB 502, is committed to proposing additional DUI legislation in the future.[191] While Senator Hamrick is uncertain of the specific reasons that the bill

183. *See* Comments by Michael Hawkins, *supra* note 167.

184. *Id.*; *see also* SB 502, §§ 1-2, as passed by the Senate, 2006 Ga. Gen. Assem. (proposing the addition of Code section 40-5-201, which would allow for testing if there are "reasonable grounds" to believe that a person was driving a motor vehicle while impaired).

185. Comments by Michael Hawkins, *supra* note 167 (noting that because there are no statutes or regulations governing negligent chemical testing, a person who is injured or dies as a result of such testing will have no legal redress).

186. *See* Hamrick Interview, *supra* note 52 (stating that while SB 502 failed to garner sufficient approval in the House, Sen. Hamrick intends to introduce additional DUI legislation in the future).

187. *See* HB 1275, as adopted, 2006 Ga. Gen Assem.

188. *See id.* § 2 (adding subsection d.1 to existing Code section 40-5-67.1, which states, "Nothing in this Code section shall be deemed to preclude the acquisition or admission of evidence of a violation of Code Section 40-6-391 if obtained by voluntary consent or a search warrant as authorized by the Constitution or laws of this state or the United States."

189. *See* Hamrick Interview, *supra* note 52.

190. *See* HB 1275, as adopted, 2006 Ga. Gen Assem.

191. *See* Hamrick Interview, *supra* note 52.

failed to garner sufficient support in the House Committee on Judiciary Non-Civil, he opined that legislators were skeptical of the "exclusionary rule," which proposed the admission into evidence of chemical testing results, even where the implied consent warning was not read exactly as written.[192] Having witnessed the nearly unanimous support for SB 502 in the Senate, Senator Hamrick hopes that in the future, legislation will be presented that a House committee will find more acceptable.[193]

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192. *See id.*
193. *See id.*