

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 832

Short Title: Prohibit Impaired Hunting.

(Public)

Sponsors: Representatives Wilson; and Bowman.

Referred to: Judiciary I.

April 16, 1991

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE USE OF A FIREARM WHILE UNDER THE
INFLUENCE OF ALCOHOL OR ANY OTHER IMPAIRING SUBSTANCE.

The General Assembly of North Carolina enacts:

Section 1. Article 22 of Chapter 113 of the General Statutes is amended by
adding two new sections to read:

§ 113-291.9. Using firearms while under the influence of an impairing substance.

(a) No person shall discharge a firearm or have a firearm readily accessible for
immediate discharge:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant
time after discharging the firearm or having the firearm readily
accessible for immediate discharge, an alcohol concentration of 0.10 or
more.

For purposes of this section, to be 'readily accessible for immediate discharge' means
loaded and held in a person's hand. 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. This section does not apply to persons exercising lawful self-
defense, defense of another, or defense of property. The relevant definitions contained
in G.S. 20-4.01, and the provisions of G.S 20-139.1 regarding the procedures governing
chemical analyses and the admissibility of evidence, apply to this section.

(b) Violation of subsection (a) of this section is a misdemeanor punishable as
follows:

- 1 (1) If the violation does not result in death or serious bodily injury to
2 another person:
- 3 a. A fine of not more than five hundred dollars (\$500.00) or
4 imprisonment not more than 60 days, or both; and
- 5 b. If the violation was committed while exercising the privileges
6 granted by a hunting license, suspension of that hunting license
7 for one year.
- 8 (2) If the violation results in death or serious bodily injury to another
9 person:
- 10 a. A fine of not more than one thousand dollars (\$1,000) or
11 imprisonment for not less than three months nor more than
12 three years, or both; and
- 13 b. If the violation was committed while exercising the privileges
14 granted by a hunting license, suspension of that hunting license
15 for one year, and until the violator successfully completes the
16 hunter safety course established in G.S. 113-270.1A.

17 **§ 113-291.10. Implied consent to chemical analysis; mandatory revocation of**
18 **hunting license in event of refusal; right of hunter to request analysis.**

19 (a) Basis for Charging Officer to Require Chemical Analysis; Notification of
20 Rights. – Any person who purchases a hunting license in this State gives consent to a
21 chemical analysis if he is charged with a violation of G.S. 113-291.9. The charging
22 officer must designate the type of chemical analysis to be administered, and it may be
23 administered when he has reasonable grounds to believe that the person charged has
24 committed a violation of G.S. 113-291.9. Except as provided in subsection (b), the
25 person charged must be taken before a chemical analyst authorized to administer a test
26 of a person's breath, who must inform the person orally and also give him a notice in
27 writing that:

- 28 (1) He has a right to refuse to be tested.
- 29 (2) Refusal to take any required test or tests will result in an immediate
30 revocation of his hunting license for at least one year.
- 31 (3) The test results, or the fact of his refusal, will be admissible in
32 evidence at trial on the offense charged.
- 33 (4) His hunting license will be revoked immediately for at least one year if
34 the test reveals an alcohol concentration of 0.10 or more.
- 35 (5) He may have a qualified person of his own choosing administer a
36 chemical test or tests in addition to any test administered at the
37 direction of the charging officer.
- 38 (6) He has the right to call an attorney and select a witness to view for him
39 the testing procedures, but the testing may not be delayed for these
40 purposes longer than 30 minutes from the time he is notified of his
41 rights.

42 (a1) Meaning of Terms. – Under this section, a person is 'charged' with an offense
43 if he is arrested for it or if criminal process for the offense has been issued. A 'charging
44 officer' is a law enforcement officer who arrests the person charged, lodges the charge,

1 or assists the officer who arrested the person or lodged the charge by assuming custody
2 of the person to make the request required by subsection (c) and, if necessary, to present
3 the person to a judicial official for an initial appearance.

4 (b) Unconscious Person May Be Tested. – If a charging officer has reasonable
5 grounds to believe that a person has committed a violation of G.S. 113-291.9, and the
6 person is unconscious or otherwise in a condition that makes him incapable of refusal,
7 the charging officer may direct the taking of a blood sample by a person qualified under
8 G.S. 20-139.1 or may direct the administration of any other chemical analysis that may
9 be effectively performed. In this instance the notification of rights set out in subsection
10 (a) and the request required by subsection (c) are not necessary.

11 (c) Request to Submit to Chemical Analysis; Procedure upon Refusal. – The
12 charging officer, in the presence of the chemical analyst who has notified the person of
13 his rights under subsection (a), must request the person charged to submit to the type of
14 chemical analysis designated. If the person charged willfully refuses to submit to that
15 chemical analysis, none may be given under the provisions of this section, but the
16 refusal does not preclude testing under other applicable procedures of law. Then the
17 charging officer and the chemical analyst must without unnecessary delay go before an
18 official authorized to administer oaths and execute an affidavit stating that the person
19 charged, after being advised of his rights under subsection (a), willfully refused to
20 submit to a chemical analysis at the request of the charging officer. The charging
21 officer must immediately mail the affidavit to the Wildlife Resources Commission. If
22 the person's refusal to submit to a chemical analysis occurs in a case involving death or
23 critical injury to another person, the charging officer must include that fact in the
24 affidavit mailed to the Commission.

25 (d) Consequences of Refusal; Right to Hearing Before Commission; Issues. –
26 Upon receipt of a properly executed affidavit required by subsection (c), the
27 Commission must expeditiously notify the person charged that his hunting license is
28 revoked for one year, effective on the tenth calendar day after the mailing of the
29 revocation order unless, before the effective date of the order, the person requests in
30 writing a hearing before the Commission. If the person shows to the satisfaction of the
31 Commission that his license was surrendered to the court, and remained in the court's
32 possession, then the Commission shall credit the amount of time for which the license
33 was in the possession of the court against the one-year revocation period required by
34 this subsection. If the person properly requests a hearing, he retains his license, unless it
35 is revoked under some other provision of law, until the hearing is held, the person
36 withdraws his request, or he fails to appear at a scheduled hearing. The hearing officer
37 may subpoena any witnesses or documents he deems necessary. The person may
38 request the hearing officer to subpoena the charging officer, the chemical analyst, or
39 both to appear at the hearing if he makes the request in writing at least three days before
40 the hearing. The person may subpoena any other witness he deems necessary, and the
41 provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas
42 issued under the authority of this section. The hearing officer is authorized to
43 administer oaths to witnesses appearing at the hearing. The hearing must be conducted

1 in the county where the charge was brought, and must be limited to consideration of
2 whether:

- 3 (1) The person was charged with a violation of G.S. 113-291.1;
- 4 (2) The charging officer had reasonable grounds to believe that the person
5 had committed a violation of G.S. 113-291.1;
- 6 (3) The violation resulted in death or serious bodily injury to another
7 person, if this allegation is in the affidavit;
- 8 (4) The person was notified of his rights as required by subsection (a); and
- 9 (5) The person willfully refused to submit to a chemical analysis upon the
10 request of the charging officer.

11 If the Commission finds that the conditions specified in this subsection are met, it must
12 order the revocation sustained. If the Commission finds that any of the conditions (1),
13 (2), (4), or (5) is not met, it must rescind the revocation. If it finds that conditions (3) is
14 alleged in the affidavit but is not met, it must order the revocation sustained if that is the
15 only condition that is not met. If the revocation is sustained, the person must surrender
16 his license immediately upon notification by the Commission.

17 (e) Right to Hearing in Superior Court. – If the revocation is sustained after the
18 hearing, the person whose license has been revoked has the right to file a petition in the
19 superior court for a hearing **de novo** upon the issues listed in subsection (d).

20 (f) Notice to Other States as to Nonresidents. – When it has been finally
21 determined under the procedures of this section that a nonresident's privilege to hunt in
22 this State has been revoked, the Commission must give information in writing of the
23 action taken to the wildlife administrator of the state of the person's residence and of
24 any state in which he has a hunting license.

25 (g) Right to Chemical Analysis before Arrest or Charge. – A person stopped or
26 questioned by a law enforcement officer who is investigating whether the person may
27 have committed a violation of G.S. 113-291.1 may request the administration of a
28 chemical analysis before any arrest or other charge is made for the offense. Upon this
29 request, the officer must afford the person the opportunity to have a chemical analysis
30 of his breath, if available, in accordance with the procedures required by G.S. 20-
31 139.1(b). The request constitutes the person's consent to be transported by the law-
32 enforcement officer to the place where the chemical analysis is to be administered.
33 Before the chemical analysis is made, the person must confirm his request in writing
34 and he must be notified:

- 35 (1) That the test results will be admissible in evidence and may be used
36 against him in any prosecution that may arise charging him with a
37 violation of G.S. 113-291.9;
- 38 (2) That his hunting license will be revoked for at least one year if the test
39 reveals an alcohol concentration of 0.10 or more;
- 40 (3) That if he fails to comply fully with the test procedures, the officer
41 may charge him with any offense for which the officer has probable
42 cause, and if he is charged with a violation of G.S. 113-291.1, his
43 refusal to submit to the testing required as a result of that charge would
44 result in revocation of his hunting license. The results of the chemical

1 analysis are admissible in evidence in any proceeding in which they
2 are relevant."

3 Sec. 2. G.S. 20-139.1 reads as rewritten:

4 **"§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary**
5 **provisions; controlled-drinking programs.**

6 (a) Chemical Analysis Admissible. – In any implied-consent offense under G.S.
7 ~~20-16.2, 20-16.2,~~ or violation of G.S. 113-291.9, a person's alcohol concentration as
8 shown by a chemical analysis is admissible in evidence. This section does not limit the
9 introduction of other competent evidence as to a defendant's alcohol concentration,
10 including other chemical tests.

11 (b) Approval of Valid Test Methods; Licensing Chemical Analysts. – A chemical
12 analysis, to be valid, must be performed in accordance with the provisions of this
13 section. The chemical analysis must be performed according to methods approved by
14 the Commission for Health Services by an individual possessing a current permit issued
15 by the Department of Environment, Health, and Natural Resources for that type of
16 chemical analysis. The Commission for Health Services is authorized to adopt
17 regulations approving satisfactory methods or techniques for performing chemical
18 analyses, and the Department of Environment, Health, and Natural Resources is
19 authorized to ascertain the qualifications and competence of individuals to conduct
20 particular chemical analyses. The Department may issue permits to conduct chemical
21 analyses to individuals it finds qualified subject to periodic renewal, termination, and
22 revocation of the permit in the Department's discretion.

23 (b1) Arresting or Charging Officer May Not Perform Chemical Analysis. – A
24 chemical analysis is not valid in any case in which it is performed by an arresting officer
25 or by a charging officer under the terms of G.S. ~~20-16.2, 20-16.2~~ or G.S. 113-291.10.

26 (b2) Breath Analysis Results Inadmissible if Preventive Maintenance Not
27 Performed. – Notwithstanding the provisions of subsection (b), the results of a chemical
28 analysis of a person's breath performed in accordance with this section are not
29 admissible in evidence if:

30 (1) The defendant objects to the introduction into evidence of the results
31 of the chemical analysis of his breath; and

32 (2) The defendant demonstrates that, with respect to the instrument used to
33 analyze his breath, preventive maintenance procedures required by the
34 regulations of the Commission for Health Services had not been
35 performed within the time limits prescribed by those regulations.

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

40 (1) A specification as to the minimum observation period before collection
41 of the first breath sample and the time requirements as to collection of
42 second and subsequent samples.

43 (2) That the test results may only be used to prove a person's particular
44 alcohol concentration if:

- 1 a. The pair of readings employed are from consecutively
2 administered tests; and
3 b. The readings do not differ from each other by an alcohol
4 concentration greater than 0.02.
5 (3) That when a pair of analyses meets the requirements of subdivision
6 (2), only the lower of the two readings may be used by the State as
7 proof of a person's alcohol concentration in any court or administrative
8 proceeding.

9 A person's willful refusal to give the sequential breath samples necessary to constitute a
10 valid chemical analysis is a willful refusal under G.S. ~~20-16.2(e)~~-20-16.2(c) or G.S. 113-
11 291.10(c), whichever is applicable.

12 (b4) Introducing Routine Records Kept as Part of Breath-Testing Program. – In
13 civil and criminal proceedings, any party may introduce, without further authentication,
14 simulator logs and logs for other devices used to verify a breath-testing instrument,
15 certificates and other records concerning the check of ampoules and of simulator stock
16 solution and the stock solution used in any other equilibration device, preventive
17 maintenance records, and other records that are routinely kept concerning the
18 maintenance and operation of breath-testing instruments. In a criminal case, however,
19 this subsection does not authorize the State to introduce records to prove the results of a
20 chemical analysis of the defendant or of any validation test of the instrument that is
21 conducted during that chemical analysis.

22 (c) Withdrawal of Blood for Chemical Analysis. – When a blood test is specified
23 as the type of chemical analysis by the charging officer, only a physician, registered
24 nurse, or other qualified person may withdraw the blood sample. If the person
25 withdrawing the blood requests written confirmation of the charging officer's request for
26 the withdrawal of blood, the officer must furnish it before blood is withdrawn. When
27 blood is withdrawn pursuant to a charging officer's request, neither the person
28 withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or
29 corporation employing him, or contracting for the service of withdrawing blood, may be
30 held criminally or civilly liable by reason of withdrawing that blood, except that there is
31 no immunity from liability for negligent acts or omissions.

32 (d) Right to Additional Test. – A person who submits to a chemical analysis may
33 have a qualified person of his own choosing administer an additional chemical test or
34 tests, or have a qualified person withdraw a blood sample for later chemical testing by a
35 qualified person of his own choosing. Any law-enforcement officer having in his charge
36 any person who has submitted to a chemical analysis must assist the person in
37 contacting someone to administer the additional testing or to withdraw blood, and must
38 allow access to the person for that purpose. The failure or inability of the person who
39 submitted to a chemical analysis to obtain any additional test or to withdraw blood does
40 not preclude the admission of evidence relating to the chemical analysis.

41 (e) Recording Results of Chemical Analysis of Breath. – The chemical analyst
42 who administers a test of a person's breath must record the following information after
43 making any chemical analysis:

1 (1) The alcohol concentration or concentrations revealed by the chemical
2 analysis.

3 (2) The time of the collection of the breath sample or samples used in the
4 chemical analysis.

5 A copy of the record of this information must be furnished to the person submitting to
6 the chemical analysis, or to his attorney, before any trial or proceeding in which the
7 results of the chemical analysis may be used.

8 (e1) Use of Chemical Analyst's Affidavit in District Court. – An affidavit by a
9 chemical analyst sworn to and properly executed before an official authorized to
10 administer oaths is admissible in evidence without further authentication in any hearing
11 or trial in the District Court Division of the General Court of Justice with respect to the
12 following matters:

13 (1) The alcohol concentration or concentrations of a person given a
14 chemical analysis and who is involved in the hearing or trial.

15 (2) The time of the collection of the blood or breath sample or samples for
16 the chemical analysis.

17 (3) The type of chemical analysis administered and the procedures
18 followed.

19 (4) The type and status of any permit issued by the Department of
20 Environment, Health, and Natural Resources that he held on the date
21 he performed the chemical analysis in question.

22 (5) If the chemical analysis is performed on a breath-testing instrument for
23 which regulations adopted pursuant to subsection (b) require
24 preventive maintenance, the date the most recent preventive
25 maintenance procedures were performed on the breath-testing
26 instrument used, as shown on the maintenance records for that
27 instrument.

28 The Department of Environment, Health, and Natural Resources must develop a form
29 for use by chemical analysts in making this affidavit. If any person who submitted to a
30 chemical analysis desires that a chemical analyst personally testify in the hearing or trial
31 in the District Court Division, he may subpoena the chemical analyst and examine him
32 as if he were an adverse witness.

33 (f) Evidence of Refusal Admissible. – If any person charged with an implied-
34 consent offense refuses to submit to a chemical analysis, evidence of that refusal is
35 admissible in any criminal action against him for an implied-consent offense under G.S.
36 ~~20-16.2~~ 20-16.2 or for a violation of G.S. 113-291.9.

37 (g) Controlled-Drinking Programs. – The Department of Environment, Health,
38 and Natural Resources is empowered to make regulations concerning the ingestion of
39 controlled amounts of alcohol by individuals submitting to chemical testing as a part of
40 scientific, experimental, educational, or demonstration programs. These regulations
41 must prescribe procedures consistent with controlling federal law governing the
42 acquisition, transportation, possession, storage, administration, and disposition of
43 alcohol intended for use in the programs. Any person in charge of a controlled-drinking
44 program who acquires alcohol under these regulations must keep records accounting for

1 the disposition of all alcohol acquired, and the records must at all reasonable times be
2 available for inspection upon the request of any federal, State, or local law-enforcement
3 officer with jurisdiction over the laws relating to control of alcohol. A controlled-
4 drinking program exclusively using lawfully purchased alcoholic beverages in places in
5 which they may be lawfully possessed, however, need not comply with the record-
6 keeping requirements of the regulations authorized by this subsection. All acts pursuant
7 to the regulations reasonably done in furtherance of bona fide objectives of a controlled-
8 drinking program authorized by the regulations are lawful notwithstanding the
9 provisions of any other general or local statute, regulation, or ordinance controlling
10 alcohol."

11 Sec. 3. This act becomes effective October 1, 1991.