

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

H

1

HOUSE BILL 662*

Short Title: DWI Civil License Revocation.

(Public)

Sponsors: Representatives Privette; Arnold, Barbee, Creech, Cromer, Culp, Decker, L. Etheridge, Hege, Howard, Isenhower, Kimsey, Lail, Rhodes, Sizemore, Stam, Weatherly, and G. Wilson.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE IMMEDIATE CIVIL LICENSE REVOCATION FOR CERTAIN PERSONS CHARGED WITH IMPLIED-CONSENT OFFENSES FROM TEN DAYS TO THIRTY DAYS AND FOR CERTAIN OTHER PERSONS FROM THIRTY DAYS TO SIXTY DAYS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present.—If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official must, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he must enter an order revoking the person's driver's license for the period required in this subsection. The judicial official must order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official must give the person a copy of the revocation order. In addition to setting it out in the order the judicial official must personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. Unless the person is not currently licensed, the revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for ~~40~~30 days and the person has paid the applicable costs. If the person is not currently licensed, the revocation continues until ~~40~~30 days from the date the revocation order is issued

1 and the person has paid the applicable costs. If within five working days of the effective
2 date of the order, the person does not surrender his license or demonstrate that he is not
3 currently licensed, the clerk must immediately issue a pick-up order. The pick-up order
4 must be issued to a member of a local law-enforcement agency if the charging officer
5 was employed by the agency at the time of the charge and the person resides in or is
6 present in the agency's territorial jurisdiction. In all other cases, the pick-up order must
7 be issued to an officer or inspector of the Division. A pick-up order issued pursuant to
8 this section is to be served in accordance with G.S. 20-29 as if the order had been issued
9 by the Division."

10 Sec. 2. G.S. 20-16.5(f) reads as rewritten:

11 "(f) Procedure if Report Filed with Clerk of Court When Person Not Present.—
12 When a clerk receives a properly executed report under subdivision (d)(3) and the
13 person named in the revocation report is not present before the clerk, the clerk must
14 determine whether there is probable cause to believe that each of the conditions of
15 subsection (b) has been met. If he determines that there is such probable cause, he must
16 mail to the person a revocation order by first-class mail. The order must direct that the
17 person on or before the effective date of the order either surrender his license to the
18 clerk or appear before the clerk and demonstrate that he is not currently licensed, and
19 the order must inform the person of the time and effective date of the revocation and of
20 its duration, of his right to a hearing as specified in subsection (g), and that the
21 revocation remains in effect pending the hearing. Revocation orders mailed under this
22 subsection become effective on the fourth day after the order is deposited in the United
23 States mail. If within five working days of the effective date of the order, the person
24 does not surrender his license to the clerk or appear before the clerk to demonstrate that
25 he is not currently licensed, the clerk must immediately issue a pick-up order. The pick-
26 up order must be issued and served in the same manner as specified in subsection (e) for
27 pick-up orders issued pursuant to that subsection. A revocation under this subsection
28 begins at the date specified in the order and continues until the person's license has been
29 revoked for the period specified in this subsection and the person has paid the applicable
30 costs. The period of revocation under this subsection is:

31 (1) ~~Ten~~ Thirty days from the time the person surrenders his
32 license to the court, if the surrender occurs within five working days
33 of the effective date of the order; or

34 (2) ~~Ten~~ Thirty days after the person appears before the clerk and
35 demonstrates that he is not currently licensed to drive, if the
36 appearance occurs within five working days of the effective date of
37 the revocation order; or

38 (3) ~~Thirty~~ Sixty days from the time:

39 a. The person's driver's license is picked up by a law-
40 enforcement officer following service of a pick-up order; or

41 b. The person demonstrates to a law-enforcement
42 officer who has a pick-up order for his license that he is not
43 currently licensed; or

1 c. The person's driver's license is surrendered to the
2 court if the surrender occurs more than five working days
3 after the effective date of the revocation order; or

4 d. The person appears before the clerk to demonstrate
5 that he is not currently licensed, if he appears more than five
6 working days after the effective date of the revocation order.

7 When a pick-up order is issued, it must inform the person of his right to a hearing as
8 specified in subsection (g), and that the revocation remains in effect pending the
9 hearing. An officer serving a pick-up order under this subsection must return the order
10 to the court indicating the date it was served or that he was unable to serve the order. If
11 the license was surrendered, the officer serving the order must deposit it with the clerk
12 within three days of the surrender."

13 Sec. 3. G.S. 20-28(a1) reads as rewritten:

14 "(a1) A person convicted under subsection (a) shall be punished as if he had been
15 convicted of driving without a driver's license under G.S. 20-7 if he demonstrates to the
16 court that:

17 (1) At the time of the offense, his license was revoked solely
18 under G.S. 20-16.5; and

19 (2) a. The offense occurred more than ~~30~~60 days
20 after the effective date of a revocation order issued under G.S.
21 20-16.5(f) and the period of revocation was 30 days as
22 provided under subdivision (3) of that subsection; or

23 b. The offense occurred more than ~~10~~30 days after the
24 effective date of the revocation order issued under any other
25 provision of G.S. 20-16.5.

26 In addition, a person punished under this subsection shall be treated for driver's license
27 and insurance rating purposes as if he had been convicted of driving without a license
28 under G.S. 20-7, and the conviction report sent to the Division must indicate that the
29 person is to be so treated."

30 Sec. 4. G.S. 20-16.2(a) reads as rewritten:

31 "(a) Basis for Charging Officer to Require Chemical Analysis; Notification of
32 Rights.—Any person who drives a vehicle on a highway or public vehicular area thereby
33 gives consent to a chemical analysis if he is charged with an implied-consent offense.
34 The charging officer must designate the type of chemical analysis to be administered,
35 and it may be administered when he has reasonable grounds to believe that the person
36 charged has committed the implied-consent offense. Except as provided in subsection
37 (b), the person charged must be taken before a chemical analyst authorized to administer
38 a test of a person's breath, who must inform the person orally and also give him a notice
39 in writing that:

40 (1) He has a right to refuse to be tested.

41 (2) Refusal to take any required test or tests will result in an
42 immediate revocation of his driving privilege for at least ~~10~~30 days
43 and an additional 12-month revocation by the Division of Motor
44 Vehicles.

1 (3) The test results, or the fact of his refusal, will be admissible
2 in evidence at trial on the offense charged.

3 (4) If any test reveals an alcohol concentration of 0.10 or more,
4 his driving privilege will be revoked immediately for at least ~~10~~30
5 days.

6 (5) He may have a qualified person of his own choosing
7 administer a chemical test or tests in addition to any test
8 administered at the direction of the charging officer.

9 (6) He has the right to call an attorney and select a witness to
10 view for him the testing procedures, but the testing may not be
11 delayed for these purposes longer than 30 minutes from the time he
12 is notified of his rights."

13 Sec. 5. G.S. 20-16.2(i) reads as rewritten:

14 "(i) Right to Chemical Analysis before Arrest or Charge.—A person stopped or
15 questioned by a law-enforcement officer who is investigating whether the person may
16 have committed an implied-consent offense may request the administration of a
17 chemical analysis before any arrest or other charge is made for the offense. Upon this
18 request, the officer must afford the person the opportunity to have a chemical analysis
19 of his breath, if available, in accordance with the procedures required by G.S. 20-
20 139.1(b). The request constitutes the person's consent to be transported by the law-
21 enforcement officer to the place where the chemical analysis is to be administered.
22 Before the chemical analysis is made, the person must confirm his request in writing
23 and he must be notified:

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

26 (2) That his license will be revoked for at least ~~10~~30 days if the
27 test reveals an alcohol concentration of 0.10 or more; and

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

35 Sec. 6. G.S. 20-16.5(k) reads as rewritten:

36 "(k) Report to Division.—Except as provided below, the clerk must mail a report to
37 the Division within 10 working days of the return of a license under this section or of
38 the termination of a revocation of the driving privilege of a person not currently
39 licensed. The report must identify the person whose license has been revoked and
40 specify the dates on which his license was revoked. No report need be made to the
41 Division, however, if there was a surrender of the driver's license issued by the
42 Division, a ~~ten-day~~30-day minimum revocation was imposed, and the license was
43 properly returned to the person under subsection (h) within five working days after the
44 10-day period had elapsed."

1 Sec. 7. This act shall become effective October 1, 1989.