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SENATE DRS45296-MLF-180A (03/04)

Short Title: Remove Revocation for Certain DWLR Offenses. (Public)

Sponsors: Senators J. Jackson and Tarte (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE PUNISHMENT OF REVOKING A PERSON'S DRIVERS LICENSE FOR COMMITTING CERTAIN DRIVING WHILE LICENSE REVOKED OFFENSES; TO MAKE DRIVING WHILE LICENSE REVOKED A NONMOVING VIOLATION FOR CERTAIN PURPOSES; AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-28 reads as rewritten:

"§ 20-28. Unlawful to drive while license revoked, after notification, or while disqualified.

(a) ~~Driving While License Revoked. – Except as provided in subsections (a1) or (a2) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 3 misdemeanor unless the person's license was originally revoked for an impaired driving revocation, in which case the person is guilty of a Class 1 misdemeanor.~~

(a1) Aggravated Driving While License Revoked. – A person convicted under subsection (a) of this section is guilty of a Class 1 misdemeanor if the person's license was originally revoked for any of the following:

- (1) Except as provided in subsection (a2) of this section, an impaired driving license revocation, as defined in G.S. 20-28.2.
- (2) An accumulation of drivers license points in violation of G.S. 20-16(a)(5).
- (3) A violation of any restriction of G.S. 20-179.3.
- (4) A violation of any restriction of G.S. 20-17.8.
- (5) A violation of a limited driving privilege issued under G.S. 20-20.1.

Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

If the person's license was originally revoked for an impaired driving license revocation, the court may order as a condition of probation that the offender abstain from alcohol consumption and verify compliance by use of a continuous alcohol monitoring system, of a type approved by the Division of Adult Correction of the Department of Public Safety, for a minimum period of 90 days.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a ~~license~~ license and punished in accordance with the provisions of this subsection.



1 ~~(a1)~~(a2) Driving Without Reclaiming License. – A person convicted under subsection (a)
2 shall be punished as if the person had been convicted of driving without a license under
3 G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or
4 subdivision (3) of this subsection is true:

- 5 (1) At the time of the offense, the person's license was revoked solely under
6 G.S. 20-16.5; and
7 (2) a. The offense occurred more than 45 days after the effective date of a
8 revocation order issued under G.S. 20-16.5(f) and the period of
9 revocation was 45 days as provided under subdivision (3) of that
10 subsection; or
11 b. The offense occurred more than 30 days after the effective date of the
12 revocation order issued under any other provision of G.S. 20-16.5; or
13 (3) At the time of the offense the person had met the requirements of
14 G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the
15 person's drivers license privilege as provided therein.

16 In addition, a person punished under this subsection shall be treated for drivers license and
17 insurance rating purposes as if the person had been convicted of driving without a license under
18 G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be
19 so treated.

20 ~~(a2)~~(a3) Driving After Notification or Failure to Appear. – A person shall be guilty of a
21 Class 1 misdemeanor if:

- 22 (1) The person operates a motor vehicle upon a highway while that person's
23 license is revoked for an impaired drivers license revocation after the
24 Division has sent notification in accordance with G.S. 20-48; or
25 (2) The person fails to appear for two years from the date of the charge after
26 being charged with an implied-consent offense.

27 Upon conviction, the person's drivers license shall be revoked for an additional period of
28 one year for the first offense, two years for the second offense, and permanently for a third or
29 subsequent offense. The restoree of a revoked drivers license who operates a motor vehicle
30 upon the highways of the State without maintaining financial responsibility as provided by law
31 shall be punished as for driving without a license.

32 ...
33 (c) When Person May Apply for License. – A person whose license has been revoked
34 may apply for a license as follows:

- 35 (1) If revoked under subsection ~~(a)~~(a1) of this section for one year, the person
36 may apply for a license after 90 days.
37 (2) If punished under subsection ~~(a1)~~(a2) of this section and the original
38 revocation was pursuant to G.S. 20-16.5, in order to obtain reinstatement of
39 a drivers license, the person must obtain a substance abuse assessment and
40 show proof of financial responsibility to the Division. If the assessment
41 recommends education or treatment, the person must complete the education
42 or treatment within the time limits specified by the Division.
43 (3) If revoked under subsection ~~(a2)~~(a3) of this section for one year, the person
44 may apply for a license after one year.
45 (4) If revoked under this section for two years, the person may apply for a
46 license after one year.
47 (5) If revoked under this section permanently, the person may apply for a
48 license after three years.

49 (c1) Upon the filing of an application the Division may, with or without a hearing, issue
50 a new license upon satisfactory proof that the former licensee has not been convicted of a
51 moving violation under this Chapter or the laws of another state, a violation of any provision of

1 the alcoholic beverage laws of this State or another state, or a violation of any provisions of the
2 drug laws of this State or another state when any of these violations occurred during the
3 revocation period. For purposes of this subsection, a violation of subsection (a) of this section
4 shall not be considered a moving violation.

5 ...

6 (c3) A person whose license is revoked for violation of subsection ~~(a)~~(a1) of this section
7 where the person's license was originally revoked for an impaired driving revocation, or a
8 person whose license is revoked for a violation of subsection ~~(a2)~~(a3) of this section, may only
9 have the license conditionally restored by the Division pursuant to the provisions of subsection
10 (c4) of this section.

11"

12 **SECTION 2.** G.S. 20-28.1(a) reads as rewritten:

13 "(a) Upon receipt of notice of conviction of any person of a motor vehicle moving
14 offense, ~~except a conviction punishable under G.S. 20-28(a1),~~ such offense having been
15 committed while such person's driving privilege was in a state of suspension or revocation, the
16 Division shall revoke such person's driving privilege for an additional period of time as set
17 forth in subsection (b) hereof. For purposes of this subsection, the following shall not be
18 considered a "motor vehicle moving offense":

19 (1) A violation of G.S. 20-28(a).

20 (2) A violation of G.S. 20-28(a2).

21 (3) A violation of G.S. 20-7 for driving a motor vehicle without a regular drivers
22 license."

23 **SECTION 3.** G.S. 20-20.1 reads as rewritten:

24 **"§ 20-20.1. Limited driving privilege for certain revocations.**

25 (a) Definitions. – The following definitions apply in this section:

26 (1) Limited driving privilege. – A judgment issued by a court authorizing a
27 person with a revoked drivers license to drive under specified terms and
28 conditions.

29 (2) Nonstandard working hours. – Anytime other than 6:00 A.M. until 8:00 P.M.
30 on Monday through Friday.

31 (3) Standard working hours. – Anytime from 6:00 A.M. until 8:00 P.M. on
32 Monday through Friday.

33 (4) Underlying offense. – The offense for which a person's drivers license was
34 revoked when the person was charged under G.S. 20-28(a), driving with a
35 revoked license, or under G.S. 20-28.1, committing a motor vehicle moving
36 offense while driving with a revoked license.

37 (b) Eligibility. – A person is eligible to apply for a limited driving privilege under this
38 section if all of the following conditions apply:

39 (1) The person's license is currently revoked under ~~G.S. 20-28(a)~~G.S. 20-28(a1)
40 or G.S. 20-28.1.

41 (2) The person has complied with the revocation for the period required in
42 subsection (c) of this section immediately preceding the date the person files
43 a petition for a limited driving privilege under this section.

44 (3) The person's underlying offense is not an offense involving impaired driving
45 and, if the person's license is revoked under G.S. 20-28.1 for committing a
46 motor vehicle moving offense while driving with a revoked license, the
47 moving offense is not an offense involving impaired driving.

48 (4) The revocation period for the underlying offense has expired.

49 (5) The revocation under ~~G.S. 20-28(a)~~G.S. 20-28(a1) or G.S. 20-28.1 is the
50 only revocation in effect.

- 1 (6) The person is not eligible to receive a limited driving privilege under any
- 2 other law.
- 3 (7) The person has not held a limited driving privilege issued under this section
- 4 at anytime during the three years prior to the date the person files the current
- 5 petition.
- 6 (8) The person has no pending charges for any motor vehicle offense in this or
- 7 in any other state and has no unpaid motor vehicle fines or penalties in this
- 8 or in any other state.
- 9 (9) The person's drivers license issued by another state has not been revoked by
- 10 that state.
- 11 (10) G.S. 20-9(e) or G.S. 20-9(f) does not prohibit the Division from issuing the
- 12 person a license.

13 (c) Compliance Period. – The following table sets out the period during which a person
 14 must comply with a revocation under ~~G.S. 20-28(a)~~G.S. 20-28(a1) or G.S. 20-28.1 to be
 15 eligible for a limited driving privilege under this section:

Revocation Period	Compliance Period
1 Year	90 Days
2 Years	1 Year
Permanent	2 Years

20 ...
 21 (j) Term and Reinstatement. – The term of a limited driving privilege issued under this
 22 section is the shorter of one year or the length of time remaining in the revocation period
 23 imposed under ~~G.S. 20-28(a)~~G.S. 20-28(a1) or G.S. 20-28.1. When the term of the limited
 24 driving privilege expires, the Division must reinstate the person's license if the person meets all
 25 of the conditions listed in this subsection. The Division may impose restrictions or conditions
 26 on the new license in accordance with G.S. 20-7(e). The conditions are:

- 27 (1) Payment of the restoration fee as required under G.S. 20-7(i1).
- 28 (2) Providing proof of financial responsibility as required under G.S. 20-7(c1).
- 29 (3) Providing the proof required for reinstatement of a license under
- 30 G.S. 20-28(c1).

31 (k) Modification. – A court may modify or revoke a person's limited driving privilege
 32 issued under this section upon a showing that the circumstances have changed sufficiently to
 33 justify modification or revocation. If the judge who issued the privilege is not presiding in the
 34 court in which the privilege was issued, a presiding judge in that court may modify or revoke
 35 the privilege. The judge must indicate in the order of modification or revocation the reasons for
 36 the order or make specific findings indicating the reason for the order and enter those findings
 37 in the record of the case. When a court issues an order of modification or revocation, the clerk
 38 of court must send a copy of the order to the Division.

39 (l) Effect of Violation. – A violation of a limited driving privilege issued under this
 40 section constitutes the offense of driving while license revoked under G.S. 20-28. When a
 41 person is charged with operating a motor vehicle in violation of the limited driving privilege,
 42 the limited driving privilege is suspended pending the final disposition of the charge."

43 **SECTION 4.** G.S. 20-17.8(f) reads as rewritten:

44 "(f) Effect of Violation of Restriction. – A person subject to this section who violates
 45 any of the restrictions of this section commits the offense of driving while license revoked
 46 under G.S. 20-28(a) and is subject to punishment and license revocation as provided in ~~that~~
 47 ~~section.~~G.S. 20-28(a1). If a law enforcement officer has reasonable grounds to believe that a
 48 person subject to this section has consumed alcohol while driving or has driven while he has
 49 remaining in his body any alcohol previously consumed, the suspected offense of driving while
 50 license is revoked is an alcohol-related offense subject to the implied-consent provisions of
 51 G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked

1 by violating a condition of subsection (b) of this section, and a judicial official determines that
2 there is probable cause for the charge, the person's license is suspended pending the resolution
3 of the case, and the judicial official must require the person to surrender the license. The
4 judicial official must also notify the person that he is not entitled to drive until his case is
5 resolved. An alcohol concentration report from the ignition interlock system shall not be
6 admissible as evidence of driving while license revoked, nor shall it be admissible in an
7 administrative revocation proceeding as provided in subsection (g) of this section, unless the
8 person operated a vehicle when the ignition interlock system indicated an alcohol concentration
9 in violation of the restriction placed upon the person by subdivision (b)(3) of this section."

10 **SECTION 5.** G.S. 20-179.3(j) reads as rewritten:

11 "(j) Effect of Violation of Restriction. – A holder of a limited driving privilege who
12 violates any of its restrictions commits the offense of driving while ~~his~~ license is revoked under
13 G.S. 20-28(a) and is subject to punishment and license revocation as provided in ~~that~~
14 ~~section~~ G.S. 20-28(a1). If a law-enforcement officer has reasonable grounds to believe that the
15 holder of a limited driving privilege has consumed alcohol while driving or has driven while he
16 has remaining in his body any alcohol previously consumed, the suspected offense of driving
17 while license is revoked is an alcohol-related offense subject to the implied-consent provisions
18 of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license
19 revoked by violating a restriction contained in his limited driving privilege, and a judicial
20 official determines that there is probable cause for the charge, the limited driving privilege is
21 suspended pending the resolution of the case, and the judicial official must require the holder to
22 surrender the limited driving privilege. The judicial official must also notify the holder that he
23 is not entitled to drive until his case is resolved.

24 Notwithstanding any other provision of law, an alcohol screening test may be administered
25 to a driver suspected of violating this section, and the results of an alcohol screening test or the
26 driver's refusal to submit may be used by a law enforcement officer, a court, or an
27 administrative agency in determining if alcohol was present in the driver's body. No alcohol
28 screening tests are valid under this section unless the device used is one approved by the
29 Department of Health and Human Services, and the screening test is conducted in accordance
30 with the applicable regulations of the Department as to the manner of its use."

31 **SECTION 6.** G.S. 20-179(c) reads as rewritten:

32 "(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing,
33 based upon the evidence presented at trial and in the hearing, the judge, or the jury in superior
34 court, must first determine whether there are any grossly aggravating factors in the case.
35 Whether a prior conviction exists under subdivision (1) of this subsection, or whether a
36 conviction exists under subdivision (d)(5) of this section, shall be matters to be determined by
37 the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case
38 remanded back to district court from superior court, the judge shall determine whether the
39 defendant has been convicted of any offense that was not considered at the initial sentencing
40 hearing and impose the appropriate sentence under this section. The judge must impose the
41 Aggravated Level One punishment under subsection (f3) of this section if it is determined that
42 three or more grossly aggravating factors apply. The judge must impose the Level One
43 punishment under subsection (g) of this section if it is determined that the grossly aggravating
44 factor in subdivision (4) of this subsection applies or two of the other grossly aggravating
45 factors apply. If the judge does not find that the aggravating factor at subdivision (4) of this
46 subsection applies, then the judge must impose the Level Two punishment under subsection (h)
47 of this section if it is determined that only one of the other grossly aggravating factors applies.
48 The grossly aggravating factors are:

49 (1) A prior conviction for an offense involving impaired driving if:

- 50 a. The conviction occurred within seven years before the date of the
51 offense for which the defendant is being sentenced; or

- b. The conviction occurs after the date of the offense for which the defendant is presently being sentenced, but prior to or contemporaneously with the present sentencing; or
- c. The conviction occurred in district court; the case was appealed to superior court; the appeal has been withdrawn, or the case has been remanded back to district court; and a new sentencing hearing has not been held pursuant to G.S. 20-38.7.

Each prior conviction is a separate grossly aggravating factor.

- (2) Driving by the defendant at the time of the offense while his driver's license was revoked under ~~G.S. 20-28~~, G.S. 20-28(a1), and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

...

In imposing an Aggravated Level One, a Level One, or a Level Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f)."

SECTION 7. This act becomes effective June 1, 2015, and applies to offenses committed on or after that date.