

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 385*
Committee Substitute Favorable 4/1/93
Senate Judiciary I Committee Substitute Adopted 6/7/93

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 MAKE THE RESULTS OF A FIRST BREATH TEST ADMISSIBLE UNDER CERTAIN CIRCUMSTANCES; TO ESTABLISH THAT THE REVOCATION OF A PROVISIONAL LICENSEE'S LICENSE FOR DRIVING AFTER CONSUMING ALCOHOL SHALL BE UNTIL THE LICENSEE'S EIGHTEENTH BIRTHDAY OR FORTY-FIVE DAYS, WHICHEVER IS LONGER; TO PROVIDE CLARIFICATION ABOUT WHEN AN EARLIER CONVICTION FOR DRIVING WHILE IMPAIRED CAN BE USED FOR AGGRAVATION PURPOSES; TO ADD A NEW GROSSLY AGGRAVATING FACTOR TO IMPAIRED DRIVING; TO AMEND THE FELONY DEATH BY VEHICLE STATUTE; AND TO REQUIRE EXPUNCTION OF CIVIL REVOCATIONS FOLLOWING ACQUITTAL OF IMPAIRED DRIVING OFFENSES.

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

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

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

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

7 (1) While the person accompanying or instructing is under the influence of
8 an impairing substance; or

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

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

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

21 (1) He has a right to refuse to be tested.

22 (2) Refusal to take any required test or tests will result in an immediate
23 revocation of his driving privilege for at least 10 days and an
24 additional 12-month revocation by the Division of Motor Vehicles.

25 (3) The test results, or the fact of his refusal, will be admissible in
26 evidence at trial on the offense charged.

27 (4) His driving privilege will be revoked immediately for at least 10 days
28 if:

29 a. The test reveals an alcohol concentration of ~~0.10~~0.08 or more;
30 or

31 b. He was driving a commercial motor vehicle and the test reveals
32 an alcohol concentration of 0.04 or more.

33 (5) He may have a qualified person of his own choosing administer a
34 chemical test or tests in addition to any test administered at the
35 direction of the charging officer.

36 (6) He has the right to call an attorney and select a witness to view for him
37 the testing procedures, but the testing may not be delayed for these
38 purposes longer than 30 minutes from the time he is notified of his
39 rights."

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

41 "(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or
42 questioned by a law-enforcement officer who is investigating whether the person may
43 have committed an implied-consent offense may request the administration of a
44 chemical analysis before any arrest or other charge is made for the offense. Upon this

1 request, the officer must afford the person the opportunity to have a chemical analysis
2 of his breath, if available, in accordance with the procedures required by G.S. 20-
3 139.1(b). The request constitutes the person's consent to be transported by the law-
4 enforcement officer to the place where the chemical analysis is to be administered.
5 Before the chemical analysis is made, the person must confirm his request in writing
6 and he must be notified:

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

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

10 a. The test reveals an alcohol concentration of ~~0.10~~0.08 or more;
11 or

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

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

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

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

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

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

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

33 (4) The person:

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

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

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

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

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

43 (1) He requests a precharge chemical analysis pursuant to G.S. 20-16.2(i);
44 and

- 1 (2) He has:
 2 a. An alcohol concentration of ~~0.10~~0.08 or more at any relevant
 3 time after driving; or
 4 b. An alcohol concentration of 0.04 or more at any relevant time
 5 after driving a commercial motor vehicle; and

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

7 Sec. 7. G.S. 20-139.1(b3) reads as rewritten:

8 "~~(b3) Sequential Breath Tests Required~~Required; Exception. —~~By January 1, 1985,~~
 9 ~~the~~The regulations of the Commission for Health Services governing the administration
 10 of chemical analyses of the breath must require the testing of at least duplicate
 11 sequential breath samples, except as provided in subdivision (2) of this
 12 subsection.

13 (1) ~~These~~The regulations for sequential testing must provide:

14 ~~(1)-~~ a. A specification as to the minimum observation period before
 15 collection of the first breath sample and the time requirements as to
 16 collection of second and subsequent samples.

17 ~~(2)-~~ b. That the test results may only be used to prove a person's particular
 18 alcohol concentration if:

19 a- 1. The pair of readings employed are from
 20 consecutively administered tests; and

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

23 ~~(3)-~~ c. That when a pair of analyses meets the requirements of subdivision
 24 ~~(2) b.~~ above, only the lower of the two readings may be used by the
 25 State as proof of a person's alcohol concentration in any court or
 26 administrative proceeding.

27 A person's willful refusal to give the sequential breath samples
 28 necessary to constitute a valid chemical analysis is a willful refusal
 29 under ~~G.S. 20-16.2(e)~~G.S. 20-16.2(c), except as provided in subdivision
 30 (2) of this subsection.

31 (2) If a person refuses to provide the second or subsequent breath sample
 32 then:

33 a. If a single breath sample is provided, the result of that sample
 34 may be used to prove a particular alcohol concentration to
 35 establish a violation of an offense involving impaired driving or
 36 for civil revocation purposes under G.S. 20-16.5, but the refusal
 37 shall not constitute a willful refusal under G.S. 20-16.2(c).

38 b. If more than one breath sample is provided, then the result of
 39 the sample providing the lowest alcohol concentration may be
 40 used to prove a particular alcohol concentration to establish a
 41 violation of an offense involving impaired driving or for civil
 42 revocation purposes under G.S. 20-16.5, but the refusal shall
 43 not constitute a willful refusal under G.S. 20-16.2(c)."

44 Sec. 8. G.S. 20-13.2(d) reads as rewritten:

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

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

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

- 16 (1) A single conviction for an offense involving impaired driving, if the
17 conviction occurred within seven years before the date of the offense
18 for which the defendant is being sentenced.
- 19 (2) Driving by the defendant at the time of the offense while his driver's
20 license was revoked under G.S. 20-28, and the revocation was an
21 impaired driving revocation under G.S. 20-28.2(a).
- 22 (3) Serious injury to another person caused by the defendant's impaired
23 driving at the time of the offense.

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

30 A conviction for another offense involving impaired driving, for which the
31 conviction occurs after the date of the offense for which the defendant is presently being
32 sentenced, but prior to or contemporaneously with the present sentencing, shall also
33 constitute a prior conviction involving impaired driving for aggravation purposes of this
34 subsection."

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

36 "(c) Determining Existence of Grossly Aggravating Factors; Habitual Offender. —
37 At the sentencing hearing, based upon the evidence presented at trial and in the hearing,
38 the judge must first determine whether there are any grossly aggravating factors in the
39 case. If the defendant has been convicted of two prior offenses involving impaired
40 driving and the convictions occurred within seven years before the date of the offense
41 for which he is being sentenced, the judge must impose the Level One punishment
42 under subsection (g). The judge must also impose the Level One punishment under
43 subsection (g) if he determines that two or more of the following grossly aggravating
44 factors apply:

- 1 (1) A single conviction for an offense involving impaired driving, if the
2 conviction occurred within seven years before the date of the offense
3 for which the defendant is being sentenced.
- 4 (2) Driving by the defendant at the time of the offense while his driver's
5 license was revoked under G.S. 20-28, and the revocation was an
6 impaired driving revocation under G.S. 20-28.2(a).
- 7 (3) Serious injury to another person caused by the defendant's impaired
8 driving at the time of the offense.
- 9 (4) Driving by the defendant while a child under the age of 16 years was
10 in the vehicle at the time of the offense.

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

17 Sec. 11. G.S. 20-141.4(a1) reads as rewritten:

18 "(a1) Felony Death by Vehicle. – A person commits the offense of felony death by
19 vehicle if he unintentionally causes the death of another person while engaged in the
20 offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of
21 that offense is the proximate cause of the death."

22 Sec. 12. G.S. 20-16.5 is amended by adding the following new subsection to
23 read:

24 "(k1) Effect of DWI Acquittal. – If a person is acquitted of G.S. 20-138.1, 20-
25 138.2, 20-138.3, 20-141.4, or 14-17 or 14-18 when the offense was based on impaired
26 driving, the Division shall expunge the record of the civil revocation under G.S. 20-
27 16.5, provided the person has not been convicted of an offense occurring during the
28 civil revocation period."

29 Sec. 13. This act becomes effective October 1, 1993, and applies to all
30 offenses committed on or after that date.