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## **G.S. 20-17.4(a)(7) DISQUALIFICATION OF CDL BASED UPON 20-16.5 REVOCATION**

For offenses committed after December 1, 2008, DMV, pursuant to N.C.G.S. 20-17.4(a)(7), now revokes / disqualifies a CDL if the CDL holder receives a 20-16.5 revocation (typically referred to as a “DWI 30 day revocation.” This disqualification applies regardless of what vehicle the CDL holder was operating at the time of his arrest – commercial, personal, lawnmower, bicycle – it does not matter. If the CDL holder blows .08 or higher, or refuses, he will automatically lose his CDL, and usually his livelihood, for 12 months – regardless of the outcome of his DWI case and regardless of whether the Judge later suppresses the BAC. In fact, at this point the disqualification typically happens *without any hearing* and usually takes effect sooner than the first court date on the underlying DWI. This 1 year disqualification is in addition to the separate 1 year (minimum) revocation / disqualification that follows a conviction of the DWI or other similar underlying charge. Further, DMV apparently did not begin enforcement of this provision until early 2010, meaning that many CDL holders received disqualification notices after their DWI cases were resolved, even those who suppressed the BAC and/or won the DWI.

**N.C.G.S. 20-17.4** states as follows:

(a) One Year.--Any of the following disqualifies a person from driving a commercial motor vehicle for one year if committed by a person holding a commercial drivers license, or, when applicable, committed while operating a commercial motor vehicle by a person who does not hold a commercial drivers license:

...

(7) A civil license revocation under [G.S. 20-16.5](#), or a substantially similar revocation obtained in another jurisdiction, arising out of a charge that occurred while the person was either operating a commercial motor vehicle or while the person was holding a commercial drivers license.

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### **30 DAY REVOCATION CHALLENGE HEARING**

The only possible hearing in this situation is to challenge the underlying 30 day revocation. If that 30 day revocation is repealed, then the CDL disqualification disappears. However, that must be requested within 10 days of the revocation (much later than the arrest date if blood test involved). The hearing is governed by G.S. 20-16.5(g) and is limited to the four issues in G.S. 20-16.5(b).

N.C. Gen. Stat. Ann. § 20-16.5 (**30 day revocation statute**) states in relevant part

- (b) ...driver's license is subject to revocation under this section if:
- (1) A law enforcement officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;
  - (2) The person is charged with that offense as provided in G.S. 20-16.2(a);
  - (3) The law enforcement officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and
  - (4) The person:
    - a. Willfully refuses to submit to the chemical analysis;
    - b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving;
    - c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle; or
    - d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age.

...

- (g) ... person whose license is revoked under this section may request in writing a hearing to contest the validity of the revocation.  
...[requested] within 10 days of the effective date of the revocation  
...Unless a district court judge is requested, the hearing must be conducted within the county by a magistrate  
...hearing must be held within three working days following the request if the hearing is before a magistrate or within five working days if the hearing is before a district court judge.

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... request for the hearing must specify the grounds upon which the validity of the revocation is challenged and the hearing must be limited to the grounds specified in the request.

... Unless contested by the person requesting the hearing, the judicial official may accept as true any matter stated in the revocation report. If any relevant condition under **subsection (b)** is contested, the judicial official must find by the greater weight of the evidence that the condition was met in order to sustain the revocation.

### **DOUBLE JEOPARDY**

The four main North Carolina cases which have addressed the double jeopardy claim arising from a driver's license revocation are listed below:

*Henry v. Edmisten*, 315 N.C. 474, 340 S.E.2d 720 (1986), holding that 10 day revocation was not "punishment";

*State v. Oliver*, 343 N.C. 202, 470 S.E.2d 16 (1996), holding that 10 day revocation was not punishment;

*State v. Evans*, 145 N.C. App. 324, 550 S.E.2d 853 (2001), holding that 30 day revocation was not punishment;

*State v. Reid*, 148 N.C. App. 548, 559 S.E.2d 561 (2002), holding that revocation/disqualification of CDL (in connection with ordinary 30 day revocation) for 30 days was not punishment.

However, *State v. Evans*, 145 N.C. App. 324, 331-332, 550 S.E.2d 853, 859 (2001) recognized the validity of the double jeopardy claim in this situation when it warned

[a]lthough we find no punitive purpose on the face of N.C.G.S. § 20-16.5, we are aware that, at some point, a further increase in the revocation period by the General Assembly becomes excessive, even when considered in light of the well-established goals of N.C.G.S. § 20-16.5. Whether it is a further doubling or tripling of the revocation period, **there is a point at which the length of time can no longer serve a legitimate remedial purpose, and the revocation provision could indeed violate the Double Jeopardy Clause.** (emphasis added).

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The automatic one year CDL disqualification not only doubles or triples the 30 day revocation, it increases it twelve fold. Further, the 30 day revocation follows an opportunity for a hearing, but this CDL disqualification does not. An actual motion, opposing Memorandums of Law, and several actual District Court orders addressing the Double Jeopardy argument are included at the end of this manuscript, and the legal arguments and precedents for the various aspects of this issue are contained within those documents.

### **DUE PROCESS CHALLENGE**

The automatic CDL revocation without a hearing not only represents a punishment which gives rise to the Double Jeopardy claim, but this revocation/disqualification without a hearing constitutes a Due Process violation, as well. While the Due Process challenge is beyond the scope of this paper<sup>1</sup>, the gist of the argument is that the possession of a CDL is a protected property right. See *Bell v. Burson*, 402 U.S. 535(1971), *Henry v. Edmisten*, 315 N.C. 474, 340 S.E.2d 720 (1986). Cases indicating that an automatic license revocation without an opportunity for a hearing violates due process include *Montgomery v. NC DMV*, 455 F.Supp. 338 (1978) and *Chavez v. Campbell*, 397 F.Supp. 1285 (D. Ariz. 1975).

While the State may argue that the opportunity to challenge the 30 day revocation satisfies the “opportunity for a hearing”, this argument fails because there is never any notice to the defendant that there is any connection between the 30 day revocation, that revocation challenge hearing, and the one year CDL revocation/disqualification issue. First, the G.S. 2-

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<sup>1</sup> Les Robinson from Greenville, N.C. (les@therobinsonlawfirm.com) presented this issue in detail earlier this year, and his manuscript is available through NCAJ.

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16.5(g) hearing itself is limited to only four issues, discussed in the 30 Day Revocation Challenge Hearing section above, and a one year CDL disqualification is not one of those issues. Second, the breath test rights include warnings relating to a “one-year refusal revocation” and a “thirty-day revocation” if the defendant refused or registered .08 or more on the test. Those rights do **not** include any notice to the defendant that he would be disqualified from having a Commercial Drivers License for one year if the defendant refused or registered a .08 or more on the chemical analysis test. Third, the Magistrate’s Revocation Order does **not** include any notice to or provision that the defendant would, in addition to the 30 day revocation, be disqualified from having a Commercial Drivers License for one year.