

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 134
Committee Substitute Favorable 3/1/95

Short Title: DMV/DOT Technical Changes.

(Public)

Sponsors:

Referred to:

February 8, 1995

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE
MOTOR VEHICLE LAWS AND OTHER LAWS CONCERNING THE
DEPARTMENT OF TRANSPORTATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-16.2 reads as rewritten:

**"§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license
in event of refusal; right of driver to request analysis.**

(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~~The person 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~~the person's driving privilege for at least 10 days and
an additional 12-month revocation by the Division of Motor Vehicles.

- 1 (3) The test results, or the fact of ~~his~~the person's refusal, will be
2 admissible in evidence at trial on the offense charged.
- 3 (4) ~~His~~The person's driving privilege will be revoked immediately for at
4 least 10 days if:
- 5 a. The test reveals an alcohol concentration of 0.08 or more; or
6 b. ~~He~~The person was driving a commercial motor vehicle and the
7 test reveals an alcohol concentration of 0.04 or more.
- 8 (5) ~~He~~The person may ~~have a qualified person of his own choosing~~choose a
9 qualified person to administer a chemical test or tests in addition to
10 any test administered at the direction of the charging officer.
- 11 (6) ~~He~~The person has the right to call an attorney and select a witness to
12 view for him or her the testing procedures, but the testing may not be
13 delayed for these purposes longer than 30 minutes from the time ~~he~~
14 when the person is notified of his or her rights.

15 If the charging officer or an arresting officer is authorized to administer a chemical
16 analysis of a person's ~~breath and the charging officer designates a chemical analysis of the~~
17 ~~blood of the person charged,~~ breath, the charging officer or the arresting officer may give
18 the person charged the oral and written notice of rights required by this subsection. This
19 authority applies regardless of the type of chemical analysis designated.

20 (a1) Meaning of Terms. – Under this section, an 'implied-consent offense' is an
21 offense involving impaired driving or an alcohol-related offense made subject to the
22 procedures of this section. A person is 'charged' with an offense if ~~he~~the person is
23 arrested for it or if criminal process for the offense has been issued. A 'charging officer'
24 is a law-enforcement officer who arrests the person charged, lodges the charge, or
25 assists the officer who arrested the person or lodged the charge by assuming custody of
26 the person to make the request required by subsection (c) and, if necessary, to present
27 the person to a judicial official for an initial appearance.

28 (b) Unconscious Person May Be Tested. – If a charging officer has reasonable
29 grounds to believe that a person has committed an implied-consent offense, and the
30 person is unconscious or otherwise in a condition that makes ~~him~~the person incapable
31 of refusal, the charging officer may direct the taking of a blood sample by a person
32 qualified under G.S. 20-139.1 or may direct the administration of any other chemical
33 analysis that may be effectively performed. In this instance the notification of rights set
34 out in subsection (a) and the request required by subsection (c) are not necessary.

35 (c) Request to Submit to Chemical Analysis; Procedure upon Refusal. – The
36 charging officer, in the presence of the chemical analyst who has notified the person of
37 his or her rights under subsection (a), must request the person charged to submit to the
38 type of chemical analysis designated. If the person charged willfully refuses to submit
39 to that chemical analysis, none may be given under the provisions of this section, but
40 the refusal does not preclude testing under other applicable procedures of law. ~~Then~~If
41 the person refuses to submit to the chemical analysis, the charging officer and the
42 chemical analyst must without unnecessary delay go before an official authorized to
43 administer oaths and execute an affidavit stating that the person charged, after being
44 advised of his or her rights under subsection (a), willfully refused to submit to a

1 chemical analysis at the request of the charging officer. The charging officer must
2 immediately mail the affidavit to the Division. If the person's refusal to submit to a
3 chemical analysis occurs in a case involving death or critical injury to another person,
4 the charging officer must include that fact in the affidavit mailed to the Division. If the
5 charging officer is also the chemical analyst who has notified the person of his or her
6 rights under subsection (a), the charging officer may perform alone the duties of this
7 subsection.

8 (d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon
9 receipt of a properly executed affidavit required by subsection (c), the Division must
10 expeditiously notify the person charged that ~~his~~ the person's license to drive is revoked
11 for 12 months, effective on the tenth calendar day after the mailing of the revocation
12 order unless, before the effective date of the order, the person requests in writing a
13 hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the
14 person shows to the satisfaction of the Division that his or her license was surrendered
15 to the court, and remained in the court's possession, then the Division shall credit the
16 amount of time for which the license was in the possession of the court against the 12-
17 month revocation period required by this subsection. If the person properly requests a
18 hearing, ~~he~~ the person retains his or her license, unless it is revoked under some other
19 provision of law, until the hearing is held, the person withdraws ~~his~~ the request, or ~~he~~ the
20 person fails to appear at a scheduled hearing. The hearing officer may subpoena any
21 witnesses or documents ~~he~~ that the hearing officer deems necessary. The person may
22 request the hearing officer to subpoena the charging officer, the chemical analyst, or
23 both to appear at the hearing if ~~he~~ the person makes the request in writing at least three
24 days before the hearing. The person may subpoena any other witness ~~he~~ whom the
25 person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance
26 and service of all subpoenas issued under the authority of this section. The hearing
27 officer is authorized to administer oaths to witnesses appearing at the hearing. The
28 hearing must be conducted in the county where the charge was brought, and must be
29 limited to consideration of whether:

- 30 (1) The person was charged with an implied-consent offense;
- 31 (2) The charging officer had reasonable grounds to believe that the person
32 had committed an implied-consent offense;
- 33 (3) The implied-consent offense charged involved death or critical injury
34 to another person, if this allegation is in the affidavit;
- 35 (4) The person was notified of his or her rights as required by subsection
36 (a); and
- 37 (5) The person willfully refused to submit to a chemical analysis upon the
38 request of the charging officer.

39 If the Division finds that the conditions specified in this subsection are met, it must
40 order the revocation sustained. If the Division finds that any of the conditions (1), (2),
41 (4), or (5) is not met, it must rescind the revocation. If it finds that conditions (3) is
42 alleged in the affidavit but is not met, it must order the revocation sustained if that is the
43 only condition that is not met; in this instance subsection (d1) does not apply to that

1 revocation. If the revocation is sustained, the person must surrender his or her license
2 immediately upon notification by the Division.

3 (d1) Consequences of Refusal in Case Involving Death or Critical Injury. – If the
4 refusal occurred in a case involving death or critical injury to another person, no limited
5 driving privilege may be issued. The 12-month revocation begins only after all other
6 periods of revocation have terminated unless the person's license is revoked ~~pursuant to~~
7 under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those
8 sections, the revocation under this subsection begins at the time and in the manner
9 specified in subsection (d) for revocations under this section. However, the person's
10 eligibility for a hearing to determine if the revocation under those sections should be
11 rescinded is postponed for one year from the date ~~he~~ on which the person would
12 otherwise have been eligible for such a hearing. If the person's driver's license is again
13 revoked while the 12-month revocation under this subsection is in effect, that
14 revocation, whether imposed by a court or by the Division, may only take effect after
15 the period of revocation under this subsection has terminated.

16 (e) Right to Hearing in Superior Court. – If the revocation is sustained after the
17 hearing, the person whose license has been revoked has the right to file a petition in the
18 superior court for a hearing de novo upon the issues listed in subsection (d), in the same
19 manner and under the same conditions as provided in G.S. 20-25 except that the de
20 novo hearing is conducted in the superior court district or set of districts as defined in
21 G.S. 7A-41.1 where the charge was made.

22 (e1) Limited Driving Privilege after Six Months in Certain Instances. – A person
23 whose driver's license has been revoked under this section may apply for and a judge
24 authorized to do so by this subsection may issue a limited driving privilege if:

- 25 (1) At the time of the refusal ~~he~~ the person held either a valid driver's
26 license or a license that had been expired for less than one year;
- 27 (2) At the time of the refusal, ~~he~~ the person had not within the preceding
28 seven years been convicted of an offense involving impaired driving;
- 29 (3) At the time of the refusal, ~~he~~ the person had not in the preceding seven
30 years willfully refused to submit to a chemical analysis under this
31 section;
- 32 (4) The implied-consent offense charged did not involve death or critical
33 injury to another person;
- 34 (5) The underlying charge for which the defendant was requested to
35 submit to a chemical analysis has been finally disposed of:
 - 36 a. Other than by conviction; or
 - 37 b. By a conviction of impaired driving under G.S. 20-138.1, at a
38 punishment level authorizing issuance of a limited driving
39 privilege under G.S. 20-179.3(b), and ~~he~~ the defendant has
40 complied with at least one of the mandatory conditions of
41 probation listed for the punishment level under which ~~he~~ the
42 defendant was sentenced;

- 1 (6) Subsequent to the refusal ~~he~~the person has had no unresolved pending
2 charges for or additional convictions of an offense involving impaired
3 driving; and
4 (7) ~~His~~The person's license has been revoked for at least six months for
5 the refusal.

6 Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the
7 procedure for application and conduct of the hearing and the restrictions required or
8 authorized to be included in the limited driving privilege apply to applications under
9 this subsection. If the case was finally disposed of in the district court, the hearing must
10 be conducted in the district court district as defined in G.S. 7A-133 in which the refusal
11 occurred by a district court judge. If the case was finally disposed of in the superior
12 court, the hearing must be conducted in the superior court district or set of districts as
13 defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A
14 limited driving privilege issued under this section authorizes a person to drive if ~~his~~the
15 person's license is revoked solely under this section or solely under this section and G.S.
16 20-17(2). If the person's license is revoked for any other reason, the limited driving
17 privilege is invalid.

18 (f) Notice to Other States as to Nonresidents. – When it has been finally
19 determined under the procedures of this section that a nonresident's privilege to drive a
20 motor vehicle in this State has been revoked, the Division must give information in
21 writing of the action taken to the motor vehicle administrator of the state of the person's
22 residence and of any state in which ~~he~~the person has a license.

23 (g) Repealed by Session Laws 1973, c. 914.

24 (h) Repealed by Session Laws 1979, c. 423, s. 2.

25 (i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or
26 questioned by a law-enforcement officer who is investigating whether the person may
27 have committed an implied-consent offense may request the administration of a
28 chemical analysis before any arrest or other charge is made for the offense. Upon this
29 request, the officer must afford the person the opportunity to have a chemical analysis
30 of his or her breath, if available, in accordance with the procedures required by G.S. 20-
31 139.1(b). The request constitutes the person's consent to be transported by the law-
32 enforcement officer to the place where the chemical analysis is to be administered.
33 Before the chemical analysis is made, the person must confirm ~~his~~the request in writing
34 and ~~he~~ must be notified:

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

37 (2) That ~~his~~the person's license will be revoked for at least 10
38 days if:

39 a. The test reveals an alcohol concentration of 0.08 or more; or

40 b. ~~He~~The person was driving a commercial motor vehicle and the
41 test results reveal an alcohol concentration of 0.04 or more.

42 (3) That if ~~he~~the person fails to comply fully with the test procedures, the
43 officer may charge ~~him~~the person with any offense for which the
44 officer has probable cause, and if ~~he~~the person is charged with an

1 implied-consent offense, ~~his~~ the person's refusal to submit to the
 2 testing required as a result of that charge would result in revocation of
 3 ~~his~~ the person's driver's license. The results of the chemical analysis
 4 are admissible in evidence in any proceeding in which they are
 5 relevant."

6 Sec. 2. G.S. 20-79.7(b) reads as rewritten:

7 "(b) Distribution of Fees. – The Special Registration Plate Account and the
 8 Collegiate and Cultural Attraction Plate Account are established within the Highway
 9 Fund. The Division must credit the additional fee imposed for the special registration
 10 plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the
 11 Collegiate and Cultural Attraction Plate Account (CCAPA), and the ~~Recreation and~~
 12 Natural Heritage Trust Fund (~~RNHTF~~), (NHTF), which is established under G.S. 113-
 13 77.7, as follows:

14 <u>Special Plate</u>	<u>SRPA</u>	<u>CCAPA</u>	Historical Attraction	\$10
15 \$20 0				
16 In-State Collegiate Insignia	\$10	\$15	0	
17 Out-of-state Collegiate Insignia		\$10	0	\$15
18 Personalized	\$10	0	\$10	
19 Special Olympics	\$10	\$15	0	
20 State Attraction	\$10	\$20	0	
21 Wildlife Resources	\$10	\$10	0	
22 All other Special Plates	\$10	0	0."	

23 Sec. 3. G.S. 20-82 is repealed.

24 Sec. 4. G.S. 20-297 reads as rewritten:

25 **"§ 20-297. ~~Inspection of records, etc.~~ Retention and inspection of certain records.**

26 (a) Vehicles. – A dealer must keep a record of all vehicles received by the dealer
 27 and all vehicles sold by the dealer. The records must contain the information that the
 28 Division requires.

29 (b) Inspection. – The Division may inspect the pertinent books, records, ~~letters~~
 30 letters, and contracts of a licensee relating to any written complaint made to ~~him~~ against
 31 ~~such~~ the Division against the licensee."

32 Sec. 5. G.S. 20-88(f) is repealed.

33 Sec. 6. G.S. 20-135.2B(b) reads as rewritten:

34 "(b) Subsection (a) of this section ~~shall not apply when:~~ does not apply in any of the
 35 following circumstances:

- 36 (1) An adult is present in the bed or cargo area of the vehicle and is
 37 supervising the ~~child;~~ child.
- 38 (2) The child is secured or restrained by a seat belt manufactured in
 39 compliance with Federal Motor Vehicle Safety Standard No. 208,
 40 installed to support a load strength of not less than 5,000 pounds for
 41 each belt, and of a type approved by the ~~Commissioner;~~ Commissioner.
- 42 (3) An emergency situation ~~exists;~~ exists.
- 43 (4) The vehicle is being operated in a parade pursuant to a valid permit.
- 44 (5) The vehicle is being operated in an agricultural ~~enterprise; or~~ enterprise.

1 (6) ~~the~~The vehicle is being operated in a county ~~which~~that has no
2 incorporated area with a population in excess of 3,500."

3 Sec. 7. G.S. 20-141.3(a) reads as rewritten:

4 "(a) It shall be unlawful for any person to operate a motor vehicle on a street or
5 highway willfully in prearranged speed competition with another motor vehicle. Any
6 person violating the provisions of this subsection shall be guilty of a Class ~~2~~1
7 misdemeanor."

8 Sec. 8. G.S. 20-141.3(b) reads as rewritten:

9 "(b) It shall be unlawful for any person to operate a motor vehicle on a street or
10 highway willfully in speed competition with another motor vehicle. Any person
11 willfully violating the provisions of this subsection shall be guilty of a Class ~~4~~2
12 misdemeanor."

13 Sec. 9. G.S. 20-183.2(b)(5) reads as rewritten:

14 "(5) It meets any of the following descriptions:

- 15 a. It is required to be registered in an emissions county.
16 b. It is part of a fleet that is operated primarily in an emissions
17 county.
18 c. It is offered for rent in an emissions county.
19 d. It is offered for sale by a dealer in an emissions ~~county~~county
20 and is not a new vehicle that has not been titled.
21 e. It is operated on a federal installation located in an emissions
22 county and it is not a tactical military vehicle. Vehicles operated
23 on a federal installation include those that are owned or leased
24 by employees of the installation and are used to commute to the
25 installation and those owned or operated by the federal agency
26 that conducts business at the installation.
27 f. It is otherwise required by 40 C.F.R. Part 51 to be subject to an
28 emissions inspection."

29 Sec. 10. G.S. 20-183.8C(c) reads as rewritten:

30 "(c) Type III. – It is a Type III violation for an emissions self-inspector, an
31 emissions inspection station, or an emissions inspection mechanic to do any of the
32 following:

- 33 (1) Fail to post an emissions license issued by the Division.
34 (2) Fail to send information on emissions inspections to the Division at
35 the time or in the form required by the Division."

36 Sec. 11. G.S. 20-183.12 is repealed.

37 Sec. 12. G.S. 20-305(5)b.6. reads as rewritten:

38 "6. Whether the establishment of an additional
39 new motor vehicle dealer or relocation of an existing
40 new motor vehicle dealer in the relevant market area
41 would increase competition in a manner such as to be
42 in the long-term public interest; and".

43 Sec. 13. G.S. 136-66.1(4) reads as rewritten:

1 "(4) If the governing body of any municipality ~~shall determine~~ determines
2 that it is in the best interest of its citizens to do so, it may expend its
3 funds for the purpose of making any of the following improvements on
4 streets that are within its corporate limits ~~which and~~ form a part of the
5 State highway system:

- 6 a. Construction of curbing and ~~guttering;~~ guttering.
7 b. Adding of lanes for automobile ~~parking;~~ parking.
8 c. Constructing street drainage facilities which may by reasonable
9 engineering estimates be attributable to that amount of surface
10 water collected upon and flowing from municipal streets which
11 do not form a part of the State highway ~~system;~~ system.
12 d. Constructing sidewalks.
13 e. Intersection improvements, if the governing body determines
14 that such improvements will decrease traffic congestion,
15 improve safety conditions, and improve air quality.

16 In exercising the authority granted herein, the municipality may,
17 with the consent of the Department of Transportation, perform the
18 work itself, or it may enter into a contract with the Department of
19 Transportation to perform such work. Any work authorized by this
20 subdivision shall be financed entirely by the municipality and be
21 approved by the Department of Transportation.

22 The cost of any work financed by a municipality ~~pursuant to~~ under
23 this subdivision may be assessed against the properties abutting the
24 street or highway upon which such work was performed in accordance
25 with the procedures of either Article 10 of Chapter 160A of the
26 General Statutes or any charter provisions or local acts applicable to
27 the particular municipality."

28 Sec. 14. G.S. 136-92 reads as rewritten:

29 "**§ 136-92. Obstructing highway drains ~~misdemeanor.~~ prohibited.**

30 ~~Any person who shall obstruct any drains~~ It is unlawful to obstruct a drain along or
31 leading from any public road in the State ~~shall be guilty of a Class 3 misdemeanor, and~~
32 ~~punished only by a fine of not less than ten (\$10.00) nor more than one hundred dollars~~
33 ~~(\$100.00). State. A person who violates this section is responsible for an infraction."~~

34 Sec. 15. Sections 7, 8, and 14 of this act become effective July 1, 1995, and
35 apply to offenses occurring on or after that date. The remainder of this act is effective
36 upon ratification.