

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 847

Short Title: D.W.I. Blood-Alcohol to 0.05.

(Public)

Sponsors: Representatives Beard; Justus and Warner.

Referred to: Judiciary II.

April 17, 1991

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE LEGAL LIMIT OF BLOOD ALCOHOL FROM 0.10 TO
0.05.

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~~ 0.05 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(1-1) 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~~ 0.05 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

1 that the person charged has committed the implied-consent offense. Except as provided
2 in subsection (b), the person charged must be taken before a chemical analyst authorized
3 to administer a test of a person's breath, who must inform the person orally and also
4 give him a notice in writing that:

- 5 (1) He has a right to refuse to be tested.
- 6 (2) Refusal to take any required test or tests will result in an immediate
7 revocation of his driving privilege for at least 10 days and an
8 additional 12-month revocation by the Division of Motor Vehicles.
- 9 (3) The test results, or the fact of his refusal, will be admissible in
10 evidence at trial on the offense charged.
- 11 (4) His driving privilege will be revoked immediately for at least 10 days
12 if:
 - 13 a. The test reveals an alcohol concentration of ~~0.10~~0.05 or more;
14 or
 - 15 b. He was driving a commercial motor vehicle and the test reveals
16 an alcohol concentration of 0.04 or more.
- 17 (5) He may have a qualified person of his own choosing administer a
18 chemical test or tests in addition to any test administered at the
19 direction of the charging officer.
- 20 (6) He has the right to call an attorney and select a witness to view for him
21 the testing procedures, but the testing may not be delayed for these
22 purposes longer than 30 minutes from the time he is notified of his
23 rights."

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

25 "(i) 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 an implied-consent offense 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 implied-consent offense that may arise;
- 37 (2) That his license will be revoked for at least 10 days if:
 - 38 a. The test reveals an alcohol concentration of ~~0.10~~0.05 or more;
39 or
 - 40 b. He was driving a commercial motor vehicle and the test results
41 reveal an alcohol concentration of 0.04 or more.
- 42 (3) That if he fails to comply fully with the test procedures, the officer
43 may charge him with any offense for which the officer has probable
44 cause, and if he is charged with an implied-consent offense, his refusal

1 to submit to the testing required as a result of that charge would result
2 in revocation of his driver's license. The results of the chemical
3 analysis are admissible in evidence in any proceeding in which they
4 are relevant."

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

6 "(b) Revocations for Persons Who Refuse Chemical Analyses or Have Alcohol
7 Concentrations of ~~0.10~~0.05 or More After Driving a Motor Vehicle or of 0.04 or More
8 After Driving a Commercial Vehicle. – A person's driver's license is subject to
9 revocation under this section if:

- 10 (1) A charging officer has reasonable grounds to believe that the person
11 has committed an offense subject to the implied-consent provisions of
12 G.S. 20-16.2;
- 13 (2) The person is charged with that offense as provided in G.S. 20-16.2(a);
- 14 (3) The charging officer and the chemical analyst comply with the
15 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's
16 submission to or procuring a chemical analysis; and
- 17 (4) The person:
 - 18 a. Willfully refuses to submit to the chemical analysis;
 - 19 b. Has an alcohol concentration of ~~0.10~~0.05 or more within a
20 relevant time after the driving; or
 - 21 c. Has an alcohol concentration of 0.04 or more at any relevant
22 time after the driving of a commercial vehicle."

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

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

- 27 (1) He requests a precharge chemical analysis pursuant to G.S. 20-16.2(i);
28 and
- 29 (2) He has:
 - 30 a. An alcohol concentration of ~~0.10~~0.05 or more at any relevant
31 time after driving; or
 - 32 b. An alcohol concentration of 0.04 or more at any relevant time
33 after driving a commercial motor vehicle; and
- 34 (3) He is charged with an implied-consent offense."

35 Sec. 7. G.S. 20-179(e) reads as rewritten:

36 "(e) Mitigating Factors to Be Weighed. – The judge must also determine before
37 sentencing under subsection (f) whether any of the mitigating factors listed below apply
38 to the defendant. The judge must weigh the degree of mitigation of each factor in light
39 of the particular circumstances of the case. The factors are:

- 40 (1) Slight impairment of the defendant's faculties resulting solely from
41 alcohol, and an alcohol concentration that did not exceed ~~0.11~~0.06 at
42 any relevant time after the driving.

- 1 (2) Slight impairment of the defendant's faculties, resulting solely from
2 alcohol, with no chemical analysis having been available to the
3 defendant.
4 (3) Driving at the time of the offense that was safe and lawful except for
5 the impairment of the defendant's faculties.
6 (4) A safe driving record, with the defendant's having no conviction for
7 any motor vehicle offense for which at least four points are assigned
8 under G.S. 20-16 or for which the person's license is subject to
9 revocation within five years of the date of the offense for which the
10 defendant is being sentenced.
11 (5) Impairment of the defendant's faculties caused primarily by
12 a lawfully prescribed drug for an existing medical condition, and the
13 amount of the drug taken was within the prescribed dosage.
14 (6) The defendant's voluntary submission to a mental health facility for
15 assessment after he was charged with the impaired driving offense for
16 which he is being sentenced, and, if recommended by the facility, his
17 voluntary participation in the recommended treatment.
18 (7) Any other factor that mitigates the seriousness of the offense.

19 Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the
20 mitigating factor must occur during the same transaction or occurrence as the impaired
21 driving offense."

22 Sec. 8. This act becomes effective October 1, 1991.