

Senate Bill 13

By: Senators Balfour of the 9th, Shafer of the 48th and Unterman of the 45th

**AS PASSED SENATE**

**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 provide for  
 3 punishment; to change certain provisions relating to the point system; to change certain  
 4 provisions relating to suspension of licenses of persons under 21 years of age for certain  
 5 offenses; to change certain provisions relating to chemical tests, implied consent notices,  
 6 rights of motorists, test results, refusal to submit, suspension or denial, hearing and review,  
 7 compensation of officers, and inspection and certification of breath-testing instruments; to  
 8 change certain provisions relating to chemical tests for alcohol or drugs in blood; to change  
 9 certain provisions relating to periods of suspension and conditions to return of license; to  
 10 change certain provisions relating to limited driving permits for certain offenders; to delete  
 11 an obsolete reference relating to issuance of temporary driving permits; to clarify certain  
 12 provisions relating to chemical tests, implied consent notices, rights of motorists, test results,  
 13 refusal to submit, suspension or denial, hearing and review, compensation of officers, and  
 14 inspection and certification of breath-testing instruments; to change certain provisions  
 15 relating to suspension of licenses by operation of law; to change certain provisions relating  
 16 to consumption of alcoholic beverages or possession of open containers of alcoholic  
 17 beverages in passenger areas of motor vehicles; to change certain provisions relating to  
 18 driving under the influence of alcohol, drugs, or other intoxicating substances, penalties,  
 19 publication of notice of conviction for persons convicted for second time, and endangering  
 20 a child; to change certain provisions relating to chemical tests for alcohol or drugs in blood;  
 21 to change certain provisions relating to motor vehicle drivers fleeing or attempting to elude  
 22 police officers; to provide for related matters; to repeal conflicting laws; and for other  
 23 purposes.

24 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

25 **SECTION 1.**

26 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is  
 27 amended by striking (c)(1)(A) of Code section 40-5-57, relating to the suspension or

1 revocation of license of habitually negligent or dangerous drivers and the point system, and  
 2 inserting in lieu thereof the following:

3 (c)(1)(A) Except as provided in subparagraph (C) of this paragraph, the points to be  
 4 assessed for each offense shall be as provided in the following schedule:

5	Aggressive driving . . . . .	6 points
6	Reckless driving . . . . .	4 points
7	Unlawful passing of a school bus . . . . .	6 points
8	Improper passing on a hill or a curve . . . . .	4 points
9	Exceeding the speed limit by more than 14 miles per hour but less than 19	
10	miles per hour . . . . .	2 points
11	Exceeding the speed limit by 19 miles per hour or more but less than 24	
12	miles per hour . . . . .	3 points
13	Exceeding the speed limit by 24 miles per hour or more but less than 34	
14	miles per hour . . . . .	4 points
15	Exceeding the speed limit by 34 miles per hour or more . . . . .	6 points
16	Disobedience of any traffic-control device or traffic officer . . . . .	3 points
17	Too fast for conditions . . . . .	0 points
18	Possessing an open container of an alcoholic beverage while driving . . . .	2 points
19	<u>Refusal to submit to chemical testing in violation of Code Section</u>	
20	<u>40-6-391.4, first offense</u> . . . . .	<u>2 points</u>
21	<u>Refusal to submit to chemical testing in violation of Code Section</u>	
22	<u>40-6-391.4, second or subsequent offense</u> . . . . .	<u>4 points</u>
23	Failure to adequately secure a load, except fresh farm produce, resulting in	
24	loss of such load onto the roadway which results in an accident . . . . .	2 points
25	Violation of child safety restraint requirements, first offense . . . . .	1 point
26	Violation of child safety restraint requirements, second or subsequent	
27	offense . . . . .	2 points
28	All other moving traffic violations which are not speed limit violations . .	3 points"

29 **SECTION 2.**

30 Said title is further amended by striking subsection (a) of Code Section 40-5-57.1, relating  
 31 to suspension of licenses of persons under age 21 for certain offenses, and inserting in lieu  
 32 thereof the following:

33 "(a) Notwithstanding any other provision of this chapter, the driver's license of any person  
 34 under 21 years of age convicted of hit and run or leaving the scene of an accident in  
 35 violation of Code Section 40-6-270, racing on highways or streets, using a motor vehicle

1 in fleeing or attempting to elude an officer, reckless driving, refusal to submit to chemical  
 2 testing in violation of Code Section 40-6-391.4, any offense for which four or more points  
 3 are assessable under subsection (c) of Code Section 40-5-57, purchasing an alcoholic  
 4 beverage in violation of paragraph (2) of subsection (a) of Code Section 3-3-23, or  
 5 violation of paragraph (3) or (5) of subsection (a) of Code Section 3-3-23, or violation of  
 6 Code Section 40-6-391 shall be suspended by the department as provided by this Code  
 7 section; and the driver's license of any person under 18 years of age who has accumulated  
 8 a violation point count of four or more points under Code Section 40-5-57 in any  
 9 consecutive 12 month period shall be suspended by the department as provided by this  
 10 Code section. A plea of nolo contendere shall be considered a conviction for purposes of  
 11 this subsection. Notice of suspension shall be given by certified mail or statutory overnight  
 12 delivery, return receipt requested; or, in lieu thereof, notice may be given by personal  
 13 service upon such person. Such license shall be surrendered within ten days of notification  
 14 of such suspension. Notice given by certified mail or statutory overnight delivery, return  
 15 receipt requested, mailed to the person's last known address shall be prima-facie evidence  
 16 that such person received the required notice."

### 17 SECTION 3.

18 Said title is further amended by striking the introductory paragraph and paragraph (1) of  
 19 subsection (a) of Code Section 40-5-63, relating to periods of suspension and conditions to  
 20 return of license, and inserting in lieu thereof the following:

21 "(a) The driver's license of any person convicted of an offense listed in Code Section  
 22 40-5-54 or of violating Code Section 40-6-391, ~~unless the driver's license has been~~  
 23 ~~previously suspended pursuant to Code Sections 40-5-67.1 and~~ except as otherwise  
 24 provided by Code Section 40-5-57.1 or subsection (b) of Code Section 40-5-67.2, shall by  
 25 operation of law be suspended and such suspension shall be subject to the following terms  
 26 and conditions; ~~provided, however, that any person convicted of a drug related offense~~  
 27 ~~pursuant to Code Section 40-6-391 shall be governed by the suspension requirements of~~  
 28 ~~Code Section 40-5-75:~~

29 (1) Upon the first conviction of any such offense, with no arrest and conviction of and  
 30 no plea of nolo contendere accepted to such offense within the previous five years, as  
 31 measured from the dates of previous arrests for which convictions were obtained to the  
 32 date of the current arrest for which a conviction is obtained, the period of suspension shall  
 33 be for 12 months. At the end of 120 days, the person may apply to the department for  
 34 reinstatement of said driver's license; except that in the case of such conviction for an  
 35 offense under paragraph (2), (4), or (6) of subsection (a) of Code Section 40-6-391, the  
 36 person shall not be eligible to apply for reinstatement of his or her driver's license until

1 the end of 180 days. Such license shall be reinstated if such person submits proof of  
2 completion of a DUI Alcohol or Drug Use Risk Reduction Program approved by the  
3 Department of Human Resources and pays a restoration fee of \$210.00 or \$200.00 when  
4 such reinstatement is processed by mail, provided that, if such license was suspended as  
5 a result of a conviction of an offense listed in Code Section 40-5-54, such license shall  
6 be reinstated if such person submits proof of completion of either a defensive driving  
7 program approved by the Department of Motor Vehicle Safety or a DUI Alcohol or Drug  
8 Use Risk Reduction Program approved by the Department of Human Resources and pays  
9 the prescribed restoration fee. A driver's license suspended as a result of a conviction of  
10 a violation of Code Section 40-6-391 shall not become valid and shall remain suspended  
11 until such person submits proof of completion of a DUI Alcohol or Drug Use Risk  
12 Reduction Program approved by the Department of Human Resources and pays the  
13 prescribed restoration fee. For purposes of this paragraph, an accepted plea of nolo  
14 contendere to an offense listed in Code Section 40-5-54 by a person who is under 18  
15 years of age at the time of arrest shall constitute a conviction. For the purposes of this  
16 paragraph only, an accepted plea of nolo contendere by a person 21 years of age or older,  
17 with no conviction of and no plea of nolo contendere accepted to a charge of violating  
18 Code Section 40-6-391 within the previous five years, as measured from the dates of  
19 previous arrests for which convictions were obtained or pleas of nolo contendere accepted  
20 to the date of the current arrest for which a plea of nolo contendere is accepted, shall be  
21 considered a conviction, and the court having jurisdiction shall forward, as provided in  
22 Code Section 40-6-391.1, the record of such disposition of the case to the department and  
23 the record of such disposition shall be kept on file for the purpose of considering and  
24 counting such accepted plea of nolo contendere as a conviction under paragraphs (2) and  
25 (3) of this subsection;"

#### 26 **SECTION 4.**

27 Said title is further amended in subsection (a) of Code Section 40-5-64, relating to limited  
28 driving permits for certain offenders, by inserting a new paragraph (1.1) to read as follows:

29 "(1.1) Any person whose driver's license has been suspended in accordance with  
30 paragraph (1) of subsection (a) of Code Section 40-5-63 for conviction of an offense  
31 under paragraph (2), (4), or (6) of subsection (a) of Code Section 40-6-391 shall not be  
32 eligible for a limited driving permit under paragraph (1) of this subsection."



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

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

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

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

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

1 substances at your own expense and from qualified personnel of your own choosing.

2 Will you submit to the state administered chemical tests of your (designate which tests)

3 under the implied consent law?'

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

### 11 SECTION 7.

12 Said title is further amended by striking paragraph (1) of subsection (f) of Code Section  
13 40-5-67.1, relating to chemical tests, implied consent notices, rights of motorists, test results,  
14 refusal to submit, suspension or denial, hearing and review, compensation of officers, and  
15 inspection and certification of breath-testing instruments, and inserting in lieu thereof the  
16 following:

17 "(f)(1) The law enforcement officer, acting on behalf of the department, shall personally  
18 serve the notice of intention to suspend or disqualify the license of the arrested person or  
19 other person refusing such test on such person at the time of the person's refusal to  
20 submit to a test or at the time at which such a test indicates that suspension or  
21 disqualification is required under this Code section. The law enforcement officer shall  
22 take possession of any driver's license or permit held by any person whose license is  
23 subject to suspension pursuant to subsection (c) or (d) of this Code section, if any, and  
24 shall issue a 30 day temporary permit. The officer shall forward the person's driver's  
25 license to the department along with the notice of intent to suspend or disqualify and the  
26 sworn report required by subsection (c) or (d) of this Code section within ten calendar  
27 days after the date of the arrest of such person. ~~This paragraph shall not apply to any~~  
28 ~~person issued a 180 day temporary permit pursuant to subsection (b) of Code Section~~  
29 ~~40-5-67.~~ The failure of the officer to transmit the sworn report required by this Code  
30 section within ten calendar days shall not prevent the department from accepting such  
31 report and utilizing it in the suspension of a driver's license as provided in this Code  
32 section."

### 33 SECTION 8.

34 Said title is further amended by striking paragraphs (2) and (4) of subsection (g) of Code  
35 Section 40-5-67.1, relating to chemical tests, implied consent notices, rights of motorists, test

1 results, refusal to submit, suspension or denial, hearing and review, compensation of officers,  
 2 and inspection and certification of breath-testing instruments, and inserting in their respective  
 3 places the following:

4 "(2) The scope of the hearing shall be limited to the following issues:

5 (A)(i) Whether the law enforcement officer had reasonable grounds to believe the  
 6 person was driving or in actual physical control of a moving motor vehicle while  
 7 under the influence of alcohol or a controlled substance and was lawfully placed  
 8 under arrest for violating Code Section 40-6-391; or

9 ~~(B)~~(ii) Whether the person was involved in a motor vehicle accident or collision  
 10 resulting in serious injury or fatality; and

11 ~~(C)~~(B) Whether at the time of the request for the test or tests the officer informed the  
 12 person of the person's implied consent rights and the consequence of submitting or  
 13 refusing to submit to such test; and

14 ~~(D)~~(C)(i) Whether the person refused the test; or

15 ~~(E)~~(ii)(I) Whether a test or tests were administered and the results indicated an  
 16 alcohol concentration of 0.08 grams or more or, for a person under the age of 21,  
 17 an alcohol concentration of 0.02 grams or more or, for a person operating or having  
 18 actual physical control of a commercial motor vehicle, an alcohol concentration of  
 19 0.04 grams or more; and

20 ~~(F)~~(II) Whether the test or tests were properly administered by an individual  
 21 possessing a valid permit issued by the Division of Forensic Sciences of the Georgia  
 22 Bureau of Investigation on an instrument approved by the Division of Forensic  
 23 Sciences or a test conducted by the Division of Forensic Sciences, including  
 24 whether the machine at the time of the test was operated with all its electronic and  
 25 operating components prescribed by its manufacturer properly attached and in good  
 26 working order, which shall be required. A copy of the operator's permit showing  
 27 that the operator has been trained on the particular type of instrument used and one  
 28 of the original copies of the test results or, where the test is performed by the  
 29 Division of Forensic Sciences, a copy of the crime lab report shall satisfy the  
 30 requirements of this ~~subparagraph~~ subdivision."

31 "(4)(A) In the event the person is acquitted of a violation of Code Section 40-6-391 or  
 32 such charge is initially disposed of other than by a conviction or plea of nolo  
 33 contendere, then the suspension shall be terminated and deleted from the driver's  
 34 license record.

35 (B) An accepted plea of nolo contendere shall be entered on the driver's license record  
 36 and shall be considered and counted as a conviction for purposes of any future  
 37 violations of Code Section 40-6-391.



1 motor vehicles, by redesignating subsection (c) as subsection (d) and inserting a new  
2 subsection (c) to read as follows:

3 "(c) In any prosecution for violation of this Code section:

4 (1) Retail labeling of the container which identifies the contents of such container as any  
5 alcoholic beverage; or

6 (2) Testimony of a law enforcement officer that, based on his or her experience and  
7 senses, the contents of the container possessed the same odor, color, and general  
8 appearance or the same taste, color, and general appearance as any alcoholic beverage,  
9 shall be admissible as evidence that the contents of such container was an alcoholic  
10 beverage."

11 **SECTION 11.**

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

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 SECTION 12.

12 Said title is further amended by adding a new Code section to follow Code Section  
 13 40-6-391.3, relating to the penalty for conviction for driving under the influence of alcohol  
 14 or drugs while driving a school bus, to read as follows:

15 "40-6-391.4.

16 (a) Any person who refuses to submit to lawfully requested chemical testing to which the  
 17 person is deemed by Code Section 40-5-55 to have given consent shall be guilty of the  
 18 separate offense of refusal to submit to chemical testing and upon conviction thereof shall  
 19 be punished as provided by subsection (c) of this Code section.

20 (b) The offense of refusal to submit to chemical testing shall be merged for purposes of  
 21 sentencing with a violation of any provision of Code Section 40-6-391 that arose out of the  
 22 same course of conduct.

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

27 (1) For the first conviction a fine of not more than \$300.00 and a period of imprisonment  
 28 of not more than three months, which period of imprisonment may, at the sole discretion  
 29 of the judge, be suspended, stayed, or probated;

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

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

1 (B) A mandatory period of imprisonment of not less than 90 days nor more than 12  
 2 months; provided, however, that the offender shall be required to serve not less than 72  
 3 hours of actual incarceration; and

4 (C) Not less than 30 days of community service; or

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

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

12 (B) A mandatory period of imprisonment of not less than 120 days nor more than 12  
 13 months; provided, however, that the offender shall be required to serve not less than 15  
 14 days of actual incarceration; and

15 (C) Not less than 30 days of community service.

16 (4) For the purpose of imposing a sentence under this subsection, a plea of nolo  
 17 contendere or an adjudication of delinquency based on a violation of this Code section  
 18 shall constitute a conviction.

19 (d) If the payment of the fine required under subsection (c) of this Code section will  
 20 impose an economic hardship on the defendant, the judge, at his or her sole discretion, may  
 21 order the defendant to pay the fine in installments and this order may be enforced through  
 22 a contempt proceeding or a revocation of any probation otherwise authorized by this Code  
 23 section."

### 24 SECTION 13.

25 Said title is further amended in Code Section 40-6-392, relating to chemical tests for alcohol  
 26 or drugs in blood, by striking paragraphs (3) and (4) of subsection (a) and subsection (d), and  
 27 inserting in their respective places the following:

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

34 (4) Upon the request of the person who shall submit to a chemical test or tests at the  
 35 request of a law enforcement officer, full information concerning the test or tests shall be  
 36 made available to ~~him or his~~ the person or the person's attorney. The arresting officer at

1 the time of arrest shall advise the person arrested of his or her rights to a chemical test or  
 2 tests according to this Code section."

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

9 **SECTION 14.**

10 Said title is further amended in Code Section 40-6-392, relating to chemical tests for alcohol  
 11 or drugs in blood, by striking subparagraph (a)(1)(B) and inserting in lieu thereof the  
 12 following:

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

29 **SECTION 15.**

30 Said title is further amended in Code Section 40-6-395, relating to motor vehicle drivers  
 31 fleeing or attempting to elude police officers, by striking subsections (a) and (b) and inserting  
 32 in lieu thereof the following:

33 "(a) It shall be unlawful for any driver of a vehicle willfully to fail or refuse to bring his  
 34 or her vehicle to a stop or otherwise to flee or attempt to elude a pursuing police vehicle  
 35 or police officer when given a visual or an audible signal to bring the vehicle to a stop. The

1 signal given by the police officer may be by hand, voice, emergency light, or siren. The  
2 officer giving such signal shall be in uniform prominently displaying his or her badge of  
3 office, and his or her vehicle shall be appropriately marked showing it to be an official  
4 police vehicle.

5 (b)(1) Any person violating the provisions of subsection (a) of this Code section shall be  
6 guilty of a high and aggravated misdemeanor and:

7 (A) Upon conviction shall be fined not less than \$500.00 nor more than \$5,000.00,  
8 which fine shall not be subject to suspension, stay, or probation and imprisoned for not  
9 less than ten days nor more than 12 months. Any period of such imprisonment in excess  
10 of ten days may, in the sole discretion of the judge, be suspended, stayed, or probated;

11 (B) Upon the second conviction within a ten-year period of time, as measured from the  
12 dates of previous arrests for which convictions were obtained to the date of the current  
13 arrest for which a conviction is obtained, shall be fined not less than \$1,000.00 nor  
14 more than \$5,000.00, which fine shall not be subject to suspension, stay, or probation  
15 and imprisoned for not less than 30 days nor more than 12 months. Any period of such  
16 imprisonment in excess of 30 days may, in the sole discretion of the judge, be  
17 suspended, stayed, or probated; and for purposes of this paragraph, previous pleas of  
18 nolo contendere accepted within such ten-year period shall constitute convictions; and

19 (C) Upon the third or subsequent conviction within a ten-year period of time, as  
20 measured from the dates of previous arrests for which convictions were obtained to the  
21 date of the current arrest for which a conviction is obtained, shall be fined not less than  
22 \$2,500.00 nor more than \$5,000.00, which fine shall not be subject to suspension, stay,  
23 or probation and imprisoned for not less than 90 days nor more than 12 months. Any  
24 period of such imprisonment in excess of 90 days may, in the sole discretion of the  
25 judge, be suspended, stayed, or probated; and for purposes of this paragraph, previous  
26 pleas of nolo contendere accepted within such ten-year period shall constitute  
27 convictions.

28 (2) For the purpose of imposing a sentence under this subsection, a plea of nolo  
29 contendere shall constitute a conviction.

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

35 (4) Notwithstanding the limits set forth in any municipal charter, any municipal court of  
36 any municipality shall be authorized to impose the punishments provided for in this

1 subsection upon a conviction of violating this subsection or upon conviction of violating  
2 any ordinance adopting the provisions of this subsection.

3 (5)(A)(i) Any person violating the provisions of subsection (a) of this Code section  
4 who, while fleeing or attempting to elude a pursuing police vehicle or police officer  
5 in an attempt to escape arrest for a felony offense other than a violation of this  
6 chapter, operates his or her vehicle in excess of 30 miles an hour above the posted  
7 speed limit, strikes or collides with another vehicle or a pedestrian, flees in traffic  
8 conditions which place the general public at risk of receiving serious injuries, or  
9 leaves the state shall be guilty of a felony punishable by a fine of \$5,000.00 and  
10 imprisonment for not less than one year nor more than five years.

11 (ii) Any person violating the provisions of subsection (a) of this Code section while  
12 driving a motor vehicle in violation of Code Section 40-6-391 shall be guilty of a  
13 felony punishable by a fine of \$5,000.00 and imprisonment for not less than one year  
14 nor more than five years.

15 (B) Following adjudication of guilt or imposition of sentence for a violation of  
16 subparagraph (A) of this paragraph, the sentence shall not be suspended, probated,  
17 deferred, or withheld, and the charge shall not be reduced to a lesser offense, merged  
18 with any other offense, or served concurrently with any other offense."

19 **SECTION 16.**

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