

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

1

HOUSE BILL 385\*

Short Title: DWI Amendments.

(Public)

---

Sponsors: Representatives Hackney; Barnes, Bowman, J. Brown, Colton, Dockham, Gottovi, Grady, Luebke, and Morgan.

---

Referred to: Judiciary I.

---

March 3, 1993

A BILL TO BE ENTITLED

1 AN ACT TO REDUCE THE BLOOD ALCOHOL CONTENT FOR DRIVING  
2 WHILE IMPAIRED AND RELATED OFFENSES FROM 0.10 TO 0.08  
3 PERCENT; TO REDUCE THE MINIMUM BLOOD ALCOHOL CONTENT  
4 NECESSARY FOR AN IMMEDIATE TEN-DAY REVOCATION OF DRIVING  
5 PRIVILEGES FROM 0.10 TO 0.08 PERCENT; TO REDUCE THE BLOOD  
6 ALCOHOL LEVEL TO BE CONSIDERED AS SLIGHT IMPAIRMENT FROM  
7 0.11 TO 0.09 PERCENT; TO MAKE THE RESULTS OF A FIRST BREATH  
8 TEST ADMISSIBLE UNDER CERTAIN CIRCUMSTANCES; TO ESTABLISH  
9 THAT THE REVOCATION OF A PROVISIONAL LICENSEE'S LICENSE FOR  
10 DRIVING AFTER CONSUMING ALCOHOL SHALL BE UNTIL THE  
11 LICENSEE'S EIGHTEENTH BIRTHDAY OR FORTY-FIVE DAYS,  
12 WHICHEVER IS LONGER; AND TO PROVIDE CLARIFICATION ABOUT  
13 WHEN AN EARLIER CONVICTION FOR DRIVING WHILE IMPAIRED CAN  
14 BE USED FOR AGGRAVATION PURPOSES.

15 The General Assembly of North Carolina enacts:

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

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

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

20 (2) After having consumed sufficient alcohol that he has, at any relevant  
21 time after the driving, an alcohol concentration of ~~0.10~~ 0.08 or more."

22 Sec. 2. G.S. 20-12.1(a) reads as rewritten:  
23

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

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

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

9       "(a) Basis for Charging Officer to Require Chemical Analysis; Notification of  
10 Rights. – Any person who drives a vehicle on a highway or public vehicular area  
11 thereby gives consent to a chemical analysis if he is charged with an implied-consent  
12 offense. The charging officer must designate the type of chemical analysis to be  
13 administered, and it may be administered when he has reasonable grounds to believe  
14 that the person charged has committed the implied-consent offense. Except as provided  
15 in subsection (b), the person charged must be taken before a chemical analyst authorized  
16 to administer a test of a person's breath, who must inform the person orally and also  
17 give him a notice in writing that:

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

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

38       "(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or  
39 questioned by a law-enforcement officer who is investigating whether the person may  
40 have committed an implied-consent offense may request the administration of a  
41 chemical analysis before any arrest or other charge is made for the offense. Upon this  
42 request, the officer must afford the person the opportunity to have a chemical analysis  
43 of his breath, if available, in accordance with the procedures required by G.S. 20-  
44 139.1(b). The request constitutes the person's consent to be transported by the law-

1 enforcement officer to the place where the chemical analysis is to be administered.  
2 Before the chemical analysis is made, the person must confirm his request in writing  
3 and he must be notified:

- 4 (1) That the test results will be admissible in evidence and may be used  
5 against him in any implied-consent offense that may arise;
- 6 (2) That his license will be revoked for at least 10 days if:
  - 7 a. The test reveals an alcohol concentration of ~~0.10~~0.08 or more;
  - 8 or
  - 9 b. He was driving a commercial motor vehicle and the test results  
10 reveal an alcohol concentration of 0.04 or more.
- 11 (3) That if he fails to comply fully with the test procedures, the officer  
12 may charge him with any offense for which the officer has probable  
13 cause, and if he is charged with an implied-consent offense, his refusal  
14 to submit to the testing required as a result of that charge would result  
15 in revocation of his driver's license. The results of the chemical  
16 analysis are admissible in evidence in any proceeding in which they  
17 are relevant."

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

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

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

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

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

- 40 (1) He requests a precharge chemical analysis pursuant to G.S. 20-16.2(i);  
41 and
- 42 (2) He has:
  - 43 a. An alcohol concentration of ~~0.10~~0.08 or more at any relevant  
44 time after driving; or

1                   b.     An alcohol concentration of 0.04 or more at any relevant time  
2                   after driving a commercial motor vehicle; and

3                   (3)    He is charged with an implied-consent offense."

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

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

9                   (1)    Slight impairment of the defendant's faculties resulting solely from  
10                  alcohol, and an alcohol concentration that did not exceed ~~0.11~~0.09 at  
11                  any relevant time after the driving.

12                  (2)    Slight impairment of the defendant's faculties, resulting solely from  
13                  alcohol, with no chemical analysis having been available to the  
14                  defendant.

15                  (3)    Driving at the time of the offense that was safe and lawful except for  
16                  the impairment of the defendant's faculties.

17                  (4)    A safe driving record, with the defendant's having no conviction for  
18                  any motor vehicle offense for which at least four points are assigned  
19                  under G.S. 20-16 or for which the person's license is subject to  
20                  revocation within five years of the date of the offense for which the  
21                  defendant is being sentenced.

22                  (5)    Impairment of the defendant's faculties caused primarily by  
23                  a lawfully prescribed drug for an existing medical condition, and the  
24                  amount of the drug taken was within the prescribed dosage.

25                  (6)    The defendant's voluntary submission to a mental health facility for  
26                  assessment after he was charged with the impaired driving offense for  
27                  which he is being sentenced, and, if recommended by the facility, his  
28                  voluntary participation in the recommended treatment.

29                  (7)    Any other factor that mitigates the seriousness of the offense.

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

33                  Sec. 8. G.S. 20-139.1(b3) reads as rewritten:

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

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

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

43                  a.     The pair of readings employed are from consecutively  
44                  administered tests; and

1                   b.       The readings do not differ from each other by an alcohol  
2                                   concentration greater than 0.02.

3                   (3)       That when a pair of analyses meets the requirements of subdivision  
4                                   (2), only the lower of the two readings may be used by the State as  
5                                   proof of a person's alcohol concentration in any court or administrative  
6                                   proceeding.

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

9       A person's willful refusal to give the second sequential breath sample shall make the  
10 results of the first breath test admissible at trial, if it is otherwise admissible."

11               Sec. 9. G.S. 20-13.2(d) reads as rewritten:

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

18               Sec. 10. G.S. 20-179(c) reads as rewritten:

19       "(c)   Determining Existence of Grossly Aggravating Factors.—At the sentencing  
20 hearing, based upon the evidence presented at trial and in the hearing, the judge must  
21 first determine whether there are any grossly aggravating factors in the case. If the  
22 defendant has been convicted of two or more prior offenses involving impaired driving,  
23 if the convictions occurred within seven years before the date of the offense for which  
24 he is being sentenced, the judge must impose the Level One punishment under  
25 subsection (g). The judge must also impose the Level One punishment if he determines  
26 that two or more of the following grossly aggravating factors apply:

27               (1)       A single conviction for an offense involving impaired driving, if the  
28                                   conviction occurred within seven years before the date of the offense  
29                                   for which the defendant is being sentenced.

30               (2)       Driving by the defendant at the time of the offense while his driver's  
31                                   license was revoked under G.S. 20-28, and the revocation was an  
32                                   impaired driving revocation under G.S. 20-28.2(a).

33               (3)       Serious injury to another person caused by the defendant's impaired  
34                                   driving at the time of the offense.

35   If the judge determines that only one of the above grossly aggravating factors applies,  
36   he must impose the Level Two punishment under subsection (h). In imposing a Level  
37   One or Two punishment, the judge may consider the aggravating and mitigating factors  
38   in subsections (d) and (e) in determining the appropriate sentence. If there are no  
39   grossly aggravating factors in the case, the judge must weigh all aggravating and  
40   mitigating factors and impose punishment as required by subsection (f).

41       A conviction for another offense involving impaired driving, for which the  
42 conviction occurs after the date of the offense for which the defendant is presently being  
43 sentenced, but prior to or contemporaneously with the present sentencing, shall also

1 constitute a prior conviction involving impaired driving for aggravation purposes of this  
2 subsection."

3           Sec. 11. This act becomes effective October 1, 1993, and applies to all  
4 offenses committed on or after that date.