

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

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HOUSE BILL 148

Short Title: Driving/Reduce Legal BAC Level. (Public)

Sponsors: Representative Clampitt.

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Judiciary 2, if favorable, Transportation, if favorable, Rules, Calendar, and Operations of the House

February 21, 2023

A BILL TO BE ENTITLED

AN ACT TO STOP IMPAIRED DRIVERS AND SAVE LIVES BY LOWERING THE LEGAL BLOOD ALCOHOL CONCENTRATION LIMIT FOR OPERATING A VEHICLE OR VESSEL.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

(1) You have been charged with an implied-consent offense. Under the implied-consent law, you can refuse any test, but your drivers license will be revoked for one year and could be revoked for a longer period of time under certain circumstances, and an officer can compel you to be tested under other laws.

(2) Repealed by Session Laws 2006-253, s. 15, effective December 1, 2006, and applicable to offenses committed on or after that date.

(3) The test results, or the fact of your refusal, will be admissible in evidence at trial.

(4) Your driving privilege will be revoked immediately for at least 30 days if you refuse any test or the test result is ~~0.08~~0.05 or more, 0.04 or more if you were driving a commercial vehicle, or 0.01 or more if you are under the age of 21.

(5) After you are released, you may seek your own test in addition to this test.



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- 1 (6) You may call an attorney for advice and select a witness to view the testing  
 2 procedures remaining after the witness arrives, but the testing may not be  
 3 delayed for these purposes longer than 30 minutes from the time you are  
 4 notified of these rights. You must take the test at the end of 30 minutes even  
 5 if you have not contacted an attorney or your witness has not arrived.

6 ...

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

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

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

28 "**§ 20-16.5. Immediate civil license revocation for certain persons charged with**  
 29 **implied-consent offenses.**

30 ...

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

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

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

- 4 (1) The person requests a precharge chemical analysis pursuant to ~~G.S. 20-16.2(i);~~  
 5 ~~and~~G.S. 20-16.2(i).  
 6 (2) The person ~~has~~has any of the following:  
 7 a. An alcohol concentration of ~~0.08~~0.05 or more at any relevant time  
 8 after ~~driving;~~driving.  
 9 b. An alcohol concentration of 0.04 or more at any relevant time after  
 10 driving a commercial motor ~~vehicle;~~or vehicle.  
 11 c. Any alcohol concentration at any relevant time after driving and the  
 12 person is under 21 years of ~~age;~~and age.  
 13 (3) The person is charged with an implied-consent offense.

14 ...."

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

16 "b. Impaired driving under G.S. 20-138.2, if the driver's alcohol  
 17 concentration level was ~~0.06~~0.04 or higher. For the purposes of this  
 18 sub-subdivision, the driver's alcohol concentration level result,  
 19 obtained by chemical analysis, shall be conclusive and is not subject  
 20 to modification by any party, with or without approval by the court."

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

22 "**§ 20-138.1. Impaired driving.**

23 (a) Offense. – A person commits the offense of impaired driving if ~~he~~the person drives  
 24 any vehicle upon any highway, any street, or any public vehicular area within this ~~State;~~State and  
 25 any of the following conditions are satisfied:

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

34 (a1) A person who has submitted to a chemical analysis of a blood sample, pursuant to  
 35 G.S. 20-139.1(d), may use the result in rebuttal as evidence that the person did not have, at a  
 36 relevant time after driving, an alcohol concentration of ~~0.08~~0.05 or more.

37 ...."

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

39 "(b5) Subsequent Tests Allowed. – A person may be requested, pursuant to G.S. 20-16.2,  
 40 to submit to a chemical analysis of the person's blood or other bodily fluid or substance in  
 41 addition to or in lieu of a chemical analysis of the breath, in the discretion of a law enforcement  
 42 officer; except that a person charged with a violation of G.S. 20-141.4 shall be requested, at any  
 43 relevant time after the driving, to provide a blood sample in addition to or in lieu of a chemical  
 44 analysis of the breath. However, if a breath sample shows an alcohol concentration of ~~0.08~~0.05  
 45 or more, then requesting a blood sample shall be in the discretion of a law enforcement officer.  
 46 If a subsequent chemical analysis is requested pursuant to this subsection, the person shall again  
 47 be advised of the implied consent rights in accordance with G.S. 20-16.2(a). A person's willful  
 48 refusal to submit to a chemical analysis of the blood or other bodily fluid or substance is a willful  
 49 refusal under G.S. 20-16.2. If a person willfully refuses to provide a blood sample under this  
 50 subsection, and the person is charged with a violation of G.S. 20-141.4, then a law enforcement  
 51 officer with probable cause to believe that the offense involved impaired driving or was an

1 alcohol-related offense made subject to the procedures of G.S. 20-16.2 shall seek a warrant to  
2 obtain a blood sample. The failure to obtain a blood sample pursuant to this subsection shall not  
3 be grounds for the dismissal of a charge and is not an appealable issue."

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

5 "(b1) No person shall operate any vessel while underway on the waters of this ~~State~~:State  
6 if any of the following apply:

7 (1) ~~While~~The person is under the influence of an impairing ~~substance,~~  
8 ~~or substance.~~

9 (2) After having consumed sufficient alcohol that the person has, at any relevant  
10 time after the boating, an alcohol concentration of ~~0.08~~0.05 or more."

11 **SECTION 8.** This act becomes effective December 1, 2023, and applies to offenses  
12 committed on or after that date.