

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE DRS35150-ML-79 (02/11)

Short Title: Immediate License Revocation for Refusal. (Public)

Sponsors: Senators Brunstetter and Rabon (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE DIVISION OF MOTOR VEHICLES SHALL IMMEDIATELY REVOKE A PERSON'S DRIVERS LICENSE FOR REFUSING TO SUBMIT TO A CHEMICAL ANALYSIS PURSUANT TO G.S. 20-16.2 REGARDLESS OF WHETHER THE PERSON REQUESTS A HEARING BEFORE THE DIVISION IF CERTAIN CONDITIONS ARE MET.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-16.2(d) reads as rewritten:

"(d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon receipt of a properly executed affidavit required by subsection (c1), the Division shall expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division order. The person may request in writing a hearing before the Division, but the request shall not stay the revocation of the person's license to drive if a judicial official or clerk pursuant to subsections (e) or (f) of G.S. 20-16.5 determines there is probable cause to believe that each of the conditions listed in subdivisions (1) through (3) and sub-subdivision (4)a. of subsection (b) of G.S. 20-16.5 has been met. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. ~~If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing.~~ The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing shall be conducted in the county where the charge was brought, and shall be limited to consideration of whether:

- (1) The person was charged with an implied-consent offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;



- 1 (2) A law enforcement officer had reasonable grounds to believe that the person
- 2 had committed an implied-consent offense or violated the alcohol
- 3 concentration restriction on the drivers license;
- 4 (3) The implied-consent offense charged involved death or critical injury to
- 5 another person, if this allegation is in the affidavit;
- 6 (4) The person was notified of the person's rights as required by subsection (a);
- 7 and
- 8 (5) The person willfully refused to submit to a chemical analysis.

9 If the Division finds that the conditions specified in this subsection are met, it shall order the
10 revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not
11 met, it shall rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is
12 not met, it shall order the revocation sustained if that is the only condition that is not met; in
13 this instance subsection (d1) does not apply to that revocation. ~~If the revocation is sustained,~~
14 ~~the person shall surrender his or her license immediately upon notification by the Division."~~

15 **SECTION 2.** This act becomes effective September 1, 2013, and applies to
16 offenses committed on or after that date.