

Senate Bill 13

By: Senators Balfour of the 9<sup>th</sup>, Shafer of the 48<sup>th</sup> and Unterman of the 45<sup>th</sup>

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 create the new offense of refusal to submit to chemical testing; to change  
3 certain provisions relating to chemical tests, implied consent notices, rights of motorists, test  
4 results, refusal to submit, suspension or denial, hearing and review, compensation of officers,  
5 and 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 provide for related matters; to repeal conflicting laws; and for other  
10 purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

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

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

21 'Georgia law requires you to submit to state administered chemical tests of your blood,  
22 breath, urine, or other bodily substances for the purpose of determining if you are under  
23 the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's  
24 license or privilege to drive on the highways of this state will be suspended for a  
25 minimum period of one year, and you may be charged with the separate offense of  
26 refusal to submit to chemical testing. Your refusal to submit to the required testing may

1 be offered into evidence against you at trial. If you submit to testing and the results  
2 indicate an alcohol concentration of 0.02 grams or more, your Georgia driver's license  
3 or privilege to drive on the highways of this state may be suspended for a minimum  
4 period of one year. After first submitting to the required state tests, you are entitled to  
5 additional chemical tests of your blood, breath, urine, or other bodily substances at your  
6 own expense and from qualified personnel of your own choosing. Will you submit to  
7 the state administered chemical tests of your (designate which tests) under the implied  
8 consent law?'

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

10 'Georgia law requires you to submit to state administered chemical tests of your blood,  
11 breath, urine, or other bodily substances for the purpose of determining if you are under  
12 the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's  
13 license or privilege to drive on the highways of this state will be suspended for a  
14 minimum period of one year, and you may be charged with the separate offense of  
15 refusal to submit to chemical testing. Your refusal to submit to the required testing may  
16 be offered into evidence against you at trial. If you submit to testing and the results  
17 indicate an alcohol concentration of 0.08 grams or more, your Georgia driver's license  
18 or privilege to drive on the highways of this state may be suspended for a minimum  
19 period of one year. After first submitting to the required state tests, you are entitled to  
20 additional chemical tests of your blood, breath, urine, or other bodily substances at your  
21 own expense and from qualified personnel of your own choosing. Will you submit to  
22 the state administered chemical tests of your (designate which tests) under the implied  
23 consent law?'

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

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

1 Will you submit to the state administered chemical tests of your (designate which tests)  
 2 under the implied consent law?  
 3 If ~~any such~~ this 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 the~~ the 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 the~~ the person. ~~Such~~ This notice shall be read in its  
 8 entirety but need not be read exactly so long as the substance of the notice remains  
 9 unchanged."

## 10 SECTION 2.

11 Said title is further amended in Code Section 40-6-391, relating to driving under the  
 12 influence of alcohol, drugs, or other intoxicating substances, penalties, publication of notice  
 13 of conviction for persons convicted for second time, and endangering a child, by striking  
 14 subsections (a), (b), and (e), and inserting in their respective places the following, and by  
 15 adding a new subsection (m) as follows:

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 0.08 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 paragraphs (3)  
 4 through (6) of Code Section 16-13-25, marijuana, cocaine, or any metabolite or derivative  
 5 of any of them present in the person's blood, urine, or both, without regard to whether or  
 6 not any alcohol is present in the person's breath or blood.

7 (b) Reserved."

8 "(e) The ~~foregoing~~ limitations on punishment imposed by subsection (c) of this Code  
 9 section also shall apply when a defendant has been convicted of violating, by a single  
 10 transaction, more than one of the ~~four~~ provisions of subsection (a) of this Code section."

11 "(m)(1) Any person who refuses to submit to lawfully requested chemical testing to  
 12 which the person is deemed by Code Section 40-5-55 to have given consent shall be  
 13 guilty of the separate offense of refusal to submit to chemical testing and upon conviction  
 14 thereof shall be punished as provided by subsection (c) of this Code section.

15 (2) The offense of refusal to submit to chemical testing shall not be merged with a  
 16 violation of any other provision of this Code section which arose out of the same course  
 17 of conduct.

18 (3) The disposition of any administrative proceeding pursuant to Code Section 40-5-67.1  
 19 arising from the same course of conduct which forms the basis of a prosecution pursuant  
 20 to this subsection shall not affect the prosecution of a person for violation of this  
 21 subsection.

22 (4) Any person who is requested to submit to chemical testing pursuant to Code Section  
 23 40-5-55 shall be advised by a law enforcement officer that refusal to submit to chemical  
 24 testing is a separate crime for which the person may be charged."

### 25 SECTION 3.

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

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

35 (1)(A) Chemical analysis of the person's blood, urine, breath, or other bodily  
 36 substance, to be considered valid under this Code section, shall have been performed

1 according to methods approved by the Division of Forensic Sciences of the Georgia  
2 Bureau of Investigation on a machine which was operated with all its electronic and  
3 operating components prescribed by its manufacturer properly attached and in good  
4 working order and by an individual possessing a valid permit issued by the Division of  
5 Forensic Sciences for this purpose. The Division of Forensic Sciences of the Georgia  
6 Bureau of Investigation shall approve satisfactory techniques or methods to ascertain  
7 the qualifications and competence of individuals to conduct analyses and to issue  
8 permits, along with requirements for properly operating and maintaining any testing  
9 instruments, and to issue certificates certifying that instruments have met those  
10 requirements, which certificates and permits shall be subject to termination or  
11 revocation at the discretion of the Division of Forensic Sciences.

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

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

36 (3) The person tested may have a physician or a qualified technician, chemist, registered  
37 nurse, or other qualified person of his or her own choosing administer a chemical test or

1 tests in addition to any administered at the direction of a law enforcement officer. The  
2 justifiable failure or inability to obtain an additional test shall not preclude the admission  
3 of evidence relating to the test or tests taken at the direction of a law enforcement officer;  
4 and

5 (4) Upon the request of the person who shall submit to a chemical test or tests at the  
6 request of a law enforcement officer, full information concerning the test or tests shall be  
7 made available to ~~him or his~~ the person or the person's attorney. The arresting officer at  
8 the time of arrest shall advise the person arrested of his or her rights to a chemical test or  
9 tests according to this Code section."

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

#### 17 SECTION 4.

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