

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

D

HOUSE BILL 1185
PROPOSED COMMITTEE SUBSTITUTE H1185-PCS10937-SA-28

Short Title: Habitual DWI-Reinstatement Petition/10 Yrs.

(Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN INDIVIDUAL CONVICTED OF HABITUAL IMPAIRED DRIVING TO BE ELIGIBLE TO PETITION FOR A HEARING TO RESTORE DRIVING PRIVILEGES AFTER TEN YEARS WITHOUT ANY TRAFFIC OR CRIMINAL CONVICTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-19(c3) reads as rewritten:

"(c3) Restriction; Revocations. – When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2 (a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, G.S. 20-138.5(d), or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

- (1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;
- (2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;
- (3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, habitual impaired driving, G.S. 20-138.5, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or



* H 1 1 8 5 - P C S 1 0 9 3 7 - S A - 2 8 *

1 a revocation under this subsection, that the person not operate a vehicle with
2 an alcohol concentration of greater than 0.00 at any relevant time after the
3 driving;

- 4 (4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or
5 G.S. 20-23.2 when the offense for which the person's license was revoked
6 prohibits substantially similar conduct which if committed in this State
7 would result in a conviction of driving while impaired in a commercial
8 motor vehicle, G.S. 20-138.2, driving while less than 21 years old after
9 consuming alcohol or drugs, G.S. 20-138.3, a violation of G.S. 20-141.4, or
10 manslaughter or negligent homicide resulting from the operation of a motor
11 vehicle when the offense involved impaired driving, that the person not
12 operate vehicle with an alcohol concentration of greater than 0.00 at any
13 relevant time after the driving.

14 In addition, the person seeking restoration of a license must agree to submit to a chemical
15 analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has
16 reasonable grounds to believe the person is operating a motor vehicle on a highway or public
17 vehicular area in violation of the restriction specified in this subsection. The person must also
18 agree that, when requested by a law enforcement officer, the person will agree to be transported
19 by the law enforcement officer to the place where chemical analysis is to be administered.

20 The restrictions placed on a license under this subsection shall be in effect (i) seven years
21 from the date of restoration if the person's license was permanently revoked, (ii) until the
22 person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and
23 (iii) three years in all other cases.

24 A law enforcement officer who has reasonable grounds to believe that a person has violated
25 a restriction placed on the person's drivers license shall complete an affidavit pursuant to
26 G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division
27 shall revoke the drivers license of any person who violates a condition of reinstatement
28 imposed under this subsection. An alcohol concentration report from an ignition interlock
29 system shall not be used as the basis for revocation under this subsection. A violation of a
30 restriction imposed under this subsection or the willful refusal to submit to a chemical analysis
31 shall result in a one-year revocation. If the period of revocation was imposed pursuant to
32 subsection (d) or (e), or G.S. 20-138.5(d), any remaining period of the original revocation, prior
33 to its reduction, shall be reinstated and the one-year revocation begins after all other periods of
34 revocation have terminated."

35 **SECTION 2.** G.S. 20-19(e3) reads as rewritten:

36 "(e3) If the Division restores a person's license under subsection ~~(e1)~~ ~~or (e2)~~(e1), (e2), or
37 ~~(e4)~~ of this section, it may place reasonable conditions or restrictions on the person for any
38 period up to five years from the date of restoration."

39 **SECTION 3.** G.S. 20-19 is amended by adding a new subsection to read:

40 "(e4) When a person's license is revoked under G.S. 20-138.5(d), the Division may
41 conditionally restore the license of that person after it has been revoked for at least 10 years
42 after the completion of any sentence imposed by the court, if the person provides the Division
43 with satisfactory proof of all of the following:

- 44 (1) In the 10 years immediately preceding the person's application for a restored
45 license, the person has not been convicted in North Carolina or in any other
46 state or federal court of a motor vehicle offense, an alcohol beverage control
47 law offense, a drug law offense, or any other criminal offense.
48 (2) The person is not currently an excessive user of alcohol, drugs, or
49 prescription drugs, or unlawfully using any controlled substance."

50 **SECTION 4.** G.S. 20-19(k) reads as rewritten:

1 "(k) Before the Division restores a driver's license that has been suspended or revoked
2 under G.S. 20-138.5(d), or under any provision of this Article, other than G.S. 20-24.1, the
3 person seeking to have his driver's license restored shall submit to the Division proof that he
4 has notified his insurance agent or company of his seeking the restoration and that he is
5 financially responsible. Proof of financial responsibility shall be in one of the following forms:

- 6 (1) A written certificate or electronically-transmitted facsimile thereof from any
7 insurance carrier duly authorized to do business in this State certifying that
8 there is in effect a nonfleet private passenger motor vehicle liability policy
9 for the benefit of the person required to furnish proof of financial
10 responsibility. The certificate or facsimile shall state the effective date and
11 expiration date of the nonfleet private passenger motor vehicle liability
12 policy and shall state the date that the certificate or facsimile is issued. The
13 certificate or facsimile shall remain effective proof of financial responsibility
14 for a period of 30 consecutive days following the date the certificate or
15 facsimile is issued but shall not in and of itself constitute a binder or policy
16 of insurance or
17 (2) A binder for or policy of nonfleet private passenger motor vehicle liability
18 insurance under which the applicant is insured, provided that the binder or
19 policy states the effective date and expiration date of the nonfleet private
20 passenger motor vehicle liability policy.

21 The preceding provisions of this subsection do not apply to applicants who do not own
22 currently registered motor vehicles and who do not operate nonfleet private passenger motor
23 vehicles that are owned by other persons and that are not insured under commercial motor
24 vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to
25 that effect. Such certificate shall be furnished by the Division and may be incorporated into the
26 restoration application form. Any material misrepresentation made by such person on such
27 certificate shall be grounds for suspension of that person's license for a period of 90 days.

28 For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has
29 the definition ascribed to it in Article 40 of General Statute Chapter 58.

30 The Commissioner may require that certificates required by this subsection be on a form
31 approved by the Commissioner. The financial responsibility required by this subsection shall be
32 kept in effect for not less than three years after the date that the license is restored. Failure to
33 maintain financial responsibility as required by this subsection shall be grounds for suspending
34 the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes
35 any person from showing proof of financial responsibility in any other manner authorized by
36 Articles 9A and 13 of this Chapter."

37 **SECTION 5.** G.S. 20-17.8 is amended by adding a new subsection to read:

38 "(a1) Additional Scope. – This section applies to a person whose license was revoked as a
39 result of a conviction of habitual impaired driving, G.S. 20-138.5."

40 **SECTION 6.** G.S. 20-17.8(b) reads as rewritten:

41 "(b) Ignition Interlock Required. – Except as provided in subsection (l) of this section,
42 when the Division restores the license of a person who is subject to this section, in addition to
43 any other restriction or condition, it shall require the person to agree to and shall indicate on the
44 person's drivers license the following restrictions for the period designated in subsection (c):

- 45 (1) A restriction that the person may operate only a vehicle that is equipped with
46 a functioning ignition interlock system of a type approved by the
47 Commissioner. The Commissioner shall not unreasonably withhold approval
48 of an ignition interlock system and shall consult with the Division of
49 Purchase and Contract in the Department of Administration to ensure that
50 potential vendors are not discriminated against.

- 1 (2) A requirement that the person personally activate the ignition interlock
2 system before driving the motor vehicle.
- 3 (3) An alcohol concentration restriction as follows:
- 4 a. If the ignition interlock system is required pursuant only to
5 subdivision (a)(1) of this section, a requirement that the person not
6 drive with an alcohol concentration of 0.04 or greater;
- 7 b. If the ignition interlock system is required pursuant to subdivision
8 (a)(2) or subsection (a1) of this section, a requirement that the person
9 not drive with an alcohol concentration of greater than 0.00; or
- 10 c. If the ignition interlock system is required pursuant to subdivision
11 (a)(1) of this section, and the person has also been convicted, based
12 on the same set of circumstances, of: (i) driving while impaired in a
13 commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21
14 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a
15 violation of G.S. 20-141.4, or (iv) manslaughter or negligent
16 homicide resulting from the operation of a motor vehicle when the
17 offense involved impaired driving, a requirement that the person not
18 drive with an alcohol concentration of greater than 0.00."

19 **SECTION 7.** This act becomes effective December 1, 2009, and applies to
20 applications for reinstatement that occur on or after that date.