

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 840

Short Title: Drug Test for DWI.

(Public)

Sponsors: Senators Plexico and Carpenter.

Referred to: Judiciary I/Constitution

April 26, 1995

A BILL TO BE ENTITLED

AN ACT TO REQUIRE BLOOD TESTS FOR CONTROLLED SUBSTANCES IN
CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-139.1 reads as rewritten:

"§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.

(a) Chemical Analysis Admissible. – In any implied-consent offense under G.S. 20-16.2, a person's alcohol concentration as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a defendant's alcohol concentration, including other chemical tests.

(b) Approval of Valid Test Methods; Licensing Chemical Analysts. – A chemical analysis, to be valid, must be performed in accordance with the provisions of this section. The chemical analysis must be performed according to methods approved by the Commission for Health Services by an individual possessing a current permit issued by the Department of Environment, Health, and Natural Resources for that type of chemical analysis. The Commission for Health Services is authorized to adopt regulations approving satisfactory methods or techniques for performing chemical analyses, and the Department of Environment, Health, and Natural Resources is authorized to ascertain the qualifications and competence of individuals to conduct particular chemical analyses.

1 The Department may issue permits to conduct chemical analyses to individuals it finds
2 qualified subject to periodic renewal, termination, and revocation of the permit in the
3 Department's discretion.

4 (b1) When Officer May Perform Chemical Analysis. – Except as provided in this
5 subsection, a chemical analysis is not valid in any case in which it is performed by an
6 arresting officer or by a charging officer under the terms of G.S. 20-16.2. A chemical
7 analysis of the breath may be performed by an arresting officer or by a charging officer
8 when both of the following apply:

9 (1) The officer possesses a current permit issued by the Department of
10 Environment, Health, and Natural Resources for the type of chemical
11 analysis.

12 (2) The officer performs the chemical analysis by using an automated
13 instrument that prints the results of the analysis.

14 (b2) Breath Analysis Results Inadmissible if Preventive Maintenance Not
15 Performed. – Notwithstanding the provisions of subsection (b), the results of a chemical
16 analysis of a person's breath performed in accordance with this section are not admissible
17 in evidence if:

18 (1) The defendant objects to the introduction into evidence of the results of
19 the chemical analysis of his breath; and

20 (2) The defendant demonstrates that, with respect to the instrument used to
21 analyse his breath, preventive maintenance procedures required by the
22 regulations of the Commission for Health Services had not been
23 performed within the time limits prescribed by those regulations.

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

28 (1) A specification as to the minimum observation period before collection
29 of the first breath sample and the time requirements as to collection of
30 second and subsequent samples.

31 (2) That the test results may only be used to prove a person's particular
32 alcohol concentration if:

33 a. The pair of readings employed are from consecutively
34 administered tests; and

35 b. The readings do not differ from each other by an alcohol
36 concentration greater than 0.02.

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

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

1 A person's willful refusal to give the second or subsequent breath sample shall make
2 the result of the first breath sample, or the result of the sample providing the lowest
3 alcohol concentration if more than one breath sample is provided, admissible in any
4 judicial or administrative hearing for any relevant purpose, including the establishment
5 that a person had a particular alcohol concentration for conviction of an offense involving
6 impaired driving.

7 (b4) Introducing Routine Records Kept as Part of Breath-Testing Program. – In
8 civil and criminal proceedings, any party may introduce, without further authentication,
9 simulator logs and logs for other devices used to verify a breath-testing instrument,
10 certificates and other records concerning the check of ampoules and of simulator stock
11 solution and the stock solution used in any other equilibration device, preventive
12 maintenance records, and other records that are routinely kept concerning the
13 maintenance and operation of breath-testing instruments. In a criminal case, however,
14 this subsection does not authorize the State to introduce records to prove the results of a
15 chemical analysis of the defendant or of any validation test of the instrument that is
16 conducted during that chemical analysis.

17 (c) Withdrawal of Blood for Chemical Analysis. – When a blood test is specified
18 as the type of chemical analysis by the charging officer, only a physician, registered
19 nurse, or other qualified person may withdraw the blood sample. If the person
20 withdrawing the blood requests written confirmation of the charging officer's request for
21 the withdrawal of blood, the officer must furnish it before blood is withdrawn. When
22 blood is withdrawn pursuant to a charging officer's request, neither the person
23 withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or
24 corporation employing him, or contracting for the service of withdrawing blood, may be
25 held criminally or civilly liable by reason of withdrawing that blood, except that there is
26 no immunity from liability for negligent acts or omissions.

27 (c1) When facts exist which would lead the charging officer to reasonably believe
28 that the defendant has used a substance other than alcohol which has impaired the ability
29 of the defendant to drive within the meaning of G.S. 20-138.1, the charging officer may:

30 (1) Submit the facts known to him to a magistrate requesting that a warrant
31 for the drawing of the defendant's blood be issued; or

32 (2) If time is of the essence, direct properly authorized personnel as set out
33 in subsection (c) above to draw defendant's blood. In this
34 circumstance, justification of the failure to seek prior approval of a
35 magistrate and existence of sufficient reason to believe that probable
36 cause would have justified issuance of the warrant shall be determined
37 prior to admissibility of the results of any testing done on any blood
38 drawn.

39 (d) Right to Additional Test. – A person who submits to a chemical analysis may
40 have a qualified person of his own choosing administer an additional chemical test or
41 tests, or have a qualified person withdraw a blood sample for later chemical testing by a
42 qualified person of his own choosing. Any law-enforcement officer having in his charge
43 any person who has submitted to a chemical analysis must assist the person in contacting

1 someone to administer the additional testing or to withdraw blood, and must allow access
2 to the person for that purpose. The failure or inability of the person who submitted to a
3 chemical analysis to obtain any additional test or to withdraw blood does not preclude the
4 admission of evidence relating to the chemical analysis.

5 (e) Recording Results of Chemical Analysis of Breath. – The chemical analyst
6 who administers a test of a person's breath must record the following information after
7 making any chemical analysis:

8 (1) The alcohol concentration or concentrations revealed by the chemical
9 analysis.

10 (2) The time of the collection of the breath sample or samples used in the
11 chemical analysis.

12 A copy of the record of this information must be furnished to the person submitting to the
13 chemical analysis, or to his attorney, before any trial or proceeding in which the results of
14 the chemical analysis may be used.

15 (e1) Use of Chemical Analyst's Affidavit in District Court. – An affidavit by a
16 chemical analyst sworn to and properly executed before an official authorized to
17 administer oaths is admissible in evidence without further authentication in any hearing
18 or trial in the District Court Division of the General Court of Justice with respect to the
19 following matters:

20 (1) The alcohol concentration or concentrations of a person given a
21 chemical analysis and who is involved in the hearing or trial.

22 (2) The time of the collection of the blood or breath sample or samples for
23 the chemical analysis.

24 (3) The type of chemical analysis administered and the procedures
25 followed.

26 (4) The type and status of any permit issued by the Department of
27 Environment, Health, and Natural Resources that he held on the date he
28 performed the chemical analysis in question.

29 (5) If the chemical analysis is performed on a breath-testing instrument for
30 which regulations adopted pursuant to subsection (b) require preventive
31 maintenance, the date the most recent preventive maintenance
32 procedures were performed on the breath-testing instrument used, as
33 shown on the maintenance records for that instrument.

34 The Department of Environment, Health, and Natural Resources must develop a form for
35 use by chemical analysts in making this affidavit. If any person who submitted to a
36 chemical analysis desires that a chemical analyst personally testify in the hearing or trial
37 in the District Court Division, he may subpoena the chemical analyst and examine him as
38 if he were an adverse witness.

39 (f) Evidence of Refusal Admissible. – If any person charged with an implied-
40 consent offense refuses to submit to a chemical analysis, evidence of that refusal is
41 admissible in any criminal action against him for an implied-consent offense under G.S.
42 20-16.2.

1 (g) Controlled-Drinking Programs. – The Department of Environment, Health, and
2 Natural Resources is empowered to make regulations concerning the ingestion of
3 controlled amounts of alcohol by individuals submitting to chemical testing as a part of
4 scientific, experimental, educational, or demonstration programs. These regulations must
5 prescribe procedures consistent with controlling federal law governing the acquisition,
6 transportation, possession, storage, administration, and disposition of alcohol intended for
7 use in the programs. Any person in charge of a controlled-drinking program who
8 acquires alcohol under these regulations must keep records accounting for the disposition
9 of all alcohol acquired, and the records must at all reasonable times be available for
10 inspection upon the request of any federal, State, or local law-enforcement officer with
11 jurisdiction over the laws relating to control of alcohol. A controlled-drinking program
12 exclusively using lawfully purchased alcoholic beverages in places in which they may be
13 lawfully possessed, however, need not comply with the record-keeping requirements of
14 the regulations authorized by this subsection. All acts pursuant to the regulations
15 reasonably done in furtherance of bona fide objectives of a controlled-drinking program
16 authorized by the regulations are lawful notwithstanding the provisions of any other
17 general or local statute, regulation, or ordinance controlling alcohol."

18 Sec. 2. This act becomes effective October 1, 1995.