

§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test devices and manner of use by Department of Health and Human Services; use of test results or refusal.

(a) When Alcohol Screening Test May Be Required; Not an Arrest. - A law-enforcement officer may require the driver of a vehicle to submit to an alcohol screening test within a relevant time after the driving if the officer has:

- (1) Reasonable grounds to believe that the driver has consumed alcohol and has:
 - a. Committed a moving traffic violation; or
 - b. Been involved in an accident or collision; or
- (2) An articulable and reasonable suspicion that the driver has committed an implied-consent offense under G.S. 20-16.2, and the driver has been lawfully stopped for a driver's license check or otherwise lawfully stopped or lawfully encountered by the officer in the course of the performance of the officer's duties.

Requiring a driver to submit to an alcohol screening test in accordance with this section does not in itself constitute an arrest.

(b) Approval of Screening Devices and Manner of Use. - The Department of Health and Human Services is directed to examine and approve devices suitable for use by law-enforcement officers in making on-the-scene tests of drivers for alcohol concentration. For each alcohol screening device or class of devices approved, the Department must adopt regulations governing the manner of use of the device. For any alcohol screening device that tests the breath of a driver, the Department is directed to specify in its regulations the shortest feasible minimum waiting period that does not produce an unacceptably high number of false positive test results.

(c) Tests Must Be Made with Approved Devices and in Approved Manner. - No screening test for alcohol concentration is a valid one under this section unless the device used is one approved by the Department and the screening test is conducted in accordance with the applicable regulations of the Department as to the manner of its use.

(d) Use of Screening Test Results or Refusal by Officer. - ~~The fact that a driver showed a positive or negative result on~~ result or results of an alcohol screening test, ~~but not the actual alcohol concentration result,~~ or a driver's refusal to submit may be used by a law-enforcement officer, is admissible in a court in determining if there is probable cause for believing, or may also be used by an administrative agency in determining if there are reasonable grounds for believing:

- (1) That the driver has committed an implied-consent offense under G.S. 20-16.2; and
- (2) That the driver had consumed alcohol and that the driver had in his or her body previously consumed alcohol, but not to prove a particular alcohol concentration. Negative or low results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol.