

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

S

1

SENATE BILL 127

Short Title: Commercial DWI.

(Public)

Sponsors: Senator Winner of Buncombe.

Referred to: Judiciary I.

February 11, 1993

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE DRIVING WHILE IMPAIRED LAWS WITH RESPECT
TO VEHICLES OPERATED IN BUSINESS AND TO MODIFY THE FELONY
MURDER BY VEHICLE STATUTES.

The General Assembly of North Carolina enacts:

Section 1. 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 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 the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

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

- (1) He has a right to refuse to be tested.
- (2) Refusal to take any required test or tests will result in an immediate revocation of his driving privilege for at least 10 days and an additional 12-month revocation by the Division of Motor Vehicles.
- (3) The test results, or the fact of his refusal, will be admissible in evidence at trial on the offense charged.
- (4) His driving privilege will be revoked immediately for at least 10 days if:

- 1 a. The test reveals an alcohol concentration of 0.10 or more; or
2 b. He was driving a commercial motor vehicle or any vehicle used
3 in commerce and registered as a commercial vehicle and the
4 test reveals an alcohol concentration of 0.04 or more.

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

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

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

16 Sec. 2. G.S. 20-16.2(i) reads as rewritten:

17 "(i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or
18 questioned by a law-enforcement officer who is investigating whether the person may
19 have committed an implied-consent offense may request the administration of a
20 chemical analysis before any arrest or other charge is made for the offense. Upon this
21 request, the officer must afford the person the opportunity to have a chemical analysis
22 of his breath, if available, in accordance with the procedures required by G.S. 20-
23 139.1(b). The request constitutes the person's consent to be transported by the law-
24 enforcement officer to the place where the chemical analysis is to be administered.
25 Before the chemical analysis is made, the person must confirm his request in writing
26 and he must be notified:

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

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

- 30 a. The test reveals an alcohol concentration of 0.10 or more; or
31 b. He was driving a commercial motor vehicle or any vehicle used
32 in commerce and registered as a commercial vehicle and the
33 test results reveal an alcohol concentration of 0.04 or more.

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

41 Sec. 3. G.S. 20-16.5(b) reads as rewritten:

42 "(b) Revocations for Persons Who Refuse Chemical Analyses or Have Alcohol
43 Concentrations of 0.10 or More After Driving a Motor Vehicle or of 0.04 or More After

1 Driving a Commercial Vehicle. – A person's driver's license is subject to revocation
2 under this section if:

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

18 Sec. 4. G.S. 20-16.5(b1) reads as rewritten:

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

- 22 (1) He requests a precharge chemical analysis pursuant to G.S. 20-16.2(i);
23 and
- 24 (2) He has:
 - 25 a. An alcohol concentration of 0.10 or more at any relevant time
26 after driving; or
 - 27 b. An alcohol concentration of 0.04 or more at any relevant time
28 after driving a commercial motor ~~vehicle~~; vehicle or any vehicle
29 used and commerce and registered as a commercial vehicle; and
- 30 (3) He is charged with an implied-consent offense."

31 Sec. 5. G.S. 20-138.2(a) reads as rewritten:

32 "(a) Offense. – A person commits the offense of impaired driving in a commercial
33 motor vehicle if he drives a commercial motor vehicle or any vehicle used in commerce
34 and registered as a commercial vehicle upon any highway, any street, or any public
35 vehicular area within the State:

- 36 (1) While appreciably under the influence of an impairing substance; or
- 37 (2) After having consumed sufficient alcohol that he has, at any relevant
38 time after the driving, an alcohol concentration of 0.04 or more."

39 Sec. 6. G.S. 20-138.2(c) reads as rewritten:

40 "(c) Pleading. – To charge a violation of this section, the pleading is sufficient if it
41 states the time and place of the alleged offense in the usual form and charges the
42 defendant drove a commercial motor vehicle or any vehicle used in commerce and
43 registered as a commercial vehicle on a highway, street, or public vehicular area while
44 subject to an impairing substance."

1 Sec. 7. G.S. 20-141.4(a1) reads as rewritten:

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

6 Sec. 8. This act becomes effective October 1, 1993.