

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 610

Short Title: Commercial Driving While Impaired.

(Public)

Sponsors: Senator Simpson.

Referred to: Judiciary I.

March 23, 1989

A BILL TO BE ENTITLED

AN ACT TO MAKE OPERATING A COMMERCIAL MOTOR VEHICLE WITH A BLOOD ALCOHOL CONCENTRATION OF 0.04 OR MORE AN IMPAIRED DRIVING OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-138.2 reads as rewritten:

"§ 20-138.2. Impaired driving in commercial vehicle.

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

(1) While appreciably 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 0.04 or more.

(b) Defense Precluded.—The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section.

(c) Pleading.—To charge a violation of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges the defendant drove a commercial motor vehicle on a highway, street, or public vehicular area while subject to an impairing substance.

(d) Implied Consent Offense.—An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2.

(e) Punishment; Effect When Impaired Driving Offense Also Charged.—The offense in this section is a misdemeanor punishable by a fine of not less than one

1 hundred dollars (\$100.00), up to two years imprisonment, or both. This offense is not a
2 lesser included offense of impaired driving under G.S. 20-138.1, but if a person is
3 convicted under this section and of an offense involving impaired driving under G.S.
4 20-138.1 arising out of the same transaction, the aggregate punishment imposed by the
5 Court may not exceed the maximum punishment applicable to the offense involving
6 impaired driving under G.S. 20-138.1.

7 (f) Limited Driving Privilege.—A person convicted of the offense of impaired
8 driving under this section is not eligible for a limited driving privilege to operate a
9 commercial motor vehicle. If a person is convicted under this section and under G.S.
10 20-138.1, he may be considered for a limited driving privilege for a noncommercial
11 motor vehicle if he meets the requirements of G.S. 20-179.3(b). Such a privilege shall
12 be for the purposes specified in G.S. 20-179.3(a) and issued according to the procedure
13 in G.S. 20-179.3(d) and (f)-(k).

14 If a person is convicted under this section and he had a blood alcohol
15 concentration below 0.10, he is nonetheless eligible to apply for a Class C
16 noncommercial license.

17 (g) The provisions of G.S. 20-139.1 shall apply to the offense of impaired
18 driving in a commercial motor vehicle."

19 Sec. 2. G.S. 20-16.2(a)(4) reads as rewritten:

- 20 "(a) (4) ~~If any test reveals an alcohol concentration of 0.10 or more, h~~
21 His driving privilege will be revoked immediately for at least 10
22 days--if:
23 a. The test reveals an alcohol concentration of 0.10 or more; or
24 b. He was driving a commercial motor vehicle and the test reveals
25 an alcohol concentration of 0.04 or more."

26 Sec. 3. G.S. 20-16.2(i)(2) reads as rewritten:

- 27 "(2) That his license will be revoked for at least 10 days if:
28 a. ~~†~~The test reveals an alcohol concentration of 0.10 or more; and
29 or
30 b. He was driving a commercial motor vehicle and the test results
31 reveal an alcohol concentration of 0.04 or more."

32 Sec. 4. G.S. 20-16.5(b) reads as rewritten:

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

- 37 (1) A charging officer has reasonable grounds to believe that the person
38 has committed an offense subject to the implied-consent provisions of
39 G.S. 20-16.2;
40 (2) The person is charged with that offense as provided in G.S. 20-
41 16.2(a);
42 (3) The charging officer and the chemical analyst comply with the
43 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's
44 submission to or procuring a chemical analysis; and

1 (4) The person:

- 2 a. Willfully refuses to submit to the chemical analysis; ~~or~~
 3 b. Has an alcohol concentration of 0.10 or more within a relevant
 4 time after the driving; ~~or~~
 5 c. Has an alcohol concentration of 0.04 or more at any relevant
 6 time after the driving of a commercial vehicle."

7 Sec. 5. G.S. 20-16.5(b)(2) reads as rewritten:

8 "(2) He has~~;~~:

- 9 a. ~~at any relevant time after the driving, a~~ An alcohol concentration
 10 of 0.10 or more at any relevant time after driving; and or
 11 b. An alcohol concentration of 0.04 or more at any relevant time
 12 after driving a commercial motor vehicle; and "

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

14 "(j) Costs. – Unless the magistrate or judge orders the revocation rescinded, a
 15 person whose license is revoked under this section must pay a fee of twenty-five dollars
 16 (\$25.00) as costs for the action before his license may be returned under subsection (h);
 17 provided, however, if the revocation is pursuant to G.S. 20-16.5(b)(4)c. or G.S. 20-
 18 16.5(b1)(2)b., the fee shall be fifty dollars (\$50.00). The costs collected under this
 19 section go to the State."

20 Sec. 7. G.S. 20-26 is amended by adding a new subsection to read:

21 "(b1) The registered or declared weight set forth on the vehicle registration card or
 22 a certified copy of the Division record sent by the Division of Criminal Information or
 23 otherwise is admissible in any judicial or administrative proceeding and shall be **prima**
 24 **facie** evidence of the registered or declared weight."

25 Sec. 8. G.S. 20-138.4 reads as rewritten:

26 "**§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge**
 27 **involving impaired driving.**

28 In any case in which a person is charged with an offense involving impaired driving,
 29 ~~A~~any prosecutor must enter detailed facts in the record of any case involving impaired
 30 driving explaining the reasons for his action if he:

- 31 (1) Enters a voluntary dismissal; or
 32 (2) Accepts a plea of guilty or no contest to a lesser included offense; or
 33 (3) Substitutes another charge, by statement of charges or otherwise, if the
 34 substitute charge carries a lesser mandatory minimum punishment or is
 35 not an offense involving impaired driving; or
 36 (4) Otherwise takes a discretionary action that effectively dismisses or
 37 reduces the original charge in the case involving impaired driving.

38 General explanations such as 'interests of justice' or 'insufficient evidence' are not
 39 sufficiently detailed to meet the requirements of this section."

40 Sec. 9. Chapter 1112 of the 1987 Session Laws is repealed.

41 Sec. 10. This act is effective upon ratification. Section 9 of this act shall
 42 become effective June 1, 1989. Sections 1 through 8 shall become effective April 1,
 43 1990.