

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:

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

7 The General Assembly of North Carolina enacts:

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

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

- 33 (1) The person was charged with an implied-consent offense or the driver had an  
34 alcohol concentration restriction on the drivers license pursuant to  
35 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.