

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 446\*

Judiciary I Committee Substitute Adopted 5/11/93

Short Title: DWI Amendments.

(Public)

Sponsors:

Referred to: Appropriations.

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 REDUCE THE BLOOD ALCOHOL LEVEL TO BE CONSIDERED AS SLIGHT IMPAIRMENT FROM 0.11 TO 0.09; 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. 20-179(e) reads as rewritten:

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

12 (1) Slight impairment of the defendant's faculties resulting solely from  
13 alcohol, and an alcohol concentration that did not exceed ~~0.11~~0.09 at  
14 any relevant time after the driving.

15 (2) Slight impairment of the defendant's faculties, resulting solely from  
16 alcohol, with no chemical analysis having been available to the  
17 defendant.

18 (3) Driving at the time of the offense that was safe and lawful except for  
19 the impairment of the defendant's faculties.

20 (4) A safe driving record, with the defendant's having no conviction for  
21 any motor vehicle offense for which at least four points are assigned  
22 under G.S. 20-16 or for which the person's license is subject to  
23 revocation within five years of the date of the offense for which the  
24 defendant is being sentenced.

25 (5) Impairment of the defendant's faculties caused primarily by  
26 a lawfully prescribed drug for an existing medical condition, and the  
27 amount of the drug taken was within the prescribed dosage.

28 (6) The defendant's voluntary submission to a mental health facility for  
29 assessment after he was charged with the impaired driving offense for  
30 which he is being sentenced, and, if recommended by the facility, his  
31 voluntary participation in the recommended treatment.

32 (7) Any other factor that mitigates the seriousness of the offense.

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

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

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

42 (1) ~~Those~~The regulations for sequential testing must provide:

- 1           (1) a. A specification as to the minimum observation period before  
2           collection of the first breath sample and the time requirements as to  
3           collection of second and subsequent samples.
- 4           (2) b. That the test results may only be used to prove a person's particular  
5           alcohol concentration if:
- 6                 a. 1. The pair of readings employed are from  
7                         consecutively administered tests; and
- 8                 b. 2. The readings do not differ from each other by  
9                         an alcohol concentration greater than 0.02.
- 10          (3) c. That when a pair of analyses meets the requirements of subdivision  
11          (2) b. above, only the lower of the two readings may be used by the  
12          State as proof of a person's alcohol concentration in any court or  
13          administrative proceeding.
- 14          A person's willful refusal to give the sequential breath samples  
15          necessary to constitute a valid chemical analysis is a willful refusal  
16          under G.S. 20-16.2(c), except as provided in subdivision (2) of this  
17          subsection.

- 18          (2) If a person refuses to provide the second or subsequent breath sample  
19          then:
- 20                 a. If a single breath sample is provided, the result of that sample  
21                         may be used to prove a particular alcohol concentration to  
22                         establish a violation of an offense involving impaired driving or  
23                         for civil revocation purposes under G.S. 20-16.5, but the refusal  
24                         shall not constitute a willful refusal under G.S. 20-16.2(c).
- 25                 b. If more than one breath sample is provided, then the result of  
26                         the sample providing the lowest alcohol concentration may be  
27                         used to prove a particular alcohol concentration to establish a  
28                         violation of an offense involving impaired driving or for civil  
29                         revocation purposes under G.S. 20-16.5, but the refusal shall  
30                         not constitute a willful refusal under G.S. 20-16.2(c)."

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

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

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

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

1 subsection (g). The judge must also impose the Level One punishment if he determines  
2 that two or more of the following grossly aggravating factors apply:

- 3 (1) A single conviction for an offense involving impaired driving, if the  
4 conviction occurred within seven years before the date of the offense  
5 for which the defendant is being sentenced.
- 6 (2) Driving by the defendant at the time of the offense while his driver's  
7 license was revoked under G.S. 20-28, and the revocation was an  
8 impaired driving revocation under G.S. 20-28.2(a).
- 9 (3) Serious injury to another person caused by the defendant's impaired  
10 driving 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 A conviction for another offense involving impaired driving, for which the  
18 conviction occurs after the date of the offense for which the defendant is presently being  
19 sentenced, but prior to or contemporaneously with the present sentencing, shall also  
20 constitute a prior conviction involving impaired driving for aggravation purposes of this  
21 subsection."

22 Sec. 11. G.S. 20-179(c) reads as rewritten:

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

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

42 If the judge determines that only one of the above grossly aggravating factors applies,  
43 he must impose the Level Two punishment under subsection (h). In imposing a Level  
44 One or Two punishment, the judge may consider the aggravating and mitigating factors

1 in subsections (d) and (e) in determining the appropriate sentence. If there are no  
2 grossly aggravating factors in the case, the judge must weigh all aggravating and  
3 mitigating factors and impose punishment as required by subsection (f)."

4 Sec. 12. G.S. 20-141.4(a1) reads as rewritten:

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

9 Sec. 13. G.S. 20-16.5 is amended by adding the following new subsection to  
10 read:

11 "(k1) Effect of DWI Acquittal. – If a person is acquitted of G.S. 20-138.1, 20-  
12 138.2, 20-138.3, 20-141.4, or 14-17 or 14-18 when the offense was based on impaired  
13 driving, the Division shall expunge the record of the civil revocation under G.S. 20-  
14 16.5, provided the person has not been convicted of an offense occurring during the  
15 civil revocation period."

16 Sec. 14. This act becomes effective October 1, 1993, and applies to all  
17 offenses committed on or after that date.