

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 1112
HOUSE BILL 2489

AN ACT TO ESTABLISH THE OFFENSE OF IMPAIRED DRIVING IN COMMERCIAL MOTOR VEHICLES, TO ASSESS A FEE FOR LICENSE REVOCATION FOR THE OFFENSE, AND TO INCREASE THE FEE FOR A CLASS A OR CLASS B LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(3c) 'Commercial Motor Vehicle.' A vehicle: (a) which requires the driver to possess a valid Class A or Class B driver's license, or a similar driver's license issued by another state; or (b) which is a school bus, school activity bus, church bus, farm bus, ambulance, volunteer transportation vehicle, activity bus operated for a nonprofit organization when the activity bus is operated for a nonprofit purpose, or a fire-fighting vehicle or combination of vehicles when operated by any volunteer member of a municipal or rural fire department in the performance of his duty."

Sec. 2. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(12a) Gross Vehicle Weight. – The gross vehicle weight is the registered or declared weight of the vehicle. If no weight is registered or declared, then the gross vehicle weight is the actual weight of the vehicle."

Sec. 3. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. – Any of the following offenses:

- a. Impaired driving under G.S. 20-138.1.
- b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.
- c. Second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.
- d. An offense committed in another jurisdiction substantially equivalent to the offenses in subparagraphs a through c.
- e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.
- f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Sec. 4. G.S. 20-7(a) reads as rewritten:

"(a) Except as otherwise provided in this Article, no person shall operate a motor vehicle on a highway unless such person has first been licensed by the Division under the provisions of this Article for the type or class of vehicle being driven. Drivers' licenses shall be classified as follows:

- (1) Class 'A' which entitles a licensee to drive any vehicle or combination of vehicles, except motorcycles, including all vehicles under Classes 'B' or 'C.'
- (2) Class 'B' which entitles a licensee to drive a single vehicle weighing over ~~30,000~~26,000 pounds gross vehicle weight, any such vehicle towing a vehicle weighing 10,000 pounds gross vehicle weight or less, a single vehicle designed to carry more than 12 passengers and all vehicles under Class 'C.' A Class 'B' license does not entitle the licensee to drive a motorcycle.
- (3) Class 'C' which entitles a licensee to drive a single vehicle weighing ~~30,000~~26,000 pounds gross vehicle weight or less; any such vehicle towing a vehicle weighing 10,000 pounds gross vehicle weight or less; a church bus, farm bus, volunteer transportation vehicle, or activity bus operated for a nonprofit organization when the activity bus is operated for a nonprofit purpose; and a fire-fighting vehicle or combination of vehicles (regardless of gross vehicle weight) when operated by any volunteer member of a municipal or rural fire department in the performance of his duty. A Class 'C' license does not entitle the licensee to drive a motorcycle. A Class 'C' license does not entitle the licensee to drive a vehicle designed to carry more than ~~12~~15 passengers unless this subsection or G.S. 20-218(a) specifically entitles him to do so.

The driver of any vehicle transporting hazardous materials as determined by Sec. 103 of The Hazardous Material Transportation Act, as amended, must possess a Class A or a Class B driver's license.

Any unusual vehicle shall be assigned by the Commissioner to the most appropriate class with suitable special restrictions if they appear to be necessary.

Any person who takes up residence in this State on a permanent basis is exempt from the provisions of this subsection for 30 days from the date that residence is established, if he is properly licensed in the jurisdiction of which he is a former resident."

Sec. 5. G.S. 20-7(i) reads as rewritten:

"(i) The fee for issuance or reissuance of a Class 'C' license is ten dollars (\$10.00). The fee for issuance or reissuance of a Class 'B' or Class 'A' license is ~~fifteen dollars (\$15.00)~~ twenty dollars (\$20.00). A person receiving at the same time a driver's license and an endorsement pursuant to G.S. 20-7(a1) shall be charged only the fee required for the class of driver's license he is receiving."

Sec. 6. G.S. 20-16.2(a)(4) reads as rewritten:

"(4) ~~If any test reveals an alcohol concentration of 0.10 or more, h~~ His driving privilege will be revoked immediately for at least 10 days ~~if:~~

a. The test reveals an alcohol concentration of 0.10 or more, or

b. He was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more."

Sec. 7. G.S. 20-16.2(i)(2) reads as rewritten:

"(2) That his license will be revoked for at least 10 days if:

a. ~~T~~the test reveals an alcohol concentration of 0.10 or more; ~~and or~~

b. He was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more."

Sec. 8. The catch line of G.S. 20-16.5(b) reads as rewritten: "Revocations for Persons Who Refuse Chemical Analyses or Have Alcohol Concentrations of ~~0.10~~ 0.04 or More. –"

Sec. 9. G.S. 20-16.5(b)(4) reads as rewritten:

"(4) The person:

a. Willfully refuses to submit to the chemical analysis; or

b. Has an alcohol concentration of 0.10 or more within a relevant time after the driving ~~;~~ or

c. Has an alcohol concentration of 0.04 or more within a relevant time after the driving of a commercial motor vehicle."

Sec. 10. G.S. 20-16.5(b1)(2) reads as rewritten:

"(2) He has ~~, at any relevant time after the driving, a;~~

a. An alcohol concentration of 0.10 or more at any relevant time after the driving; or

b. An alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle; and"

Sec. 11. G.S. 20-16.5(j) reads as rewritten:

"(j) Costs. – Unless the magistrate or judge orders the revocation rescinded, a person whose license is revoked under this section must pay a fee of twenty-five dollars (\$25.00) as costs for the action before his license may be returned under subsection (h); provided, however, if the revocation is pursuant to G.S. 20-16.5(b)(4)c. or G.S. 20-16.5(b1)(2)b., the fee shall be fifty dollars (\$50.00). The costs collected under this section go to the State."

Sec. 12. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-17.4. Mandatory Revocation of a Class A or Class B License. – The Division shall forthwith revoke the Class A or Class B license of any driver upon receiving a record of a final conviction of such driver for impaired driving in a commercial vehicle under G.S. 20-138.2. Under this section only, a final conviction of any driver for violating G.S. 20-138.1 shall not be grounds for revoking the license of such driver."

Sec. 13. G.S. 20-19 is amended by adding a new subsection to read:

"(c2) When a license is revoked under G.S. 20-17.4, the period of suspension shall be for one year for the first conviction of G.S. 20-138.2, 10 years for the second

conviction of G.S. 20-138.2, and for life for a third or subsequent conviction of G.S. 20-138.2. This period of suspension applies only to a Class A or Class B license and not to a Class C license."

Sec. 14. G.S. 20-26 is amended by adding a new subsection to read:

"(b1) The registered or declared weight set forth on the vehicle registration card or a certified copy of the Division record sent by the Police Information Network or otherwise is admissible in any judicial or administrative proceeding and shall be prima facie evidence of the registered or declared weight."

Sec. 15. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-138.2. Impaired driving in commercial vehicle. – (a) Offense. – A person commits the offense of impaired driving in a commercial motor vehicle if he drives a commercial motor vehicle upon any highway, any street, or any public vehicular area within the State:

- (1) While appreciably under the influence of an impairing substance; or
- (2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.04 or more.

(b) Defense Precluded. – The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section.

(c) Pleading. – To charge a violation of this section, the pleading is sufficient if it states the time and place of the alleged offense in the usual form and charges the defendant drove a commercial motor vehicle on a highway, street, or public vehicular area while subject to an impairing substance.

(d) Implied Consent Offense. – An offense under this section is an implied consent offense subject to the provisions of G.S. 20-16.2.

(e) Punishment; Effect When Impaired Driving Offense Also Charged. – The offense in this section is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100.00), up to two years imprisonment, or both. This offense is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving under G.S. 20-138.1 arising out of the same transaction, the aggregate punishment imposed by the Court may not exceed the maximum punishment applicable to the offense involving impaired driving under G.S. 20-138.1.

(f) Limited Driving Privilege. – A person convicted of the offense of impaired driving under this section is eligible for a limited driving privilege if:

- (1) At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;
- (2) At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;
- (3) Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving.

- (4) The court finds slight impairment of the defendant's faculties, and an alcohol concentration that did not exceed .10 at any relevant time after the driving.

The limited driving privilege under this section shall be issued for the purposes specified in G.S. 20-179.3(a) and according to the procedure in G.S. 20-179.3(d) and G.S. 20-179.3(f)-(k).

(g) The provisions of G.S. 20-139.1 shall apply to the offense of impaired driving in a commercial motor vehicle."

Sec. 16. G.S. 20-138.4 reads as rewritten:

"§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge involving impaired driving. – In any case in which a person is charged with an offense involving impaired driving, Any prosecutor must enter detailed facts in the record of any case involving impaired driving explaining the reasons for his action if he:

- (1) Enters a voluntary dismissal; or
- (2) Accepts a plea of guilty or no contest to a lesser included offense; or
- (3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not an offense involving impaired driving; or
- (4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in the case involving impaired driving.

General explanations such as 'interests of justice' or 'insufficient evidence' are not sufficiently detailed to meet the requirements of this section."

Sec. 17. This act shall become effective June 1, 1989. This act shall expire June 30, 1989. Provided, any person with a Class C license issued before the effective date of this act may continue to operate any vehicle for which he was authorized prior to the effective date of this act and until his license expires. Provided, further, any driver covered by the preceding sentence shall be subject to the provisions of this act and upon conviction of a violation of G.S. 20-138.2 while possessing a Class C license shall, if otherwise entitled, have a new Class C license issued which shall not authorize the operation of a commercial motor vehicle. Nothing in this section shall be construed to exempt a vehicle from the definition of commercial motor vehicle merely because the driver was authorized to operate it while possessing a Class C license issued prior to June 1, 1989.

In the General Assembly read three times and ratified this the 12th day of July, 1988.