

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 206
SENATE BILL 86

AN ACT PERTAINING TO MANDATORY LICENSE REVOCATION OF DRIVING
PRIVILEGE FOR FAILING TO SUBMIT TO BREATH TEST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-16.2 is hereby rewritten to read as follows:

"§ 20-16.2. Mandatory revocation of license in event of refusal to submit to chemical tests. — (a) Any person who drives or operates a motor vehicle upon any highway or any public vehicular area shall be deemed to have given consent, subject to the provisions of G.S. 20-139.1, to a chemical test or tests of his breath or blood for the purpose of determining the alcoholic content of his blood if arrested for any offense arising out of acts alleged to have been committed while the person was driving or operating a motor vehicle while under the influence of intoxicating liquor. The test or tests shall be administered at the request of a law enforcement officer having reasonable grounds to believe the person to have been driving or operating a motor vehicle on a highway or public vehicular area while under the influence of intoxicating liquor. The law enforcement officer shall designate which of the aforesaid tests shall be administered. The person arrested shall forthwith be taken before a person authorized to administer a chemical test and this person shall inform the person arrested both verbally and in writing and shall furnish the person a signed document setting out:

- (1) That he has a right to refuse to take the test;
- (2) That refusal to take the test will result in revocation of his driving privilege for six months.
- (3) That he may have a physician, qualified technician, chemist, registered nurse or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of the law enforcement officer; and
- (4) That he has the right to call an attorney and select a witness to view for him the testing procedures; but that the test shall not be delayed for this purpose for a period in excess of 30 minutes from the time he is notified of his rights.

(b) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (a) of this section and the test or tests may be administered, subject to the provisions of G.S. 20-139.1.

(c) The arresting officer, in the presence of the person authorized to administer a chemical test, shall request that the person arrested submit to a test described in subsection (a). If the person arrested willfully refuses to submit to the chemical test designated by the arresting officer, none shall be given. However, upon the receipt of a sworn report of the arresting officer and the person authorized to administer a chemical test that the person arrested, after being advised of his rights as set forth in subsection (a), willfully refused to submit to the test upon the request of the officer, the Department shall revoke the driving privilege of the person arrested for a period of six months.

(d) Upon receipt of the sworn report required by G.S. 20-16.2(c) the Department shall immediately notify the arrested person that his license to drive is revoked immediately unless

said person requests in writing within three days of receipt of notice of revocation a hearing. If at least three days prior to hearing, the licensee shall so request of the hearing officer, the hearing officer shall subpoena the arresting officer and any other witnesses requested by the licensee to personally appear and give testimony at the hearing. If such person requests in writing a hearing, he shall retain his license until after the hearing. The hearing shall be conducted in the county where the arrest was made under the same conditions as hearings are conducted under the provisions of G.S. 20-16(d) except that the scope of such hearing for the purpose of this section shall cover the issues of whether the law enforcement officer had reasonable grounds to believe the person had been driving or operating a motor vehicle upon a highway or public vehicular area while under the influence of intoxicating liquor, whether the person was placed under arrest, and whether he willfully refused to submit to the test upon the request of the officer. Whether the person was informed of his rights under the provision of N.C. G.S. 20-16.2(a)(1), (2), (3), (4) shall be an issue. The Department shall order that the revocation either be rescinded or sustained. If the revocation is sustained, the person shall surrender his license immediately upon notification.

(e) If the revocation is sustained after such a hearing, the person whose driving privilege has been revoked, under the provisions of this section, shall have the right to file a petition in the superior court for a hearing de novo to review the action of the Department in the same manner and under the same conditions as is provided in G.S. 20-25.

(f) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this State has been revoked, the Department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license.

(g) Any revocation imposed under the provisions of this act shall run concurrently with any revocations issued under the provisions of G.S. 20-16.3."

Sec. 2. Subsection (g) of G.S. 20-16.2 as it appears in the Cumulative Supplement of Volume 1-C of the General Statutes is hereby reenacted as Subsection (g).

Sec. 3. This act shall be effective on June 1, 1973.

In the General Assembly read three times and ratified, this the 17th day of April, 1973.