

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 285
HOUSE BILL 385

AN ACT TO REDUCE THE BLOOD ALCOHOL CONTENT FOR DRIVING WHILE IMPAIRED AND RELATED OFFENSES FROM 0.10 TO 0.08; TO REDUCE THE MINIMUM BLOOD ALCOHOL CONTENT NECESSARY FOR AN IMMEDIATE TEN-DAY REVOCATION OF DRIVING PRIVILEGES FROM 0.10 TO 0.08; TO MAKE THE RESULTS OF A FIRST BREATH TEST ADMISSIBLE UNDER CERTAIN CIRCUMSTANCES; TO ESTABLISH THAT THE REVOCATION OF A PROVISIONAL LICENSEE'S LICENSE FOR DRIVING AFTER CONSUMING ALCOHOL SHALL BE UNTIL THE LICENSEE'S EIGHTEENTH BIRTHDAY OR FORTY-FIVE DAYS, WHICHEVER IS LONGER; TO PROVIDE CLARIFICATION ABOUT WHEN AN EARLIER CONVICTION FOR DRIVING WHILE IMPAIRED CAN BE USED FOR AGGRAVATION PURPOSES; TO ADD A NEW GROSSLY AGGRAVATING FACTOR TO IMPAIRED DRIVING; TO AMEND THE FELONY DEATH BY VEHICLE STATUTE; AND TO REQUIRE THAT THERE BE NO INSURANCE CONSEQUENCES FOR A REVOCATION UNDER G.S. 20-16.5 WHEN THERE IS A DISMISSAL OR ACQUITTAL OF THE IMPAIRED DRIVING OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-138.1(a) reads as rewritten:

"(a) Offense. – A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

- (1) While under the influence of an impairing substance; or
- (2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of ~~0.10~~ 0.08 or more."

Sec. 2. G.S. 20-12.1(a) reads as rewritten:

"(a) It is unlawful for any person to accompany another person driving a motor vehicle, in accordance with G.S. 20-11, or instruct another person driving a motor vehicle, in accordance with G.S. 20-7(l-1) and (m) or G.S. 20-12:

- (1) While the person accompanying or instructing is under the influence of an impairing substance; or
- (2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of ~~0.10~~ 0.08 or more."

Sec. 3. G.S. 20-16.2(a) reads as rewritten:

"(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. – Any person who drives a vehicle on a highway or public vehicular area

thereby gives consent to a chemical analysis if he is charged with an implied-consent offense. The charging officer must designate the type of chemical analysis to be administered, and it may be administered when he has reasonable grounds to believe that the person charged has committed the implied-consent offense. Except as provided in subsection (b), the person charged must be taken before a chemical analyst authorized to administer a test of a person's breath, who must inform the person orally and also give him a notice in writing that:

- (1) He has a right to refuse to be tested.
- (2) Refusal to take any required test or tests will result in an immediate revocation of his driving privilege for at least 10 days and an additional 12-month revocation by the Division of Motor Vehicles.
- (3) The test results, or the fact of his refusal, will be admissible in evidence at trial on the offense charged.
- (4) His driving privilege will be revoked immediately for at least 10 days if:
 - a. The test reveals an alcohol concentration of ~~0.10~~0.08 or more; or
 - b. He was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more.
- (5) He may have a qualified person of his own choosing administer a chemical test or tests in addition to any test administered at the direction of the charging officer.
- (6) He has the right to call an attorney and select a witness to view for him the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time he is notified of his rights."

Sec. 4. G.S. 20-16.2(i) reads as rewritten:

"(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer must afford the person the opportunity to have a chemical analysis of his breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person must confirm his request in writing and he must be notified:

- (1) That the test results will be admissible in evidence and may be used against him in any implied-consent offense that may arise;
- (2) That his license will be revoked for at least 10 days if:
 - a. The test reveals an alcohol concentration of ~~0.10~~0.08 or more; or
 - b. He was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

- (3) That if he fails to comply fully with the test procedures, the officer may charge him with any offense for which the officer has probable cause, and if he is charged with an implied-consent offense, his refusal to submit to the testing required as a result of that charge would result in revocation of his driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Sec. 5. G.S. 20-16.5(b) reads as rewritten:

"(b) Revocations for Persons Who Refuse Chemical Analyses or Have Alcohol Concentrations of ~~0.10~~0.08 or More After Driving a Motor Vehicle or of 0.04 or More After Driving a Commercial Vehicle. – A person's driver's license is subject to revocation under this section if:

- (1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;
- (2) The person is charged with that offense as provided in G.S. 20-16.2(a);
- (3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and
- (4) The person:
 - a. Willfully refuses to submit to the chemical analysis;
 - b. Has an alcohol concentration of ~~0.10~~0.08 or more within a relevant time after the driving; or
 - c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial vehicle."

Sec. 6. G.S. 20-16.5(b1) reads as rewritten:

"(b1) Precharge Test Results as Basis for Revocation. – Notwithstanding the provisions of subsection (b), a person's driver's license is subject to revocation under this section if:

- (1) He requests a precharge chemical analysis pursuant to G.S. 20-16.2(i); and
- (2) He has:
 - a. An alcohol concentration of ~~0.10~~0.08 or more at any relevant time after driving; or
 - b. An alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor vehicle; and
- (3) He is charged with an implied-consent offense."

Sec. 7. G.S. 20-139.1(b3) reads as rewritten:

"(b3) Sequential Breath Tests Required. – By January 1, 1985, the regulations of the Commission for Health Services governing the administration of chemical analyses of the breath must require the testing of at least duplicate sequential breath samples. Those regulations must provide:

- (1) A specification as to the minimum observation period before collection of the first breath sample and the time requirements as to collection of second and subsequent samples.
- (2) That the test results may only be used to prove a person's particular alcohol concentration if:
 - a. The pair of readings employed are from consecutively administered tests; and
 - b. The readings do not differ from each other by an alcohol concentration greater than 0.02.
- (3) That when a pair of analyses meets the requirements of subdivision (2), only the lower of the two readings may be used by the State as proof of a person's alcohol concentration in any court or administrative proceeding.

A person's willful refusal to give the sequential breath samples necessary to constitute a valid chemical analysis is a willful refusal under G.S. 20-16.2(c).

A person's willful refusal to give the second or subsequent breath sample shall make the result of the first breath sample, or the result of the sample providing the lowest alcohol concentration if more than one breath sample is provided, admissible in any judicial or administrative hearing for any relevant purpose, including the establishment that a person had a particular alcohol concentration for conviction of an offense involving impaired driving."

Sec. 8. G.S. 20-13.2(d) reads as rewritten:

"(d) ~~A~~ The length of revocation under this section continues until shall be equal to the number of days from the date of the charge to the provisional licensee's eighteenth birthday reaches 18 years of age or 45 days have elapsed, whichever occurs last is longer. Revocations under this section run concurrently with any other revocations, but a limited driving privilege issued pursuant to law does not authorize a provisional licensee to drive if his license is revoked under this section."

Sec. 9. G.S. 20-179(c) reads as rewritten:

"(c) ~~Determining Existence of Grossly Aggravating Factors; Habitual Offender Factors.~~ At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge must first determine whether there are any grossly aggravating factors in the case. If the defendant has been convicted of two prior offenses involving impaired driving and the convictions occurred within seven years before the date of the offense for which he is being sentenced, the judge must impose the Level One punishment under subsection (g). ~~The judge must also impose the Level One punishment under subsection (g) of this section if he the judge determines that two or more of the following grossly aggravating factors apply: apply.~~ The judge must impose the Level Two punishment under subsection (h) of this section if the judge determines that only one of the grossly aggravating factors applies. The grossly aggravating factors are:

- (1) ~~A single conviction prior conviction~~ for an offense involving impaired driving, if driving if:

- a. ~~the~~ The conviction occurred within seven years before the date of the offense for which the defendant is being sentenced; or
- b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing.

Each prior conviction is a separate grossly aggravating factor.

- (2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).
- (3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.
- (4) Driving by the defendant while a child under the age of 16 years was in the vehicle at the time of the offense.

~~If the judge determines that only one of the above grossly aggravating factors applies, he must impose the Level Two punishment under subsection (h).~~

In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f)."

Sec. 10. G.S. 20-141.4(a1) reads as rewritten:

"(a1) Felony Death by Vehicle. – A person commits the offense of felony death by vehicle if he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death."

Sec. 11. G.S. 58-36-75 is amended by adding a new subsection to read:

"(a2) The subclassification plan shall provide that there shall be no premium surcharge or assessment of points against an insured where (i) the insured's driver's license has been revoked under G.S. 20-16.5; and (ii) the insured is subsequently acquitted of the offense involving impaired driving, as defined in G.S. 20-4.01(24a), that is related to the revocation, or the charge for that offense is dismissed. In addition, no insurer shall use, for rating, underwriting, or classification purposes, including ceding any risk to the Facility or writing any kind of coverage subject to this Article, any license revocation under G.S. 20-16.5 if the insured is acquitted or the charge is dismissed as described in this subsection."

Sec. 12. This act becomes effective October 1, 1993, and applies to all offenses committed on or after that date.

In the General Assembly read three times and ratified this the 5th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives