

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2015

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HOUSE BILL 802

Short Title: Ignition Interlock/Expand Scope. (Public)

Sponsors: Representatives Jackson, Jordan, and Faircloth (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary II, if favorable, Finance.

April 15, 2015

A BILL TO BE ENTITLED
AN ACT TO INCREASE THE NUMBER OF PERSONS SUBJECT TO AN IGNITION INTERLOCK REQUIREMENT AND TO MAKE OTHER REVISIONS TO THE IMPAIRED DRIVING LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-16.2(c1) reads as rewritten:

"(c1) Procedure for Reporting Results and Refusal to Division. - Whenever a person refuses to submit to a chemical analysis, a person has an alcohol concentration of 0.150.13 or more, or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the law enforcement officer and the chemical analyst shall without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that all of the following:

- (1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license; license.
(2) A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license; license.
(3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis; analysis.
(4) The person was notified of the rights in subsection (a); and (a).
(5) The results of any tests given or that the person willfully refused to submit to a chemical analysis.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the restriction which was violated. The officer shall immediately mail the affidavit(s) to the Division. If the officer is also the chemical analyst who has notified the person of the rights under subsection (a), the officer may perform alone the duties of this subsection."

SECTION 2. G.S. 20-17.8 reads as rewritten:

§ 20-17.8. Restoration of a license after certain driving while impaired convictions; ignition interlock.

(a) Scope. - This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and:



- 1 (1) The person had an alcohol concentration of ~~0.150.13~~ or more;
- 2 (2) The person has been convicted of another offense involving impaired
- 3 driving, which offense occurred within seven years immediately preceding
- 4 the date of the offense for which the person's license has been revoked; or
- 5 (3) The person was sentenced pursuant to G.S. 20-179(f3).

6 For purposes of subdivision (1) of this subsection, the results of a chemical analysis, as

7 shown by an affidavit or affidavits executed pursuant to G.S. 20-16.2(c1), shall be used by the

8 Division to determine that person's alcohol concentration.

9 ...

10 (e1) Disabling or Removing of Ignition Interlock System. – If an ignition interlock

11 system is disabled or removed from a vehicle in which it is required to be installed pursuant to

12 subsection (c1) of this section, the Division shall revoke the drivers license of the person

13 subject to the provisions of this section and shall provide notice in accordance with G.S. 20-48.

14 ...

15 (j) Right to Hearing Before Division; Issues. – If the person's license is revoked

16 pursuant to subsection (g) of this section, before the effective date of the order issued under

17 subsection (i) of this section, the person may request in writing a hearing before the Division.

18 Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the

19 Division that the person's license was surrendered to the court and remained in the court's

20 possession, then the Division shall credit the amount of time for which the license was in the

21 possession of the court against the revocation period required by subsection (g) of this section.

22 If the person properly requests a hearing, the person retains the person's license, unless it is

23 revoked under some other provision of law, until the hearing is held, the person withdraws the

24 request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena

25 any witnesses or documents that the hearing officer deems necessary. The person may request

26 the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at

27 the hearing if the person makes the request in writing at least three days before the hearing. The

28 person may subpoena any other witness whom the person deems necessary, and the provisions

29 of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the

30 authority of this section. The hearing officer is authorized to administer oaths to witnesses

31 appearing at the hearing. The hearing must be conducted in the county where the charge was

32 brought, except when the evidence of the violation is an alcohol concentration report from an

33 ignition interlock system, the hearing may be conducted in the county where the person resides.

34 The hearing must be limited to consideration of whether:

- 35 (1) The drivers license of the person had an ignition interlock requirement; and
- 36 (2) The person:
- 37 a. Was driving a vehicle that was not equipped with a functioning
- 38 ignition interlock system; ~~or system.~~
- 39 b. Did not personally activate the ignition interlock system before
- 40 driving the ~~vehicle; or vehicle.~~
- 41 c. Drove the vehicle in violation of an applicable alcohol concentration
- 42 restriction prescribed by subdivision (b)(3) of this section.
- 43 d. Allowed an ignition interlock system required by this section to be
- 44 disabled or removed.

45 If the Division finds that the conditions specified in this subsection are

46 met, it must order the revocation sustained. If the Division finds that the

47 condition of subdivision (1) is not met, or that none of the conditions of

48 subdivision (2) are met, it must rescind the revocation. If the revocation is

49 sustained, the person must surrender the person's license immediately upon

50 notification by the Division. If the revocation is sustained, the person may

51 appeal the decision of the Division pursuant to G.S. 20-25.

1 "

2 **SECTION 3.** G.S. 20-179.3 reads as rewritten:

3 **"§ 20-179.3. Limited driving privilege.**

4 ...

5 (b) Eligibility. –

6 (1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is
7 eligible for a limited driving privilege ~~if~~if all of the following requirements
8 are met:

9 a. At the time of the ~~offense~~offense, the person held either a valid
10 driver's license or a license that had been expired for less than one
11 year~~;year~~.

12 b. At the time of the ~~offense~~offense, the person had not within the
13 preceding seven years been convicted of an offense involving
14 impaired ~~driving~~driving.

15 c. Punishment Level Three, Four, or Five was imposed for the offense
16 of impaired ~~driving~~driving.

17 d. Subsequent to the ~~offense~~offense, the person has not been
18 convicted of, or had an unresolved charge lodged against him or her
19 for, an offense involving impaired ~~driving~~and driving.

20 e. The person has obtained and filed with the court a substance abuse
21 assessment of the type required by G.S. 20-17.6 for the restoration of
22 a drivers license.

23 A person whose North Carolina driver's license is revoked because of a
24 conviction in another jurisdiction substantially similar to impaired driving
25 under G.S. 20-138.1 is eligible for a limited driving privilege if he would be
26 eligible for it had the conviction occurred in North Carolina. Eligibility for a
27 limited driving privilege following a revocation under G.S. 20-16.2(d) is
28 governed by G.S. 20-16.2(e1).

29 ...

30 (c1) Privilege Restrictions for High-Risk Drivers. – Notwithstanding any other provision
31 of this section, any limited driving privilege issued to a person convicted of an impaired driving
32 offense with an alcohol concentration of ~~0.15~~0.13 or more at the time of the offense ~~shall~~shall
33 include all of the following:

34 (1) ~~Not become effective until at least 45 days after the final conviction under~~
35 ~~G.S. 20-138.1;~~

36 (2) Require the applicant to comply with the ignition interlock requirements of
37 subsection (g5) of this ~~section~~and section.

38 (3) Restrict the applicant to driving only to and from the applicant's place of
39 employment, the place the applicant is enrolled in school, any court ordered
40 treatment or substance abuse education, and any ignition interlock service
41 facility.

42 For purposes of this subsection, the results of a chemical analysis presented at trial or
43 sentencing shall be sufficient to prove a person's alcohol concentration, shall be conclusive, and
44 shall not be subject to modification by any party, with or without approval by the court.

45 ...

46 (f1) Definition of "Standard Working Hours". – Under this section, "standard working
47 hours" are 6:00 A.M. to 8:00 P.M. on Monday through ~~Friday~~Sunday.

48 ...

49 (g5) Ignition Interlock Required. – If a person's drivers license is revoked for a
50 conviction of G.S. 20-138.1, and the person had an alcohol concentration of ~~0.15~~0.13 or more,
51 a judge shall include all of the following in a limited driving privilege order:

- 1 (1) A restriction that the applicant may operate only a designated motor vehicle.
- 2 (2) A requirement that the designated motor vehicle be equipped with a
- 3 functioning ignition interlock system of a type approved by the
- 4 Commissioner, which is set to prohibit driving with an alcohol concentration
- 5 of greater than 0.00. The Commissioner shall not unreasonably withhold
- 6 approval of an ignition interlock system and shall consult with the Division
- 7 of Purchase and Contract in the Department of Administration to ensure that
- 8 potential vendors are not discriminated against.
- 9 (3) A requirement that the applicant personally activate the ignition interlock
- 10 system before driving the motor vehicle.

11 For purposes of this subsection, the results of a chemical analysis presented at trial or
12 sentencing shall be sufficient to prove a person's alcohol concentration, shall be conclusive, and
13 shall not be subject to modification by any party, with or without approval by the court.

14"

15 **SECTION 4.** This act becomes effective December 1, 2015, and applies to
16 offenses committed on or after that date and restorations for offenses committed on or after that
17 date. Prosecutions for offenses committed before the effective date of this act are not abated or
18 affected by this act, and the statutes that would be applicable but for this act remain applicable
19 to those prosecutions.