

Senate Bill 73

By: Senators Ray of the 48th, Price of the 56th, Johnson of the 1st, Perdue of the 18th and Hamrick 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 change certain provisions relating to implied consent; to change certain
3 provisions relating to chemical tests, implied consent notices, rights of motorists, test results,
4 refusal to submit, suspension or denial, hearing and review, compensation of officers, and
5 inspection and certification of breath-testing instruments; to change certain provisions
6 relating to driving under the influence of alcohol, drugs, or other intoxicating substances,
7 penalties, publication of notice of conviction for persons convicted for second time, and
8 endangering a child; to change certain provisions relating to chemical tests for alcohol or
9 drugs in blood; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is
13 amended by striking subsection (a) of Code Section 40-5-55, relating to implied consent to
14 chemical tests, and inserting in lieu thereof the following:

15 ~~"(a) The State of Georgia considers that the persons who are under the influence of alcohol~~
16 ~~or drugs while operating a motor vehicle or who have a blood alcohol concentration of 0.10~~
17 ~~grams or more at any time within three hours after operating a motor vehicle from alcohol~~
18 ~~consumed before such driving or actual physical control ended or who have any amount~~
19 ~~of marijuana or any controlled substance without prescription present in their blood or~~
20 ~~urine, without regard to the presence of alcohol, while operating a motor vehicle constitute~~
21 any person who drives or is in actual physical control of any moving vehicle in violation
22 of any provision of Code Section 40-6-391 constitutes a direct and immediate threat to the
23 welfare and safety of the general public. Therefore, any person who operates a motor
24 vehicle upon the highways or elsewhere throughout this state shall be deemed to have
25 given consent, subject to Code Section 40-6-392, to a chemical test or tests of his or her
26 blood, breath, urine, or other bodily substances for the purpose of determining the presence

1 of alcohol or any other drug, if arrested for any offense arising out of acts alleged to have
 2 been committed in violation of Code Section 40-6-391 or if such person is involved in any
 3 traffic accident resulting in serious injuries or fatalities. The test or tests shall be
 4 administered at the request of a law enforcement officer having reasonable grounds to
 5 believe that the person has been driving or was in actual physical control of a moving
 6 motor vehicle upon the highways or elsewhere throughout this state in violation of Code
 7 Section 40-6-391. The test or tests shall be administered as soon as possible to any person
 8 who operates a motor vehicle upon the highways or elsewhere throughout this state who
 9 is involved in any traffic accident resulting in serious injuries or fatalities. Subject to Code
 10 Section 40-6-392, the requesting law enforcement officer shall designate which of the test
 11 or tests shall be administered, provided a blood test with drug screen may be administered
 12 to any person operating a motor vehicle involved in a traffic accident resulting in serious
 13 injuries or fatalities."

14 SECTION 2.

15 Said title is further amended by striking subsection (b) of Code Section 40-5-67.1, relating
 16 to chemical tests, implied consent notices, rights of motorists, test results, refusal to submit,
 17 suspension or denial, hearing and review, compensation of officers, and inspection and
 18 certification of breath-testing instruments, and inserting in lieu thereof the following:

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

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

22 'Georgia law requires you to submit to state administered chemical tests of your blood,
 23 breath, urine, or other bodily substances for the purpose of determining if you are under
 24 the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's
 25 license or privilege to drive on the highways of this state will be suspended for a
 26 minimum period of one year, and you may be charged with the separate offense of
 27 refusal to submit to chemical testing; if you are convicted of such offense, your Georgia
 28 driver's license or privilege to drive on the highways of this state will be revoked. Your
 29 refusal to submit to the required testing may be offered into evidence against you at trial
 30 and may create an inference that you were unlawfully under the influence of alcohol,
 31 drugs, or other intoxicating substances or had an unlawful alcohol concentration. If you
 32 submit to testing and the results indicate an alcohol concentration of 0.02 grams or
 33 more, your Georgia driver's license or privilege to drive on the highways of this state
 34 will be suspended and, if you are convicted of having such an alcohol concentration,
 35 will be revoked. After first submitting to the required state tests, you are entitled to
 36 additional chemical tests of your blood, breath, urine, or other bodily substances at your

1 own expense and from qualified personnel of your own choosing. Will you submit to
2 the state administered chemical tests of your (designate which tests) under the implied
3 consent law?

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

5 'Georgia law requires you to submit to state administered chemical tests of your blood,
6 breath, urine, or other bodily substances for the purpose of determining if you are under
7 the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's
8 license or privilege to drive on the highways of this state will be suspended for a
9 minimum period of one year, and you may be charged with the separate offense of
10 refusal to submit to chemical testing. Your refusal to submit to the required testing may
11 be offered into evidence against you at trial and may create an inference that you were
12 unlawfully under the influence of alcohol, drugs, or other intoxicating substances or
13 had an unlawful alcohol concentration. If you submit to testing and the results indicate
14 an alcohol concentration of 0.10 grams or more, your Georgia driver's license or
15 privilege to drive on the highways of this state may be suspended for a minimum period
16 of one year. After first submitting to the required state tests, you are entitled to
17 additional chemical tests of your blood, breath, urine, or other bodily substances at your
18 own expense and from qualified personnel of your own choosing. Will you submit to
19 the state administered chemical tests of your (designate which tests) under the implied
20 consent law?

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

22 'Georgia law requires you to submit to state administered chemical tests of your blood,
23 breath, urine, or other bodily substances for the purpose of determining if you are under
24 the influence of alcohol or drugs. If you refuse this testing, you will be disqualified
25 from operating a commercial motor vehicle for a minimum period of one year, and you
26 may be charged with the separate offense of refusal to submit to chemical testing. Your
27 refusal to submit to the required testing may be offered into evidence against you at trial
28 and may create an inference that you were unlawfully under the influence of alcohol,
29 drugs, or other intoxicating substances or had an unlawful alcohol concentration. If you
30 submit to testing and the results indicate the presence of any alcohol, you will be issued
31 an out-of-service order and will be prohibited from operating a motor vehicle for 24
32 hours. If the results indicate an alcohol concentration of 0.04 grams or more, you will
33 be disqualified from operating a commercial motor vehicle for a minimum period of
34 one year. After first submitting to the required state tests, you are entitled to additional
35 chemical tests of your blood, breath, urine, or other bodily substances at your own
36 expense and from qualified personnel of your own choosing. Will you submit to the

1 state administered chemical tests of your (designate which tests) under the implied
2 consent law?'

3 If any such notice is used by a law enforcement officer to advise a person of his or her
4 rights regarding the administration of chemical testing, such person shall be deemed to
5 have been properly advised of his or her rights under this Code section and under Code
6 Section 40-6-392 and the results of any chemical test, or the refusal to submit to a test, shall
7 be admitted into evidence against such person. Such notice shall be read in its entirety but
8 need not be read exactly so long as the substance of the notice remains unchanged."

9 **SECTION 3.**

10 Said title is further amended by striking Code Section 40-6-391, relating to driving under the
11 influence of alcohol, drugs, or other intoxicating substances, penalties, publication of notice
12 of conviction for persons convicted for second time, and endangering a child, and Code
13 Section 40-6-392, relating to chemical tests for alcohol or drugs in blood, and inserting in
14 lieu thereof the following:

15 "40-6-391.

16 (a) A person shall not drive or be in actual physical control of any moving vehicle while:

17 (1) Under the influence of alcohol to the extent that it is less safe for the person to drive;

18 (2) Under the influence of any drug to the extent that it is less safe for the person to
19 drive;

20 (3) Under the intentional influence of any glue, aerosol, or other toxic vapor to the extent
21 that it is less safe for the person to drive;

22 (4) Under the combined influence of any two or more of the substances specified in
23 paragraphs (1) through (3) of this subsection to the extent that it is less safe for the person
24 to drive;

25 (5) The person's alcohol concentration is 0.10 grams or more at any time within three
26 hours after such driving or being in actual physical control from alcohol consumed before
27 such driving or being in actual physical control ended; or

28 ~~(6) Subject to the provisions of subsection (b) of this Code section, there is any amount~~
29 ~~of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in~~
30 ~~the person's blood or urine, or both, including the metabolites and derivatives of each or~~
31 ~~both without regard to whether or not any alcohol is present in the person's breath or~~
32 ~~blood.~~

33 ~~(b) The fact that any person charged with violating this Code section is or has been legally~~
34 ~~entitled to use a drug shall not constitute a defense against any charge of violating this~~
35 ~~Code section; provided, however, that such person shall not be in violation of this Code~~

1 ~~section unless such person is rendered incapable of driving safely as a result of using a drug~~
2 ~~other than alcohol which such person is legally entitled to use.~~

3 (6) There is any amount of any Schedule I controlled substance listed in Code Section
4 16-13-25, marijuana, cocaine, or any metabolite or derivative of any of them, present in
5 the person's blood, urine, or both, without regard to whether or not any alcohol is present
6 in the person's breath or blood.

7 (b) The fact that any person charged with violating this Code section is or has been legally
8 entitled to use a drug, including without limitation authorization for marijuana use under
9 Article 5 of Chapter 34 of Title 43, shall not constitute a defense against any charge of
10 violating this Code section.

11 (c) Every person convicted of violating this Code section shall, upon a first or second
12 conviction thereof, be guilty of a misdemeanor and, upon a third or subsequent conviction
13 thereof, be guilty of a high and aggravated misdemeanor and shall be punished as follows:

14 (1) First conviction with no conviction of and no plea of nolo contendere accepted to a
15 charge of violating this Code section within the previous five years, as measured from the
16 dates of previous arrests for which convictions were obtained or pleas of nolo contendere
17 were accepted to the date of the current arrest for which a conviction is obtained or a plea
18 of nolo contendere is accepted:

19 (A) A fine of not less than \$300.00 nor more than \$1,000.00, which fine shall not,
20 except as provided in subsection (g) of this Code section, be subject to suspension, stay,
21 or probation;

22 (B) A period of imprisonment of not less than ten days nor more than 12 months,
23 which period of imprisonment may, at the sole discretion of the judge, be suspended,
24 stayed, or probated, except that if the offender's alcohol concentration at the time of the
25 offense was 0.08 grams or more, the judge may suspend, stay, or probate all but 24
26 hours of any term of imprisonment imposed under this subparagraph;

27 (C) Not less than 40 hours of community service, except that for a conviction for
28 violation of subsection (k) of this Code section where the person's alcohol
29 concentration at the time of the offense was less than 0.08 grams, the period of
30 community service shall be not less than 20 hours;

31 (D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by
32 the Department of Human Resources. The sponsor of any such program shall provide
33 written notice of such approval to the person upon enrollment in the program; and

34 (E) If the defendant is sentenced to a period of imprisonment for less than 12 months,
35 a period of probation of 12 months less any days during which the defendant is actually
36 incarcerated;

1 (2) For the second conviction within a five-year period of time, as measured from the
2 dates of previous arrests for which convictions were obtained or pleas of nolo contendere
3 were accepted to the date of the current arrest for which a conviction is obtained or a plea
4 of nolo contendere is accepted:

5 (A) A fine of not less than \$600.00 nor more than \$1,000.00, which fine shall not,
6 except as provided in subsection (g) of this Code section, be subject to suspension, stay,
7 or probation;

8 (B) A period of imprisonment of not less than 90 days nor more than 12 months. At the
9 sole discretion and under such terms and conditions as the judge shall impose, the judge
10 may suspend, stay, or probate all but 48 hours of any term of imprisonment imposed
11 under this subparagraph;

12 (C) Not less than 80 hours of community service, except that for a second conviction
13 for violation of subsection (k) of this Code section where the person's alcohol
14 concentration at the time of the offense was less than 0.08 grams, the period of
15 community service shall be not less than 40 hours;

16 (D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by
17 the Department of Human Resources. The sponsor of any such program shall provide
18 written notice of such approval to the person upon enrollment in the program;

19 (E) Undergoing a clinical evaluation as defined in Code Section 40-5-1 and, if
20 indicated by such evaluation, completion of a substance abuse treatment program as
21 defined in Code Section 40-5-1; and

22 (F) If the defendant is sentenced to a period of imprisonment for less than 12 months,
23 a period of probation of 12 months less any days during which the defendant is actually
24 incarcerated; or

25 (3) For the third or subsequent conviction within a five-year period of time, as measured
26 from the dates of previous arrests for which convictions were obtained or pleas of nolo
27 contendere were accepted to the date of the current arrest for which a conviction is
28 obtained or a plea of nolo contendere is accepted:

29 (A) A fine of not less than \$1,000.00 and not more than \$5,000.00, which fine shall
30 not, except as provided in subsection (g) of this Code section, be subject to suspension,
31 stay, or probation;

32 (B) A mandatory period of imprisonment of not less than 120 days nor more than 12
33 months. At the sole discretion and under such terms and conditions as the judge shall
34 impose, the judge may suspend, stay, or probate all but ten days of any term of
35 imprisonment imposed under this subparagraph;

36 (C) Not less than 20 days of community service, except that for a third or subsequent
37 conviction for violation of subsection (k) of this Code section where the person's

1 alcohol concentration at the time of the offense was less than 0.08 grams, the period of
2 community service shall be not less than 40 hours;

3 (D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by
4 the Department of Human Resources. The sponsor of any such program shall provide
5 written notice of such approval to the person upon enrollment in the program;

6 (E) Undergoing a clinical evaluation as defined in Code Section 40-5-1 and, if
7 indicated by such evaluation, completion of a substance abuse treatment program as
8 defined in Code Section 40-5-1; and

9 (F) If the defendant is sentenced to a period of imprisonment for less than 12 months,
10 a period of probation of 12 months less any days during which the defendant is actually
11 incarcerated.

12 For the purpose of imposing a sentence under this subsection, a plea of nolo contendere or
13 an adjudication of delinquency based on a violation of this Code section shall constitute a
14 conviction.

15 (d)(1) Notwithstanding the limits set forth in any municipal charter, any municipal court
16 of any municipality shall be authorized to impose the punishments provided for in this
17 Code section upon a conviction of violating this Code section or upon conviction of
18 violating any ordinance adopting the provisions of this Code section.

19 (2) Notwithstanding any provision of this Code section to the contrary, any court
20 authorized to hear cases involving violations of this Code section shall be authorized to
21 exercise the power to probate, suspend, or stay any sentence imposed. Such power shall,
22 however, be limited to the conditions and limitations imposed by subsection (c) of this
23 Code section.

24 (e) The foregoing limitations on punishment also shall apply when a defendant has been
25 convicted of violating, by a single transaction, more than one of the four provisions of
26 subsection (a) of this Code section.

27 (f) The provisions of Code Section 17-10-3, relating to general punishment for
28 misdemeanors including traffic offenses, and the provisions of Article 3 of Chapter 8 of
29 Title 42, relating to probation of first offenders, shall not apply to any person convicted of
30 violating any provision of this Code section.

31 (g)(1) If the payment of the fine required under subsection (c) of this Code section will
32 impose an economic hardship on the defendant, the judge, at his or her sole discretion,
33 may order the defendant to pay such fine in installments and such order may be enforced
34 through a contempt proceeding or a revocation of any probation otherwise authorized by
35 this Code section.

36 (2) In the sole discretion of the judge, he or she may suspend up to one-half of the fine
37 imposed under paragraph (2) or (3) of subsection (c) of this Code section for a second or

1 subsequent conviction conditioned upon the defendant's undergoing treatment in a
2 substance abuse treatment program as defined in Code Section 40-5-1.

3 (h) For purposes of determining under this chapter prior convictions of or pleas of nolo
4 contendere to violating this Code section, in addition to the offense prohibited by this Code
5 section, a conviction of or plea of nolo contendere to any of the following offenses shall
6 be deemed to be a violation of this Code section:

7 (1) Any federal law substantially conforming to or parallel with the offense covered
8 under this Code section;

9 (2) Any local ordinance adopted pursuant to Article 14 of this chapter, which ordinance
10 adopts the provisions of this Code section; or

11 (3) Any previously or currently existing law of this or any other state, which law was or
12 is substantially conforming to or parallel with this Code section.

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

19 (j)(1) The clerk of the court in which a person is convicted a second or subsequent time
20 under subsection (c) of this Code section within five years, as measured from the dates
21 of previous arrests for which convictions were obtained or pleas of nolo contendere were
22 accepted to the date of the current arrest for which a conviction is obtained or a plea of
23 nolo contendere is accepted, shall cause to be published a notice of conviction for each
24 such person convicted. Such notices of conviction shall be published in the manner of
25 legal notices in the legal organ of the county in which such person resides or, in the case
26 of nonresidents, in the legal organ of the county in which the person was convicted. Such
27 notice of conviction shall be one column wide by ~~two inches~~ two-inches long and shall
28 contain the photograph taken by the arresting law enforcement agency at the time of
29 arrest, name and address of the convicted person, and the date, time, place of arrest, and
30 disposition of the case and shall be published once in the legal organ of the appropriate
31 county in the second week following such conviction or as soon thereafter as publication
32 may be made.

33 (2) The convicted person for which a notice of conviction is published pursuant to this
34 subsection shall be assessed \$25.00 for the cost of publication of such notice and such
35 assessment shall be imposed at the time of conviction in addition to any other fine
36 imposed pursuant to this Code section.

1 (3) The clerk of the court, the publisher of any legal organ which publishes a notice of
2 conviction, and any other person involved in the publication of an erroneous notice of
3 conviction shall be immune from civil or criminal liability for such erroneous publication,
4 provided such publication was made in good faith.

5 (k)(1) A person under the age of 21 shall not drive or be in actual physical control of any
6 moving vehicle while the person's alcohol concentration is 0.02 grams or more at any
7 time within three hours after such driving or being in physical control from alcohol
8 consumed before such driving or being in actual physical control ended.

9 (2) Every person convicted of violating this subsection shall be guilty of a misdemeanor
10 for the first and second convictions and upon a third or subsequent conviction thereof be
11 guilty of a high and aggravated misdemeanor and shall be punished and fined as provided
12 in subsection (c) of this Code section, provided that any term of imprisonment served
13 shall be subject to the provisions of Code Section 17-10-3.1, and any period of
14 community service imposed on such person shall be required to be completed within 60
15 days of the date of sentencing.

16 (3) No plea of nolo contendere shall be accepted for any person under the age of 21
17 charged with a violation of this Code section.

18 (4) The driver's license of any person convicted of violating this subsection shall be
19 revoked as provided by Code Section 40-5-57.1.

20 (l) A person who violates this Code section while transporting in a motor vehicle a child
21 under the age of 14 years is guilty of the separate offense of endangering a child by driving
22 under the influence of alcohol or drugs. The offense of endangering a child by driving
23 under the influence of alcohol or drugs shall not be merged with the offense of driving
24 under the influence of alcohol or drugs for the purposes of prosecution and sentencing. An
25 offender who is convicted of a violation of this subsection shall be punished in accordance
26 with the provisions of subsection (d) of Code Section 16-12-1, relating to the offense of
27 contributing to the delinquency, unruliness, or deprivation of a child.

28 (m) Any person who refuses to submit to lawfully requested chemical testing to which
29 such person is deemed by Code Section 40-5-55 to have given consent shall be guilty of
30 the separate offense of refusal to submit to chemical testing and upon conviction thereof
31 shall be punished as provided by subsection (c) of this Code section. No person shall be
32 convicted of such separate offense in addition to a violation of any other provision of this
33 Code section which arose out of the same course of conduct other than subsection (l) of this
34 Code section."

1 "40-6-392.

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

8 (1)(A) Chemical analysis of the person's blood, urine, breath, or other bodily
9 substance, to be considered valid under this Code section, shall have been performed
10 according to methods approved by the Division of Forensic Sciences of the Georgia
11 Bureau of Investigation on a machine which was operated with all its electronic and
12 operating components prescribed by its manufacturer properly attached and in good
13 working order and by an individual possessing a valid permit issued by the Division of
14 Forensic Sciences for this purpose. The Division of Forensic Sciences of the Georgia
15 Bureau of Investigation shall approve satisfactory techniques or methods to ascertain
16 the qualifications and competence of individuals to conduct analyses and to issue
17 permits, along with requirements for properly operating and maintaining any testing
18 instruments, and to issue certificates certifying that instruments have met those
19 requirements, which certificates and permits shall be subject to termination or
20 revocation at the discretion of the Division of Forensic Sciences.

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

1 (2) When a person shall undergo a chemical test at the request of a law enforcement
 2 officer, only a physician, registered nurse, laboratory technician, emergency medical
 3 technician, or other qualified person may withdraw blood for the purpose of determining
 4 the alcoholic content therein, provided that this limitation shall not apply to the taking of
 5 breath or urine specimens. No physician, registered nurse, or other qualified person or
 6 employer thereof shall incur any civil or criminal liability as a result of the medically
 7 proper obtaining of such blood specimens when requested in writing by a law
 8 enforcement officer;

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

15 (4) Upon the request of the person who shall submit to a chemical test or tests at the
 16 request of a law enforcement officer, full information concerning the test or tests shall be
 17 made available to ~~him or his~~ such person or such person's attorney. The arresting officer
 18 at the time of arrest shall advise the person arrested of his or her rights to a chemical test
 19 or tests according to this Code section.

20 (b) Except as provided in subsection (c) of this Code section, upon the trial of any civil or
 21 criminal action or proceeding arising out of acts alleged to have been committed by any
 22 person in violation of Code Section 40-6-391, the amount of alcohol in the person's blood
 23 at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or
 24 other bodily substance, ~~shall~~ may give rise to the following ~~presumptions~~ inferences:

25 (1) If there was at that time an alcohol concentration of 0.05 grams or less, ~~it shall be~~
 26 ~~presumed~~ the trier of fact in its discretion may infer therefrom that the person was not
 27 under the influence of alcohol, as prohibited by paragraphs (1), ~~(2)~~, and (4) of subsection
 28 (a) of Code Section 40-6-391;

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

36 (3) If there was at that time an alcohol concentration of 0.08 grams or more, ~~it shall be~~
 37 ~~presumed~~ the trier of fact in its discretion may infer therefrom that the person was under

1 the influence of alcohol, as prohibited by paragraphs (1), ~~(2)~~, and (4) of subsection (a) of
2 Code Section 40-6-391; and

3 (4) If there was at that time or within three hours after driving or being in actual physical
4 control of a moving vehicle from alcohol consumed before such driving or being in actual
5 physical control ended an alcohol concentration of 0.10 or more grams, the person shall
6 be in violation of paragraph (5) of subsection (a) of Code Section 40-6-391.

7 (c)(1) In any civil or criminal action or proceeding arising out of acts alleged to have
8 been committed by any person in violation of subsection (i) of Code Section 40-6-391,
9 if there was at that time or within three hours after driving or being in actual physical
10 control of a moving vehicle from alcohol consumed before such driving or being in actual
11 physical control ended an alcohol concentration of 0.04 grams or more in the person's
12 blood, breath, or urine, the person shall be in violation of subsection (i) of Code Section
13 40-6-391.

14 (2) In any civil or criminal action or proceeding arising out of acts alleged to have been
15 committed by any person in violation of subsection (k) of Code Section 40-6-391, if there
16 was at that time or within three hours after driving or being in actual physical control of
17 a moving vehicle from alcohol consumed before such driving or being in actual physical
18 control ended an alcohol concentration of 0.02 grams or more in the person's blood,
19 breath, or urine, the person shall be in violation of subsection (k) of Code Section
20 40-6-391.

21 (d) In any criminal trial, the refusal of the defendant to permit a chemical analysis to be
22 made of his or her blood, breath, urine, or other bodily substance ~~at the time of his arrest~~
23 shall be admissible in evidence against him or her, and the trier of fact may in its discretion
24 infer from such refusal that the person was unlawfully under the influence of alcohol,
25 drugs, or other intoxicating substances or had an unlawful alcohol concentration as
26 prohibited by Code Section 40-6-391.

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

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

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

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

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

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

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

12 **SECTION 4.**

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