

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 385*
Committee Substitute Favorable 4/1/93

Short Title: DWI Amendments.

(Public)

Sponsors:

Referred to:

March 3, 1993

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE BLOOD ALCOHOL CONTENT FOR DRIVING WHILE IMPAIRED AND RELATED OFFENSES FROM 0.10 TO 0.08; TO REDUCE THE MINIMUM BLOOD ALCOHOL CONTENT NECESSARY FOR AN IMMEDIATE TEN-DAY REVOCATION OF DRIVING PRIVILEGES FROM 0.10 TO 0.08; TO REDUCE THE BLOOD ALCOHOL LEVEL TO BE CONSIDERED AS SLIGHT IMPAIRMENT FROM 0.11 TO 0.09; TO MAKE THE RESULTS OF A FIRST BREATH TEST ADMISSIBLE UNDER CERTAIN CIRCUMSTANCES; TO CHANGE THE METHOD OF CALCULATING THE REVOCATION OF A PROVISIONAL LICENSEE'S LICENSE FOR CERTAIN ALCOHOL-RELATED OFFENSES; AND TO PROVIDE CLARIFICATION ABOUT WHEN A PRIOR CONVICTION FOR DRIVING WHILE IMPAIRED CAN BE USED FOR AGGRAVATION PURPOSES.

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~~ 0.08 or more."

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

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 charged with an implied-consent offense.
12 The charging officer must designate the type of chemical analysis to be administered,
13 and it may be administered when the officer has reasonable grounds to believe that the
14 person charged has committed the implied-consent offense.

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

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

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

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

43 "(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or
44 questioned by a law-enforcement officer who is investigating whether the person may

1 have committed an implied-consent offense may request the administration of a
2 chemical analysis before any arrest or other charge is made for the offense. Upon this
3 request, the officer must afford the person the opportunity to have a chemical analysis
4 of his breath, if available, in accordance with the procedures required by G.S. 20-
5 139.1(b). The request constitutes the person's consent to be transported by the law-
6 enforcement officer to the place where the chemical analysis is to be administered.
7 Before the chemical analysis is made, the person must confirm his request in writing
8 and he must be notified:

9 (1) That the test results will be admissible in evidence and may be used
10 against him in any implied-consent offense that may arise;

11 (2) That his license will be revoked for at least 10 days if:

12 a. The test reveals an alcohol concentration of ~~0.10~~0.08 or more;
13 or

14 b. He was driving a commercial motor vehicle and the test results
15 reveal an alcohol concentration of 0.04 or more.

16 (3) That if he fails to comply fully with the test procedures, the officer
17 may charge him with any offense for which the officer has probable
18 cause, and if he is charged with an implied-consent offense, his refusal
19 to submit to the testing required as a result of that charge would result
20 in revocation of his driver's license. The results of the chemical
21 analysis are admissible in evidence in any proceeding in which they
22 are relevant."

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

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

28 (1) A charging officer has reasonable grounds to believe that the person
29 has committed an offense subject to the implied-consent provisions of
30 G.S. 20-16.2;

31 (2) The person is charged with that offense as provided in G.S. 20-16.2(a);

32 (3) The charging officer and the chemical analyst comply with the
33 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's
34 submission to or procuring a chemical analysis; and

35 (4) The person:

36 a. Willfully refuses to submit to the chemical analysis;

37 b. Has an alcohol concentration of ~~0.10~~0.08 or more within a
38 relevant time after the driving; or

39 c. Has an alcohol concentration of 0.04 or more at any relevant
40 time after the driving of a commercial vehicle."

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

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

- 1 (1) He requests a precharge chemical analysis pursuant to G.S. 20-16.2(i);
2 and
3 (2) He has:
4 a. An alcohol concentration of ~~0.10~~0.08 or more at any relevant
5 time after driving; or
6 b. An alcohol concentration of 0.04 or more at any relevant time
7 after driving a commercial motor vehicle; and
8 (3) He is charged with an implied-consent offense."

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

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

- 14 (1) Slight impairment of the defendant's faculties resulting solely from
15 alcohol, and an alcohol concentration that did not exceed ~~0.11~~0.09 at
16 any relevant time after the driving.
17 (2) Slight impairment of the defendant's faculties, resulting solely from
18 alcohol, with no chemical analysis having been available to the
19 defendant.
20 (3) Driving at the time of the offense that was safe and lawful except for
21 the impairment of the defendant's faculties.
22 (4) A safe driving record, with the defendant's having no conviction for
23 any motor vehicle offense for which at least four points are assigned
24 under G.S. 20-16 or for which the person's license is subject to
25 revocation within five years of the date of the offense for which the
26 defendant is being sentenced.
27 (5) Impairment of the defendant's faculties caused primarily by
28 a lawfully prescribed drug for an existing medical condition, and the
29 amount of the drug taken was within the prescribed dosage.
30 (6) The defendant's voluntary submission to a mental health facility for
31 assessment after he was charged with the impaired driving offense for
32 which he is being sentenced, and, if recommended by the facility, his
33 voluntary participation in the recommended treatment.
34 (7) Any other factor that mitigates the seriousness of the offense.

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

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

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

- 1 (1) A specification as to the minimum observation period before collection
 2 of the first breath sample and the time requirements as to collection of
 3 second and subsequent samples.
- 4 (2) That the test results may only be used to prove a person's particular
 5 alcohol concentration if:
- 6 a. The pair of readings employed are from consecutively
 7 administered tests; and
- 8 b. The readings do not differ from each other by an alcohol
 9 concentration greater than 0.02.
- 10 (3) That when a pair of analyses meets the requirements of subdivision
 11 (2), only the lower of the two readings may be used by the State as
 12 proof of a person's alcohol concentration in any court or administrative
 13 proceeding.

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

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

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

19 "(d) ~~A~~The length of revocation under this section continues until shall be (i) equal
 20 to the number of days from the date of the charge to the provisional licensee-licensee's
 21 eighteenth birthday; or, (ii) equal to the number of days from the date of any occurrence
 22 giving rise to a civil revocation to the provisional licensee's eighteenth birthday; or, (iii)
 23 45 days, reaches 18 years of age or 45 days have elapsed, whichever occurs last is longer.
 24 Revocations under this section run concurrently with any other revocations, but a
 25 limited driving privilege issued pursuant to law does not authorize a provisional licensee
 26 to drive if his license is revoked under this section."

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

28 "(c) Determining Existence of Grossly Aggravating Factors; Habitual Offender. –
 29 At the sentencing hearing, based upon the evidence presented at trial and in the hearing,
 30 the judge must first determine whether there are any grossly aggravating factors in the
 31 case. ~~If the defendant has been convicted of two prior offenses involving impaired driving and~~
 32 ~~the convictions occurred within seven years before the date of the offense for which he is being~~
 33 ~~sentenced, the judge must impose the Level One punishment under subsection (g).~~ The judge
 34 must impose the Level One punishment under subsection (g) of this section if:

- 35 (1) The defendant has been convicted of two prior offenses involving
 36 impaired driving, and the convictions occurred within seven years
 37 before the date of the offense for which he is being sentenced; or
- 38 (2) The defendant has been convicted of a prior offense involving
 39 impaired driving and the conviction occurred within seven years
 40 before the date of the offense for which he is being sentenced and he
 41 has been convicted of a second offense involving impaired driving for
 42 which the conviction occurs after the date of the offense for which the
 43 defendant is presently being sentenced, but prior to or
 44 contemporaneously with the present sentencing; or

1 (3) The defendant has been convicted of two offenses involving impaired
2 driving for which the convictions occur after the date of the offense for
3 which the defendant is presently being sentenced, but prior to or
4 contemporaneously with the present sentencing.

5 The judge must also impose the Level One punishment under subsection (g) if he
6 determines that two or more of the following grossly aggravating factors apply:

7 (1) A single conviction for an offense involving impaired driving, if the
8 conviction occurred within seven years before the date of the offense
9 for which the defendant is being ~~sentenced~~ sentenced, or if the
10 conviction occurs after the date of the offense for which the defendant
11 is presently being sentenced, but prior to or contemporaneously with
12 the present sentencing.

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

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

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

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