

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 446*

Short Title: DWI Amendments.

(Public)

Sponsors: Senators Odom; Forrester, Codington, Plexico, Smith, Allran, Albertson, Walker, Kincaid, Martin of Pitt, Hunt, Hoyle, Martin of Guilford, Cochran, Blackmon, Simpson, Carpenter, Winner of Buncombe, and Hartsell.

Referred to: Judiciary I.

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 PERCENT; TO REDUCE THE MINIMUM BLOOD ALCOHOL CONTENT NECESSARY FOR AN IMMEDIATE TEN-DAY REVOCATION OF DRIVING PRIVILEGES FROM 0.10 TO 0.08 PERCENT; TO REDUCE THE BLOOD ALCOHOL LEVEL TO BE CONSIDERED AS SLIGHT IMPAIRMENT FROM 0.11 TO 0.09 PERCENT; 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; AND TO PROVIDE CLARIFICATION ABOUT WHEN AN EARLIER 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."

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

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

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

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

10 "(a) Basis for Charging Officer to Require Chemical Analysis; Notification of
11 Rights. – Any person who drives a vehicle on a highway or public vehicular area
12 thereby gives consent to a chemical analysis if he is charged with an implied-consent
13 offense. The charging officer must designate the type of chemical analysis to be
14 administered, and it may be administered when he has reasonable grounds to believe
15 that the person charged has committed the implied-consent offense. Except as provided
16 in subsection (b), the person charged must be taken before a chemical analyst authorized
17 to administer a test of a person's breath, who must inform the person orally and also
18 give him 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 Sec. 4. G.S. 20-16.2(i) reads as rewritten:

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

1 139.1(b). The request constitutes the person's consent to be transported by the law-
2 enforcement officer to the place where the chemical analysis is to be administered.
3 Before the chemical analysis is made, the person must confirm his request in writing
4 and he must be notified:

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

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

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

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

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

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

- 41 (1) He requests a precharge chemical analysis pursuant to G.S. 20-16.2(i);
42 and
- 43 (2) He has:

- 1 a. An alcohol concentration of ~~0.10~~0.08 or more at any relevant
2 time after driving; or
3 b. An alcohol concentration of 0.04 or more at any relevant time
4 after driving a commercial motor vehicle; and
5 (3) He is charged with an implied-consent offense."

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

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

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

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

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

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

- 40 (1) A specification as to the minimum observation period before collection
41 of the first breath sample and the time requirements as to collection of
42 second and subsequent samples.
43 (2) That the test results may only be used to prove a person's particular
44 alcohol concentration if:

- 1 a. The pair of readings employed are from consecutively
 2 administered tests; and
 3 b. The readings do not differ from each other by an alcohol
 4 concentration greater than 0.02.

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

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

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

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

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

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

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

- 29 (1) A single conviction for an offense involving impaired driving, if the
 30 conviction occurred within seven years before the date of the offense
 31 for which the defendant is being sentenced.
 32 (2) Driving by the defendant at the time of the offense while his driver's
 33 license was revoked under G.S. 20-28, and the revocation was an
 34 impaired driving revocation under G.S. 20-28.2(a).
 35 (3) Serious injury to another person caused by the defendant's impaired
 36 driving at the time of the offense.

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

43 A conviction for another offense involving impaired driving, for which the
 44 conviction occurs after the date of the offense for which the defendant is presently being

1 sentenced, but prior to or contemporaneously with the present sentencing, shall also
2 constitute a prior conviction involving impaired driving for aggravation purposes of this
3 subsection."

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