

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 709  
Committee Substitute Favorable 5/29/91

Short Title: DWI Test Changes.

(Public)

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Sponsors:

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Referred to:

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April 11, 1991

A BILL TO BE ENTITLED

1 AN ACT TO ESTABLISH A STATEWIDE, AUTOMATED PROGRAM FOR  
2 CHEMICAL TESTS FOR ALCOHOL IN IMPAIRED DRIVERS, TO PROVIDE  
3 FUNDS FOR THE PROGRAM, AND TO ALLOW CERTAIN OFFICERS TO  
4 GIVE PERSONS CHARGED WITH IMPAIRED DRIVING THE REQUIRED  
5 NOTIFICATION OF RIGHTS.  
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 20-16.5(j) reads as rewritten:

9 "(j) Costs. – Unless the magistrate or judge orders the revocation rescinded, a  
10 person whose license is revoked under this section must pay a fee of ~~twenty-five dollars~~  
11 ~~(\$25.00)~~ forty dollars (\$40.00) as costs for the action before ~~his~~ the person's license may  
12 be returned under subsection (h). The costs collected under this section ~~go to the State.~~  
13 shall be credited to the General Fund. Fifty percent (50%) of the costs collected shall be  
14 used to fund a statewide chemical alcohol testing program administered by the Injury  
15 Control Section of the Department of Environment, Health, and Natural Resources."

16 Sec. 2. G.S. 20-139.1(b1) reads as rewritten:

17 "(b1) When Arresting or Charging Officer May Not Perform Chemical Analysis. – A  
18 Except as provided in this subsection, a chemical analysis is not valid in any case in  
19 which it is performed by an arresting officer or by a charging officer under the terms of  
20 G.S. 20-16.2. A chemical analysis of the breath may be performed by an arresting  
21 officer or by a charging officer when both of the following apply:

- 1           (1) The officer possesses a current permit issued by the Department of  
2           Environment, Health, and Natural Resources for the type of chemical  
3           analysis.  
4           (2) The officer performs the chemical analysis by using an automated  
5           instrument that prints the results of the analysis."

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

7           "(a) Basis for Charging Officer to Require Chemical Analysis; Notification of  
8 Rights. – Any person who drives a vehicle on a highway or public vehicular area  
9 thereby gives consent to a chemical analysis if ~~he is~~ charged with an implied-consent  
10 offense. The charging officer must designate the type of chemical analysis to be  
11 administered, and it may be administered when ~~he~~ the officer has reasonable grounds to  
12 believe that the person charged has committed the implied-consent offense.

13           Except as provided in this subsection or subsection (b), before any type of chemical  
14 analysis is administered the person charged must be taken before a chemical analyst  
15 authorized to administer a test of a person's breath, who must inform the person orally  
16 and also give ~~him~~ the person a notice in writing that:

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

35 If the charging officer or an arresting officer is authorized to administer a chemical  
36 analysis of a person's breath and the charging officer designates a chemical analysis of  
37 the blood of the person charged, the charging officer or the arresting officer may give  
38 the person charged the oral and written notice of rights required by this subsection."

39           Sec. 4. Amounts collected under G.S. 20-16.5(j) for fiscal years 1991-92 and  
40 1992-93 and designated for the alcohol testing program of the Injury Control Section of  
41 the Department of Environment, Health, and Natural Resources shall not revert to the  
42 General Fund. The amount of funds collected under G.S. 20-16.5(j) that are designated  
43 for this alcohol testing program and have not been spent or obligated as of June 30,  
44 1994 shall revert to the Highway Fund.

1           Beginning with the 1994-95 fiscal year, any funds collected under G.S. 20-  
2 16.5(j) that are designated for the alcohol testing program of the Injury Control Section  
3 of the Department of Environment, Health, and Natural Resources and are not needed  
4 for that program shall be transferred quarterly to the Governor's Highway Safety  
5 Program for grants to local law enforcement agencies for training concerning  
6 enforcement of the laws on driving while impaired. Except for amounts transferred  
7 during the fourth quarter of a fiscal year, the Governor's Highway Safety Program shall  
8 expend funds transferred to it under this section in the fiscal year in which they are  
9 received. Amounts received by the Governor's Highway Safety Program during the  
10 fourth quarter of a fiscal year shall not revert and shall be expended by the following  
11 September 30.

12           Sec. 5. Section 1 of this act becomes effective July 1, 1991, and applies to  
13 revocation orders issued under G.S. 20-16.5 on or after that date. Section 2 of this act  
14 becomes effective January 1, 1993, and applies to chemical analyses performed on or  
15 after that date. The remaining sections of this act are effective upon ratification.