

House Bill 1765

By: Representatives Lunsford of the 85<sup>th</sup>, Post 2, and Yates of the 85<sup>th</sup>, Post 1

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 provide for reading the Georgia implied consent warning prior to testing  
3 rather than at the time of arrest; to provide that no state administered test shall be requested  
4 absent probable cause to believe the driver was under the influence of alcohol or any other  
5 drug; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is  
9 amended by striking Code Section 40-5-55, relating to implied consent to chemical tests, and  
10 inserting in its place the following:

11 "40-5-55.

12 (a) The State of Georgia considers that any person who drives or is in actual physical  
13 control of any moving vehicle in violation of any provision of Code Section 40-6-391  
14 constitutes a direct and immediate threat to the welfare and safety of the general public.  
15 Therefore, any person who operates a motor vehicle upon the highways or elsewhere  
16 throughout this state shall be deemed to have given consent, subject to Code Section  
17 40-6-392, to a chemical test or tests of his or her blood, breath, urine, or other bodily  
18 substances for the purpose of determining the presence of alcohol or any other drug, if  
19 arrested for any offense arising out of acts alleged to have been committed in violation of  
20 Code Section 40-6-391 ~~or if such person is involved in any traffic accident resulting in~~  
21 ~~serious injuries or fatalities.~~ The test or tests shall be administered at the request of a law  
22 enforcement officer having reasonable grounds to believe that the person has been driving  
23 or was in actual physical control of a moving motor vehicle upon the highways or  
24 elsewhere throughout this state in violation of Code Section 40-6-391. The test or tests  
25 shall be administered as soon as possible to any person who operates a motor vehicle upon  
26 the highways or elsewhere throughout this state who is involved in any traffic accident

1 resulting in serious injuries or fatalities, provided probable cause exists to believe the driver  
 2 may have been under the influence of alcohol or any drug. Subject to Code Section  
 3 40-6-392, the requesting law enforcement officer shall designate which of the test or tests  
 4 shall be administered, ~~provided a blood test with drug screen may be administered to any~~  
 5 ~~person operating a motor vehicle involved in a traffic accident resulting in serious injuries~~  
 6 ~~or fatalities.~~

7 (b) Any person who is dead, unconscious, or otherwise in a condition rendering such  
 8 person incapable of refusal shall be deemed not to have withdrawn the consent provided  
 9 by subsection (a) of this Code section, and the test or tests may be administered, subject to  
 10 Code Section 40-6-392.

11 (c) As used in this Code section, the term 'traffic accident resulting in serious injuries or  
 12 fatalities' means any motor vehicle accident in which a person was killed or in which one  
 13 or more persons suffered a fractured bone, severe burns, disfigurement, dismemberment,  
 14 partial or total loss of sight or hearing, or loss of consciousness."

## 15 SECTION 2.

16 Said title is further amended by striking Code Section 40-5-67.1, relating to chemical tests,  
 17 implied consent notices, rights of motorists, test results, refusal to submit, suspension or  
 18 denial, hearings and reviews, compensation of officers, and inspection and certification of  
 19 breath-testing instruments, and inserting in its place the following:

20 "40-5-67.1.

21 (a) The test or tests required under Code Section 40-5-55 shall be administered as soon as  
 22 possible at the request of a law enforcement officer having reasonable grounds to believe  
 23 that the person has been driving or was in actual physical control of a moving motor  
 24 vehicle upon the highways or elsewhere throughout this state in violation of Code Section  
 25 40-6-391 ~~and the officer has arrested such person for a violation of Code Section 40-6-391,~~  
 26 any federal law in conformity with Code Section 40-6-391, or any local ordinance which  
 27 adopts Code Section 40-6-391 by reference ~~or the person has been involved in a traffic~~  
 28 ~~accident resulting in serious injuries or fatalities.~~ Subject to Code Section 40-6-392, the  
 29 requesting law enforcement officer shall designate which test or tests shall be administered  
 30 initially and may subsequently require a test or tests of any substances not initially tested.

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

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

34 'Georgia law requires you to submit to state administered chemical tests of your blood,  
 35 breath, urine, or other bodily substances for the purpose of determining if you are under  
 36 the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's

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

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

12 'Georgia law requires you to submit to state administered chemical tests of your blood,  
13 breath, urine, or other bodily substances for the purpose of determining if you are under  
14 the influence of alcohol or drugs. If you refuse this testing, your Georgia driver's  
15 license or privilege to drive on the highways of this state will be suspended for a  
16 minimum period of one year. Your refusal to submit to the required testing may be  
17 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. 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 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 (c) If a person ~~under arrest or a person who was involved in any traffic accident resulting~~  
10 ~~in serious injuries or fatalities~~ submits to a chemical test upon the request of a law  
11 enforcement officer and the test results indicate that a suspension or disqualification is  
12 required under this Code section, the results shall be reported to the department. Upon the  
13 receipt of a sworn report of the law enforcement officer that the officer had reasonable  
14 grounds to believe the arrested person had been driving or was in actual physical control  
15 of a moving motor vehicle upon the highways or elsewhere throughout this state in  
16 violation of Code Section 40-6-391 ~~or that such person had been driving or was in actual~~  
17 ~~physical control of a moving motor vehicle upon the highways or elsewhere throughout this~~  
18 ~~state and was involved in a traffic accident involving serious injuries or fatalities~~ and that  
19 the person submitted to a chemical test at the request of the law enforcement officer and  
20 the test results indicate either an alcohol concentration of 0.08 grams or more or, for a  
21 person under the age of 21, an alcohol concentration of 0.02 grams or more, the department  
22 shall suspend the person's driver's license, permit, or nonresident operating privilege  
23 pursuant to Code Section 40-5-67.2, subject to review as provided for in this chapter. Upon  
24 the receipt of a sworn report of the law enforcement officer that the arrested person had  
25 been operating or was in actual physical control of a moving commercial motor vehicle and  
26 the test results indicate an alcohol concentration of 0.04 grams or more, the department  
27 shall disqualify the person from operating a motor vehicle for a minimum period of one  
28 year.

29 (d) If a person ~~under arrest or a person who was involved in any traffic accident resulting~~  
30 ~~in serious injuries or fatalities~~ refuses, upon the request of a law enforcement officer, to  
31 submit to a chemical test designated by the law enforcement officer as provided in  
32 subsection (a) of this Code section, no test shall be given; but the law enforcement officer  
33 shall report the refusal to the department. Upon the receipt of a sworn report of the law  
34 enforcement officer that the officer had reasonable grounds to believe the arrested person  
35 had been driving or was in actual physical control of a moving motor vehicle upon the  
36 highways or elsewhere throughout this state in violation of Code Section 40-6-391 ~~or that~~  
37 ~~such person had been driving or was in actual physical control of a moving motor vehicle~~

1 ~~upon the highways or elsewhere throughout this state and was involved in a traffic accident~~  
2 ~~which resulted in serious injuries or fatalities~~ and that the person had refused to submit to  
3 the test upon the request of the law enforcement officer, the department shall suspend the  
4 person's driver's license, permit, or nonresident operating privilege for a period of one year  
5 or if the person was operating or in actual physical control of a commercial motor vehicle,  
6 the department shall disqualify the person from operating a commercial motor vehicle and  
7 shall suspend the person's driver's license, permit, or nonresident operating privilege,  
8 subject to review as provided for in this chapter.

9 (e) If the person is a resident without a driver's license, commercial driver's license, or  
10 permit to operate a motor vehicle in this state, the department shall deny issuance of a  
11 license or permit to such person for the same period provided in subsection (c) or (d) of this  
12 Code section, whichever is applicable, for suspension of a license or permit or  
13 disqualification to operate a commercial motor vehicle subject to review as provided for  
14 in this chapter.

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

31 (2) If notice has not been given by the arresting officer, the department, upon receipt of  
32 the sworn report of such officer, shall suspend the person's driver's license, permit, or  
33 nonresident operating privilege or disqualify such person from operating a motor vehicle  
34 and, by regular mail, at the last known address, notify such person of such suspension or  
35 disqualification. The notice shall inform the person of the grounds of suspension or  
36 disqualification, the effective date of the suspension or disqualification, and the right to  
37 review. The notice shall be deemed received three days after mailing.

1 (g)(1) A person whose driver's license is suspended or who is disqualified from  
 2 operating a commercial motor vehicle pursuant to this Code section shall request, in  
 3 writing, a hearing within ten business days from the date of personal notice or receipt of  
 4 notice sent by certified mail or statutory overnight delivery, return receipt requested, or  
 5 the right to said hearing shall be deemed waived. Within 30 days after receiving a written  
 6 request for a hearing, the department shall hold a hearing as is provided in Chapter 13 of  
 7 Title 50, the 'Georgia Administrative Procedure Act.' The hearing shall be recorded.

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

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

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

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

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

19 ~~(E)~~(ii)(I) Whether a test or tests were administered and the results indicated an  
 20 alcohol concentration of 0.08 grams or more or, for a person under the age of 21,  
 21 an alcohol concentration of 0.02 grams or more or, for a person operating or having  
 22 actual physical control of a commercial motor vehicle, an alcohol concentration of  
 23 0.04 grams or more; and

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

35 (3) The hearing officer shall, within five calendar days after such hearing, forward a  
 36 decision to the department to rescind or sustain the driver's license suspension or  
 37 disqualification. If no hearing is requested within the ten business days specified above,

1 and the failure to request such hearing is due in whole or in part to the reasonably  
2 avoidable fault of the person, the right to a hearing shall have been waived. The request  
3 for a hearing shall not stay the suspension of the driver's license; provided, however, that  
4 if the hearing is timely requested and is not held before the expiration of the temporary  
5 permit and the delay is not due in whole or in part to the reasonably avoidable fault of the  
6 person, the suspension shall be stayed until such time as the hearing is held and the  
7 hearing officer's decision is made.

8 (4) In the event the person is acquitted of a violation of Code Section 40-6-391 or such  
9 charge is initially disposed of other than by a conviction or plea of nolo contendere, then  
10 the suspension shall be terminated and deleted from the driver's license record. An  
11 accepted plea of nolo contendere shall be entered on the driver's license record and shall  
12 be considered and counted as a conviction for purposes of any future violations of Code  
13 Section 40-6-391. In the event of an acquittal or other disposition other than by a  
14 conviction or plea of nolo contendere, the driver's license restoration fee shall be  
15 promptly returned by the department to the licensee.

16 (h) If the suspension is sustained after such a hearing, the person whose license has been  
17 suspended under this Code section shall have a right to file for a judicial review of the  
18 department's final decision, as provided for in Chapter 13 of Title 50, the 'Georgia  
19 Administrative Procedure Act'; while such appeal is pending, the order of the department  
20 shall not be stayed.

21 (i) Subject to the limitations of this subsection, any law enforcement officer who attends  
22 a hearing provided for by subsection (g) of this Code section for the purpose of giving  
23 testimony relative to the subject of such hearing shall be compensated in the amount of  
24 \$20.00 for each day's attendance at such hearing. In the event a law enforcement officer  
25 gives testimony at two or more different hearings on the same day, such officer shall  
26 receive only \$20.00 for attendance at all hearings. The compensation provided for in this  
27 subsection shall not be paid to any law enforcement officer who is on regular duty or who  
28 is on a lunch or other break from regular duty at the time the officer attends any such  
29 hearing. The compensation provided for by this subsection shall be paid to the law  
30 enforcement officer by the department from department funds at such time and in such  
31 manner as the commissioner shall provide by rules or regulations. The commissioner shall  
32 also require verification of a law enforcement officer's qualifying to receive the payment  
33 authorized by this subsection by requiring the completion of an appropriate document in  
34 substantially the following form:

IMPLIED CONSENT HEARING ATTENDANCE RECORD

OFFICER: \_\_\_\_\_ S.S. No. \_\_\_\_\_

ADDRESS: \_\_\_\_\_

Street City State ZIP Code

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ A.M.

P.M.

CASE: \_\_\_\_\_

This is to certify that the police officer named above attended an implied consent hearing as a witness or complainant on the date and time shown above.

HEARING OFFICER: \_\_\_\_\_ TITLE: \_\_\_\_\_

I certify that I appeared at the implied consent hearing described above on the date and time shown above and that I was not on regular duty at the time of attending the hearing and that I have not received and will not receive compensation from my regular employer for attending the hearing.

Signature of officer: \_\_\_\_\_

APPROVED FOR PAYMENT: \_\_\_\_\_

Comptroller

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

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

When properly prepared and executed, as prescribed in this subsection, the certificate shall, notwithstanding any other provision of law, be self-authenticating, shall be admissible in any court of law, and shall satisfy the pertinent requirements of paragraph (1) of subsection (a) of Code Section 40-6-392 and subdivision (g)(2)(C)(ii)(II) of this Code section."

SECTION 3.

Said title is further amended by striking Code Section 40-6-392, relating to chemical tests for alcohol or drugs in blood, and inserting in its place the following:

"40-6-392.

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of Code Section 40-6-391, evidence of



1 the amount of alcohol or drug in a person's blood, urine, breath, or other bodily substance  
2 at the alleged time, as determined by a chemical analysis of the person's blood, urine,  
3 breath, or other bodily substance shall be admissible. Where such a chemical test is made,  
4 the following provisions shall apply:

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

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

34 (2) When a person shall undergo a chemical test at the request of a law enforcement  
35 officer, only a physician, registered nurse, laboratory technician, emergency medical  
36 technician, or other qualified person may withdraw blood for the purpose of determining  
37 the alcoholic content therein, provided that this limitation shall not apply to the taking of

1 breath or urine specimens. No physician, registered nurse, or other qualified person or  
2 employer thereof shall incur any civil or criminal liability as a result of the medically  
3 proper obtaining of such blood specimens when requested in writing by a law  
4 enforcement officer;

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

11 (4) Upon the request of the person who shall submit to a chemical test or tests at the  
12 request of a law enforcement officer, full information concerning the test or tests shall be  
13 made available to him or her or his or her attorney. The ~~arresting~~ officer at the time of  
14 ~~arrest~~ request shall advise the person ~~arrested~~ of his or her rights to a chemical test or  
15 tests according to this Code section prior to the administration of the state administered  
16 chemical test.

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

22 (1) If there was at that time an alcohol concentration of 0.05 grams or less, the trier of  
23 fact in its discretion may infer therefrom that the person was not under the influence of  
24 alcohol, as prohibited by paragraphs (1) and (4) of subsection (a) of Code Section  
25 40-6-391; or

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

33 (c)(1) In any civil or criminal action or proceeding arising out of acts alleged to have  
34 been committed in violation of paragraph (5) of subsection (a) of Code Section 40-6-391,  
35 if there was at that time or within three hours after driving or being in actual physical  
36 control of a moving vehicle from alcohol consumed before such driving or being in actual  
37 physical control ended an alcohol concentration of 0.08 or more grams in the person's

1 blood, breath, or urine, the person shall be in violation of paragraph (5) of subsection (a)  
2 of Code Section 40-6-391.

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

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

17 (d) In any criminal trial, the refusal of the defendant to permit a chemical analysis to be  
18 made of his or her blood, breath, urine, or other bodily substance at the time of his or her  
19 arrest shall be admissible in evidence against him or her.

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

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

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

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

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

33 'This breath-testing instrument (serial no. \_\_\_\_\_) was thoroughly inspected, tested,  
34 and standardized by the undersigned on (date \_\_\_\_\_) and all of its electronic and  
35 operating components prescribed by its manufacturer are properly attached and are in  
36 good working order.'

1 When properly prepared and executed, as prescribed in this subsection, the certificate shall,  
2 notwithstanding any other provision of law, be self-authenticating, shall be admissible in  
3 any court of law, and shall satisfy the pertinent requirements of paragraph (1) of subsection  
4 (a) of this Code section and subdivision (g)(2)(C)(ii)(II) of Code Section 40-5-67.1."

5 **SECTION 4.**

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