

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H.B. 148
Feb 20, 2023
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH30056-ML-68

Short Title: Driving/Reduce Legal BAC Level.

(Public)

Sponsors: Representative Clampitt.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO STOP IMPAIRED DRIVERS AND SAVE LIVES BY LOWERING THE LEGAL
3 BLOOD ALCOHOL CONCENTRATION LIMIT FOR OPERATING A VEHICLE OR
4 VESSEL.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 20-12.1(a)(2) reads as rewritten:

7 "(2) After having consumed sufficient alcohol to have, at any relevant time after
8 the driving, an alcohol concentration of ~~0.08~~0.05 or more."

9 **SECTION 2.** G.S. 20-16.2 reads as rewritten:

10 **"§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event
11 of refusal; right of driver to request analysis.**

12 (a) Basis for Officer to Require Chemical Analysis; Notification of Rights. – Any person
13 who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical
14 analysis if charged with an implied-consent offense. Any law enforcement officer who has
15 reasonable grounds to believe that the person charged has committed the implied-consent offense
16 may obtain a chemical analysis of the person.

17 Before any type of chemical analysis is administered the person charged shall be taken before
18 a chemical analyst authorized to administer a test of a person's breath or a law enforcement officer
19 who is authorized to administer chemical analysis of the breath, who shall inform the person
20 orally and also give the person a notice in writing that:

- 21 (1) You have been charged with an implied-consent offense. Under the
22 implied-consent law, you can refuse any test, but your drivers license will be
23 revoked for one year and could be revoked for a longer period of time under
24 certain circumstances, and an officer can compel you to be tested under other
25 laws.
- 26 (2) Repealed by Session Laws 2006-253, s. 15, effective December 1, 2006, and
27 applicable to offenses committed on or after that date.
- 28 (3) The test results, or the fact of your refusal, will be admissible in evidence at
29 trial.
- 30 (4) Your driving privilege will be revoked immediately for at least 30 days if you
31 refuse any test or the test result is ~~0.08~~0.05 or more, 0.04 or more if you were
32 driving a commercial vehicle, or 0.01 or more if you are under the age of 21.
- 33 (5) After you are released, you may seek your own test in addition to this test.
- 34 (6) You may call an attorney for advice and select a witness to view the testing
35 procedures remaining after the witness arrives, but the testing may not be
36 delayed for these purposes longer than 30 minutes from the time you are



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1 notified of these rights. You must take the test at the end of 30 minutes even
2 if you have not contacted an attorney or your witness has not arrived.

3 ...

4 (i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or
5 questioned by a law enforcement officer who is investigating whether the person may have
6 committed an implied consent offense may request the administration of a chemical analysis
7 before any arrest or other charge is made for the offense. Upon this request, the officer shall
8 afford the person the opportunity to have a chemical analysis of his or her breath, if available, in
9 accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the
10 person's consent to be transported by the law enforcement officer to the place where the chemical
11 analysis is to be administered. Before the chemical analysis is made, the person shall confirm the
12 request in writing and shall be notified:

- 13 (1) That the test results will be admissible in evidence and may be used against
14 you in any implied consent offense that may arise;
- 15 (2) Your driving privilege will be revoked immediately for at least 30 days if the
16 test result is ~~0.08~~0.05 or more, 0.04 or more if you were driving a commercial
17 vehicle, or 0.01 or more if you are under the age of 21.
- 18 (3) That if you fail to comply fully with the test procedures, the officer may charge
19 you with any offense for which the officer has probable cause, and if you are
20 charged with an implied consent offense, your refusal to submit to the testing
21 required as a result of that charge would result in revocation of your driving
22 privilege. The results of the chemical analysis are admissible in evidence in
23 any proceeding in which they are relevant."

24 **SECTION 3.** G.S. 20-16.5 reads as rewritten:

25 **"§ 20-16.5. Immediate civil license revocation for certain persons charged with**
26 **implied-consent offenses.**

27 ...

28 (b) Revocations for Persons Who Refuse Chemical Analyses or Who Are Charged With
29 Certain Implied-Consent Offenses. – A person's driver's license is subject to revocation under
30 this section ~~if~~if all of the following conditions are satisfied:

- 31 (1) A law enforcement officer has reasonable grounds to believe that the person
32 has committed an offense subject to the implied-consent provisions of ~~G.S.~~
33 ~~20-16.2;~~G.S. 20-16.2.
- 34 (2) The person is charged with that offense as provided in ~~G.S.~~
35 ~~20-16.2(a);~~G.S. 20-16.2(a).
- 36 (3) The law enforcement officer and the chemical analyst comply with the
37 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's
38 submission to or procuring a chemical ~~analysis;~~analysis.
- 39 (4) ~~The person;~~person does or has any of the following:
 - 40 a. Willfully refuses to submit to the chemical ~~analysis;~~analysis.
 - 41 b. Has an alcohol concentration of ~~0.08~~0.05 or more within a relevant
42 time after the ~~driving;~~driving.
 - 43 c. Has an alcohol concentration of 0.04 or more at any relevant time after
44 the driving of a commercial motor ~~vehicle;~~vehicle.
 - 45 d. Has any alcohol concentration at any relevant time after the driving
46 and the person is under 21 years of age.

47 (b1) Precharge Test Results as Basis for Revocation. – Notwithstanding the provisions of
48 subsection (b), a person's driver's license is subject to revocation under this section ~~if~~if all of the
49 following conditions are satisfied:

- 50 (1) The person requests a precharge chemical analysis pursuant to ~~G.S. 20-16.2(i);~~
51 ~~and~~G.S. 20-16.2(i).

- 1 (2) The person ~~has~~has any of the following:
- 2 a. An alcohol concentration of ~~0.08~~0.05 or more at any relevant time
- 3 after ~~driving~~driving.
- 4 b. An alcohol concentration of 0.04 or more at any relevant time after
- 5 driving a commercial motor ~~vehicle~~orvehicle.
- 6 c. Any alcohol concentration at any relevant time after driving and the
- 7 person is under 21 years of ~~age~~andage.
- 8 (3) The person is charged with an implied-consent offense.

9 "

10 **SECTION 4.** G.S. 20-17(a)(2)b. reads as rewritten:

11 "b. Impaired driving under G.S. 20-138.2, if the driver's alcohol

12 concentration level was ~~0.06~~0.04 or higher. For the purposes of this

13 sub-subdivision, the driver's alcohol concentration level result,

14 obtained by chemical analysis, shall be conclusive and is not subject

15 to modification by any party, with or without approval by the court."

16 **SECTION 5.** G.S. 20-138.1 reads as rewritten:

17 "**§ 20-138.1. Impaired driving.**

18 (a) Offense. – A person commits the offense of impaired driving if ~~he~~the person drives

19 any vehicle upon any highway, any street, or any public vehicular area within this ~~State~~State and

20 any of the following conditions are satisfied:

- 21 (1) ~~While~~The person was under the influence of an impairing ~~substance~~;
22 or substance.
- 23 (2) After having consumed sufficient alcohol that ~~he~~the person has, at any
- 24 relevant time after the driving, an alcohol concentration of ~~0.08~~0.05 or more.
- 25 The results of a chemical analysis shall be deemed sufficient evidence to prove
- 26 a person's alcohol ~~concentration~~orconcentration.
- 27 (3) ~~With~~The person had any amount of a Schedule I controlled substance, as
- 28 listed in G.S. 90-89, or its metabolites in his blood or urine.

29 (a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to

30 G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a

31 relevant time after driving, an alcohol concentration of ~~0.08~~0.05 or more.

32 "

33 **SECTION 6.** G.S. 20-139.1(b5) reads as rewritten:

34 "(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2,

35 to submit to a chemical analysis of the person's blood or other bodily fluid or substance in

36 addition to or in lieu of a chemical analysis of the breath, in the discretion of a law enforcement

37 officer; except that a person charged with a violation of G.S. 20-141.4 shall be requested, at any

38 relevant time after the driving, to provide a blood sample in addition to or in lieu of a chemical

39 analysis of the breath. However, if a breath sample shows an alcohol concentration of ~~0.08~~0.05

40 or more, then requesting a blood sample shall be in the discretion of a law enforcement officer.

41 If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again

42 be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful

43 refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful

44 refusal under G.S. 20-16.2. If a person willfully refuses to provide a blood sample under this

45 subsection, and the person is charged with a violation of G.S. 20-141.4, then a law enforcement

46 officer with probable cause to believe that the offense involved impaired driving or was an

47 alcohol-related offense made subject to the procedures of G.S. 20-16.2 shall seek a warrant to

48 obtain a blood sample. The failure to obtain a blood sample pursuant to this subsection shall not

49 be grounds for the dismissal of a charge and is not an appealable issue."

50 **SECTION 7.** G.S. 75A-10(b1) reads as rewritten:

1 "(b1) No person shall operate any vessel while underway on the waters of this ~~State:~~State
2 if any of the following apply:
3 (1) ~~While~~The person is under the influence of an impairing ~~substance,~~
4 or substance.
5 (2) After having consumed sufficient alcohol that the person has, at any relevant
6 time after the boating, an alcohol concentration of ~~0.08~~0.05 or more."
7 **SECTION 8.** This act becomes effective December 1, 2023, and applies to offenses
8 committed on or after that date.