

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

3

HOUSE BILL 134

Committee Substitute Favorable 3/1/95

Senate Judiciary I/Constitution Committee Substitute Adopted 5/25/95

Short Title: DMV/DOT Technical Changes.

(Public)

Sponsors:

Referred to:

February 8, 1995

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE MOTOR VEHICLE LAWS AND OTHER LAWS CONCERNING THE DEPARTMENT OF TRANSPORTATION, AND TO VALIDATE CERTAIN RECORDED INSTRUMENTS WHERE SEALS HAVE BEEN OMITTED.

The General Assembly of North Carolina enacts:

Section 1. 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 Charging 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. The charging officer must designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged must be taken before a chemical analyst

1 authorized to administer a test of a person's breath, who must inform the person orally
2 and also give the person a notice in writing that:

- 3 (1) ~~He~~The person has a right to refuse to be tested.
- 4 (2) Refusal to take any required test or tests will result in an immediate
5 revocation of ~~his~~the person's driving privilege for at least 10 days and
6 an additional 12-month revocation by the Division of Motor Vehicles.
- 7 (3) The test results, or the fact of ~~his~~the person's refusal, will be admissible
8 in evidence at trial on the offense charged.
- 9 (4) ~~His~~The person's driving privilege will be revoked immediately for at
10 least 10 days if:
- 11 a. The test reveals an alcohol concentration of 0.08 or more; or
- 12 b. ~~He~~The person was driving a commercial motor vehicle and the
13 test reveals an alcohol concentration of 0.04 or more.
- 14 (5) ~~He~~The person may ~~have a qualified person of his own choosing~~choose a
15 qualified person to administer a chemical test or tests in addition to any
16 test administered at the direction of the charging officer.
- 17 (6) ~~He~~The person has the right to call an attorney and select a witness to
18 view for him or her the testing procedures, but the testing may not be
19 delayed for these purposes longer than 30 minutes from the time ~~he~~
20 when the person is notified of his or her rights.

21 If the charging officer or an arresting officer is authorized to administer a chemical
22 analysis of a person's ~~breath and the charging officer designates a chemical analysis of the~~
23 ~~blood of the person charged,~~breath, the charging officer or the arresting officer may give
24 the person charged the oral and written notice of rights required by this subsection. This
25 authority applies regardless of the type of chemical analysis designated.

26 (a) Meaning of Terms. – Under this section, an 'implied-consent offense' is an
27 offense involving impaired driving or an alcohol-related offense made subject to the
28 procedures of this section. A person is 'charged' with an offense if ~~he~~the person is
29 arrested for it or if criminal process for the offense has been issued. A 'charging officer'
30 is a law-enforcement officer who arrests the person charged, lodges the charge, or assists
31 the officer who arrested the person or lodged the charge by assuming custody of the
32 person to make the request required by subsection (c) and, if necessary, to present the
33 person to a judicial official for an initial appearance.

34 (b) Unconscious Person May Be Tested. – If a charging officer has reasonable
35 grounds to believe that a person has committed an implied-consent offense, and the
36 person is unconscious or otherwise in a condition that makes ~~him~~the person incapable of
37 refusal, the charging officer may direct the taking of a blood sample by a person qualified
38 under G.S. 20-139.1 or may direct the administration of any other chemical analysis that
39 may be effectively performed. In this instance the notification of rights set out in
40 subsection (a) and the request required by subsection (c) are not necessary.

41 (c) Request to Submit to Chemical Analysis; Procedure upon Refusal. – The
42 charging officer, in the presence of the chemical analyst who has notified the person of
43 his or her rights under subsection (a), must request the person charged to submit to the

1 type of chemical analysis designated. If the person charged willfully refuses to submit to
2 that chemical analysis, none may be given under the provisions of this section, but the
3 refusal does not preclude testing under other applicable procedures of law. ~~Then~~ If the
4 person refuses to submit to the chemical analysis, the charging officer and the chemical
5 analyst must without unnecessary delay go before an official authorized to administer
6 oaths and execute an affidavit stating that the person charged, after being advised of his
7 or her rights under subsection (a), willfully refused to submit to a chemical analysis at the
8 request of the charging officer. The charging officer must immediately mail the affidavit
9 to the Division. If the person's refusal to submit to a chemical analysis occurs in a case
10 involving death or critical injury to another person, the charging officer must include that
11 fact in the affidavit mailed to the Division. If the charging officer is also the chemical
12 analyst who has notified the person of his or her rights under subsection (a), the charging
13 officer may perform alone the duties of this subsection.

14 (d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon
15 receipt of a properly executed affidavit required by subsection (c), the Division must
16 expeditiously notify the person charged that ~~his~~ the person's license to drive is revoked
17 for 12 months, effective on the tenth calendar day after the mailing of the revocation
18 order unless, before the effective date of the order, the person requests in writing a
19 hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person
20 shows to the satisfaction of the Division that his or her license was surrendered to the
21 court, and remained in the court's possession, then the Division shall credit the amount of
22 time for which the license was in the possession of the court against the 12-month
23 revocation period required by this subsection. If the person properly requests a hearing,
24 ~~he~~ the person retains his or her license, unless it is revoked under some other provision of
25 law, until the hearing is held, the person withdraws ~~his~~ the request, or ~~he~~ the person fails
26 to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or
27 documents ~~he~~ that the hearing officer deems necessary. The person may request the
28 hearing officer to subpoena the charging officer, the chemical analyst, or both to appear
29 at the hearing if ~~he~~ the person makes the request in writing at least three days before the
30 hearing. The person may subpoena any other witness ~~he~~ whom the person deems
31 necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of
32 all subpoenas issued under the authority of this section. The hearing officer is authorized
33 to administer oaths to witnesses appearing at the hearing. The hearing must be conducted
34 in the county where the charge was brought, and must be limited to consideration of
35 whether:

- 36 (1) The person was charged with an implied-consent offense;
- 37 (2) The charging officer had reasonable grounds to believe that the person
38 had committed an implied-consent offense;
- 39 (3) The implied-consent offense charged involved death or critical injury to
40 another person, if this allegation is in the affidavit;
- 41 (4) The person was notified of his or her rights as required by subsection
42 (a); and

- 1 (5) The person willfully refused to submit to a chemical analysis upon the
2 request of the charging officer.

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

10 (d1) Consequences of Refusal in Case Involving Death or Critical Injury. – If the
11 refusal occurred in a case involving death or critical injury to another person, no limited
12 driving privilege may be issued. The 12-month revocation begins only after all other
13 periods of revocation have terminated unless the person's license is revoked ~~pursuant to~~
14 under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those
15 sections, the revocation under this subsection begins at the time and in the manner
16 specified in subsection (d) for revocations under this section. However, the person's
17 eligibility for a hearing to determine if the revocation under those sections should be
18 rescinded is postponed for one year from the date ~~he~~ on which the person would
19 otherwise have been eligible for such a hearing. If the person's driver's license is again
20 revoked while the 12-month revocation under this subsection is in effect, that revocation,
21 whether imposed by a court or by the Division, may only take effect after the period of
22 revocation under this subsection has terminated.

23 (e) Right to Hearing in Superior Court. – If the revocation is sustained after the
24 hearing, the person whose license has been revoked has the right to file a petition in the
25 superior court for a hearing de novo upon the issues listed in subsection (d), in the same
26 manner and under the same conditions as provided in G.S. 20-25 except that the de novo
27 hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-
28 41.1 where the charge was made.

29 (e1) Limited Driving Privilege after Six Months in Certain Instances. – A person
30 whose driver's license has been revoked under this section may apply for and a judge
31 authorized to do so by this subsection may issue a limited driving privilege if:

- 32 (1) At the time of the refusal ~~he~~ the person held either a valid driver's
33 license or a license that had been expired for less than one year;
34 (2) At the time of the refusal, ~~he~~ the person had not within the preceding
35 seven years been convicted of an offense involving impaired driving;
36 (3) At the time of the refusal, ~~he~~ the person had not in the preceding seven
37 years willfully refused to submit to a chemical analysis under this
38 section;
39 (4) The implied-consent offense charged did not involve death or critical
40 injury to another person;
41 (5) The underlying charge for which the defendant was requested to submit
42 to a chemical analysis has been finally disposed of:
43 a. Other than by conviction; or

1 b. By a conviction of impaired driving under G.S. 20-138.1, at a
2 punishment level authorizing issuance of a limited driving
3 privilege under G.S. 20-179.3(b), and ~~he~~the defendant has
4 complied with at least one of the mandatory conditions of
5 probation listed for the punishment level under which ~~he~~the
6 defendant was sentenced;

7 (6) Subsequent to the refusal ~~he~~the person has had no unresolved pending
8 charges for or additional convictions of an offense involving impaired
9 driving; and

10 (7) ~~His~~The person's license has been revoked for at least six months for the
11 refusal.

12 Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the
13 procedure for application and conduct of the hearing and the restrictions required or
14 authorized to be included in the limited driving privilege apply to applications under this
15 subsection. If the case was finally disposed of in the district court, the hearing must be
16 conducted in the district court district as defined in G.S. 7A-133 in which the refusal
17 occurred by a district court judge. If the case was finally disposed of in the superior
18 court, the hearing must be conducted in the superior court district or set of districts as
19 defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A
20 limited driving privilege issued under this section authorizes a person to drive if ~~his~~the
21 person's license is revoked solely under this section or solely under this section and G.S.
22 20-17(2). If the person's license is revoked for any other reason, the limited driving
23 privilege is invalid.

24 (f) Notice to Other States as to Nonresidents. – When it has been finally
25 determined under the procedures of this section that a nonresident's privilege to drive a
26 motor vehicle in this State has been revoked, the Division must give information in
27 writing of the action taken to the motor vehicle administrator of the state of the person's
28 residence and of any state in which ~~he~~the person has a license.

29 (g) Repealed by Session Laws 1973, c. 914.

30 (h) Repealed by Session Laws 1979, c. 423, s. 2.

31 (i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or
32 questioned by a law-enforcement officer who is investigating whether the person may
33 have committed an implied-consent offense may request the administration of a chemical
34 analysis before any arrest or other charge is made for the offense. Upon this request, the
35 officer must afford the person the opportunity to have a chemical analysis of his or her
36 breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The
37 request constitutes the person's consent to be transported by the law-enforcement officer
38 to the place where the chemical analysis is to be administered. Before the chemical
39 analysis is made, the person must confirm ~~his~~the request in writing and ~~he~~ must be
40 notified:

41 (1) That the test results will be admissible in evidence and may be used
42 against ~~him~~the person in any implied-consent offense that may arise;

(2) That ~~his~~ the person's license will be revoked for at least 10 days if:

- a. The test reveals an alcohol concentration of 0.08 or more; or
- b. ~~He~~ The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.

(3) That if ~~he~~ the person fails to comply fully with the test procedures, the officer may charge ~~him~~ the person with any offense for which the officer has probable cause, and if ~~he~~ the person is charged with an implied-consent offense, ~~his~~ the person's refusal to submit to the testing required as a result of that charge would result in revocation of ~~his~~ the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Sec. 2. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the ~~Recreation and~~ Natural Heritage Trust Fund (~~RNHTF~~), (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	RNHTF - <u>NHTF</u>	
Historical Attraction	\$10	\$20	0	
In-State Collegiate Insignia	\$10	\$15	0	
Out-of-state Collegiate Insignia		\$10	0	\$15
Personalized	\$10	0	\$10	
Special Olympics	\$10	\$15	0	
State Attraction	\$10	\$20	0	
Wildlife Resources	\$10	\$10	0	
All other Special Plates	\$10	0	0."	

Sec. 3. G.S. 20-82 is repealed.

Sec. 4. G.S. 20-118(b)(12) reads as rewritten:

"(12) Subsections (b) and (e) of this section do not apply to a vehicle that meets one of the following descriptions, is hauling agricultural crops from the farm where they were grown to first market, is within 35 miles of that farm, does not operate on an interstate highway while hauling the crops, and does not exceed its registered weight:

- a. Is a five-axle combination with a gross weight of no more than 88,000 pounds, a single-axle weight of no more than 22,000 pounds, a tandem-axle weight of no more than 42,000 pounds, and a length of at least 51 feet between the first and last axles of the combination.
- b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13.

- 1 c. Is a four-axle combination with a gross weight that does not
2 exceed the limit set in subdivision (b)(3) of this section, a single-
3 axle weight of no more than 22,000 pounds, and a tandem-axle
4 weight of no more than 42,000 pounds."

5 Sec. 5. G.S. 20-297 reads as rewritten:

6 "**§ 20-297. Inspection of records, etc. Retention and inspection of certain records.**

7 (a) Vehicles. – A dealer must keep a record of all vehicles received by the dealer
8 and all vehicles sold by the dealer. The records must contain the information that the
9 Division requires.

10 (b) Inspection. – The Division may inspect the pertinent books, records, ~~letters~~
11 letters, and contracts of a licensee relating to any written complaint made to ~~him~~ against
12 ~~such~~ the Division against the licensee."

13 Sec. 6. G.S. 20-88(f) is repealed.

14 Sec. 7. G.S. 20-135.2B(b) reads as rewritten:

15 "(b) Subsection (a) of this section ~~shall not apply when:~~ does not apply in any of the
16 following circumstances:

17 (1) An adult is present in the bed or cargo area of the vehicle and is
18 supervising the ~~child;~~ child.

19 (2) The child is secured or restrained by a seat belt manufactured in
20 compliance with Federal Motor Vehicle Safety Standard No. 208,
21 installed to support a load strength of not less than 5,000 pounds for
22 each belt, and of a type approved by the ~~Commissioner;~~ Commissioner.

23 (3) An emergency situation ~~exists;~~ exists.

24 (4) The vehicle is being operated in a parade pursuant to a valid permit.

25 (5) The vehicle is being operated in an agricultural ~~enterprise;~~ or enterprise.

26 (6) ~~the~~ The vehicle is being operated in a county ~~which~~ that has no
27 incorporated area with a population in excess of 3,500."

28 Sec. 8. G.S. 20-141.3(a) reads as rewritten:

29 "(a) It shall be unlawful for any person to operate a motor vehicle on a street or
30 highway willfully in prearranged speed competition with another motor vehicle. Any
31 person violating the provisions of this subsection shall be guilty of a Class ~~2-1~~
32 1 misdemeanor."

33 Sec. 9. G.S. 20-141.3(b) reads as rewritten:

34 "(b) It shall be unlawful for any person to operate a motor vehicle on a street or
35 highway willfully in speed competition with another motor vehicle. Any person willfully
36 violating the provisions of this subsection shall be guilty of a Class ~~1-2~~ 2 misdemeanor."

37 Sec. 10. G.S. 20-183.2(b)(5) reads as rewritten:

38 "(5) It meets any of the following descriptions:

39 a. It is required to be registered in an emissions county.

40 b. It is part of a fleet that is operated primarily in an emissions
41 county.

42 c. It is offered for rent in an emissions county.

- 1 d. It is offered for sale by a dealer in an emissions ~~county~~ county
2 and is not a new vehicle that has not been titled.
3 e. It is operated on a federal installation located in an emissions
4 county and it is not a tactical military vehicle. Vehicles operated
5 on a federal installation include those that are owned or leased by
6 employees of the installation and are used to commute to the
7 installation and those owned or operated by the federal agency
8 that conducts business at the installation.
9 f. It is otherwise required by 40 C.F.R. Part 51 to be subject to an
10 emissions inspection."

11 Sec. 11. G.S. 20-183.8C(c) reads as rewritten:

12 "(c) Type III. – It is a Type III violation for an emissions self-inspector, an
13 emissions inspection station, or an emissions inspection mechanic to do any of the
14 following:

- 15 (1) Fail to post an emissions license issued by the Division.
16 (2) Fail to send information on emissions inspections to the Division at the
17 time or in the form required by the Division."

18 Sec. 12. G.S. 20-183.12 is repealed.

19 Sec. 13. G.S. 20-305(5)b.6. reads as rewritten:

20 "6. Whether the establishment of an additional new
21 motor vehicle dealer or relocation of an existing new
22 motor vehicle dealer in the relevant market area would
23 increase competition in a manner such as to be in the
24 long-term public interest; and".

25 Sec. 14. G.S 136-66.1(4) reads as rewritten:

26 "(4) If the governing body of any municipality ~~shall determine~~ determines that
27 it is in the best interest of its citizens to do so, it may expend its funds
28 for the purpose of making any of the following improvements on streets
29 that are within its corporate limits ~~which~~ and form a part of the State
30 highway system:

- 31 a. Construction of curbing and ~~guttering~~ guttering.
32 b. Adding of lanes for automobile ~~parking~~ parking.
33 c. Constructing street drainage facilities which may by reasonable
34 engineering estimates be attributable to that amount of surface
35 water collected upon and flowing from municipal streets which
36 do not form a part of the State highway ~~system~~ system.
37 d. Constructing sidewalks.
38 e. Intersection improvements, if the governing body determines that
39 such improvements will decrease traffic congestion, improve
40 safety conditions, and improve air quality.

41 In exercising the authority granted herein, the municipality may,
42 with the consent of the Department of Transportation, perform
43 the work itself, or it may enter into a contract with the

1 Department of Transportation to perform such work. Any work
2 authorized by this subdivision shall be financed entirely by the
3 municipality and be approved by the Department of
4 Transportation.

5 The cost of any work financed by a municipality pursuant to
6 under this subdivision may be assessed against the properties
7 abutting the street or highway upon which such work was
8 performed in accordance with the procedures of either Article 10
9 of Chapter 160A of the General Statutes or any charter
10 provisions or local acts applicable to the particular municipality."

11 Sec. 15. G.S. 136-92 reads as rewritten:

12 **"§ 136-92. Obstructing highway drains misdemeanor. prohibited.**

13 ~~Any person who shall obstruct any drains~~ It is unlawful to obstruct a drain along or
14 leading from any public road in the State shall be guilty of a Class 3 misdemeanor, and
15 ~~punished only by a fine of not less than ten (\$10.00) nor more than one hundred dollars~~
16 ~~(\$100.00). State. A person who violates this section is responsible for an infraction."~~

17 Sec. 16. G.S. 47-108.11 reads as rewritten:

18 **"§ 47-108.11. Validation of recorded instruments where seals have been omitted.**

19 In all cases of any deed, deed of trust, mortgage, lien or other instrument authorized or
20 required to be registered in the office of the register of deeds of any county in this State
21 where it appears of record or it appears that from said instrument, as recorded in the
22 office of the register of deeds of any county in the State, there has been omitted from said
23 recorded or registered instrument the word 'seal,' 'notarial seal' and that any of said
24 recorded or registered instruments shows or recites that the grantor or grantors 'have
25 hereunto fixed or set their hands and seals' and the signature of the grantor or grantors
26 appears without a seal thereafter or on the recorded or registered instrument or in all
27 cases where it appears there is an attesting clause which recites 'signed, sealed and
28 delivered in the presence of,' and the signature of the grantor or grantors appears on the
29 recorded or registered instrument without any seal appearing thereafter or of record, then
30 all such deeds, mortgages, deeds of trust, liens or other instruments, and the registration
31 of same in the office of the register of deeds, are hereby declared to be in all respects
32 valid and binding and are hereby made in all respects valid and binding to the same
33 extent as if the word 'seal' or 'notarial seal' had not been omitted, and the registration and
34 recording of such instruments in the office of the register of deeds in any county in this
35 State are hereby declared to be valid, proper, legal and binding registrations.

36 This section shall not apply in any respect to any instrument recorded or registered
37 subsequent to January 1, ~~1991, 1995~~ or to pending litigation or to any such instruments
38 now directly or indirectly involved in pending litigation."

39 Sec. 17. Sections 8, 9, and 15 of this act become effective July 1, 1995, and
40 apply to offenses occurring on or after that date. The remainder of this act is effective
41 upon ratification.