

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 613

Short Title: DWI Civil License Revocation.

(Public)

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Sponsors: Representatives Privette; and Justus.

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Referred to: Judiciary III.

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April 8, 1991

A BILL TO BE ENTITLED

1 AN ACT TO INCREASE THE IMMEDIATE CIVIL LICENSE REVOCATION FOR  
2 CERTAIN PERSONS CHARGED WITH IMPLIED-CONSENT OFFENSES  
3 FROM TEN DAYS TO THIRTY DAYS AND FOR CERTAIN OTHER PERSONS  
4 FROM THIRTY DAYS TO SIXTY DAYS.  
5

6 The General Assembly of North Carolina enacts:

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

8 "(e) Procedure if Report Filed with Judicial Official When Person Is Present. – If  
9 a properly executed revocation report concerning a person is filed with a judicial official  
10 when the person is present before that official, the judicial official must, after  
11 completing any other proceedings involving the person, determine whether there is  
12 probable cause to believe that each of the conditions of subsection (b) has been met. If  
13 he determines that there is such probable cause, he must enter an order revoking the  
14 person's driver's license for the period required in this subsection. The judicial official  
15 must order the person to surrender his license and if necessary may order a law-  
16 enforcement officer to seize the license. The judicial official must give the person a  
17 copy of the revocation order. In addition to setting it out in the order the judicial official  
18 must personally inform the person of his right to a hearing as specified in subsection (g),  
19 and that his license remains revoked pending the hearing. Unless the person is not  
20 currently licensed, the revocation under this subsection begins at the time the revocation  
21 order is issued and continues until the person's license has been surrendered for ~~10-30~~  
22 days and the person has paid the applicable costs. If the person is not currently licensed,  
23 the revocation continues until ~~10-30~~ days from the date the revocation order is issued  
24 and the person has paid the applicable costs. If within five working days of the effective

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

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

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

- 30           (1) ~~Ten~~Thirty days from the time the person surrenders his  
31 license to the court, if the surrender occurs within five working days  
32 of the effective date of the order; or  
33           (2) ~~Ten~~Thirty days after the person appears before the clerk and  
34 demonstrates that he is not currently licensed to drive, if the  
35 appearance occurs within five working days of the effective date of  
36 the revocation order; or  
37           (3) ~~Thirty~~Sixty days from the time:  
38           a. The person's driver's license is picked up by a law-  
39 enforcement officer following service of a pick-up order; or  
40           b. The person demonstrates to a law-enforcement  
41 officer who has a pick-up order for his license that he is not  
42 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  
33 thereby gives consent to a chemical analysis if he is charged with an implied-consent  
34 offense. The charging officer must designate the type of chemical analysis to be  
35 administered, and it may be administered when he has reasonable grounds to believe  
36 that the person charged has committed the implied-consent offense. Except as provided  
37 in subsection (b), the person charged must be taken before a chemical analyst authorized  
38 to administer a test of a person's breath, who must inform the person orally and also  
39 give him a notice 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) His driving privilege will be revoked immediately for at  
4 least ~~10~~30 days if:
- 5 a. The test reveals an alcohol concentration of 0.10 or more; or  
6 b. He was driving a commercial motor vehicle and the test reveals  
7 an alcohol concentration of 0.04 or more.
- 8 (5) He may have a qualified person of his own choosing  
9 administer a chemical test or tests in addition to any test  
10 administered at the direction of the charging officer.
- 11 (6) He has the right to call an attorney and select a witness to  
12 view for him the testing procedures, but the testing may not be  
13 delayed for these purposes longer than 30 minutes from the time he  
14 is notified of his rights."

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

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

- 26 (1) That the test results will be admissible in evidence and may  
27 be used against him in any implied-consent offense that may arise;
- 28 (2) That his license will be revoked for at least ~~10~~30 days if:
- 29 a. The test reveals an alcohol concentration of 0.10 or more; or  
30 b. He was driving a commercial vehicle and the test results reveal  
31 an alcohol concentration of 0.04 or more.
- 32 (3) That if he fails to comply fully with the test procedures, the  
33 officer may charge him with any offense for which the officer has  
34 probable cause, and if he is charged with an implied-consent offense,  
35 his refusal to submit to the testing required as a result of that charge  
36 would result in revocation of his driver's license. The results of the  
37 chemical analysis are admissible in evidence in any proceeding in  
38 which they are relevant."

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

40 "(k) Report to Division. – Except as provided below, the clerk must mail a report  
41 to the Division within 10 working days of the return of a license under this section or of  
42 the termination of a revocation of the driving privilege of a person not currently  
43 licensed. The report must identify the person whose license has been revoked and  
44 specify the dates on which his license was revoked. No report need be made to the

1 Division, however, if there was a surrender of the driver's license issued by the  
2 Division, a ~~ten-day~~ 30-day minimum revocation was imposed, and the license was  
3 properly returned to the person under subsection (h) within five working days after the  
4 10-day period had elapsed."

5           Sec. 7. This act becomes effective October 1, 1991.