

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H.B. 877
Apr 14, 2015
HOUSE PRINCIPAL CLERK

H

D

HOUSE DRH20241-MLf-228 (4/4)

Short Title: Ignition Interlock Req'd/All DWIs. (Public)

Sponsors: Representatives Jordan and Faircloth (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PERSONS CONVICTED OF DRIVING AFTER CONSUMING ALCOHOL BEING LESS THAN TWENTY-ONE YEARS OF AGE, AND CERTAIN PERSONS WHO REFUSE A CHEMICAL ANALYSIS OR ARE CONVICTED OF DRIVING WHILE IMPAIRED OR ANY OTHER IMPAIRED DRIVING OFFENSE, TO HAVE AN IGNITION INTERLOCK SYSTEM INSTALLED ON EVERY VEHICLE THAT PERSON MAY DRIVE BEFORE THAT PERSON CAN GET A LIMITED DRIVING PRIVILEGE; TO REMOVE THE WAITING PERIOD BEFORE A PERSON MAY APPLY FOR A LIMITED DRIVING PRIVILEGE; AND TO PROVIDE FOR THE PAYMENT OF AN ADMINISTRATIVE FEE AND COSTS ASSOCIATED WITH AN IGNITION INTERLOCK SYSTEM AND CREATE AN IGNITION INTERLOCK DEVICE FUND TO ASSIST INDIGENT PERSONS.

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 ~~0.15~~0.08 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:

- (1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers 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;
- (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;
- (4) The person was notified of the rights in subsection (a); and
- (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



* D R H 2 0 2 4 1 - M L F - 2 2 8 *

1 Division. If the officer is also the chemical analyst who has notified the person of the rights
2 under subsection (a), the officer may perform alone the duties of this subsection."

3 **SECTION 2.** G.S. 20-16.2(e1) reads as rewritten:

4 "(e1) Limited Driving Privilege ~~after Six Months~~ in Certain Instances. – A person whose
5 driver's license has been revoked under this section may apply for and a judge authorized to do
6 so by this subsection may issue a limited driving privilege ~~if~~ if all of the following
7 requirements are met:

- 8 (1) At the time of the refusal the person held either a valid drivers license or a
9 license that had been expired for less than one ~~year;~~ year.
- 10 (2) ~~At the time of the refusal, the person had not within the preceding seven~~
11 ~~years been convicted of an offense involving impaired driving;~~
- 12 (3) ~~At the time of the refusal, the person had not in the preceding seven years~~
13 ~~willfully refused to submit to a chemical analysis under this section;~~
- 14 (4) The implied consent offense charged did not involve death or critical injury
15 to another ~~person;~~ person.
- 16 (5) The underlying charge for which the defendant was requested to submit to a
17 chemical analysis has been finally disposed of:
 - 18 a. Other than by conviction; or
 - 19 b. By a conviction of impaired driving under G.S. 20-138.1, at a
20 punishment level authorizing issuance of a limited driving privilege
21 under G.S. 20-179.3(b), and the defendant has complied with at least
22 one of the mandatory conditions of probation listed for the
23 punishment level under which the defendant was
24 ~~sentenced;~~ sentenced.
- 25 (6) Subsequent to the refusal the person has had no unresolved pending charges
26 for or additional convictions of an offense involving impaired
27 ~~driving;~~ driving.
- 28 (7) ~~The person's license has been revoked for at least six months for the refusal;~~
29 ~~and~~
- 30 (8) The person has obtained a substance abuse assessment from a mental health
31 facility and successfully completed any recommended training or treatment
32 program.
- 33 (9) All vehicles that the person will be authorized to drive have been equipped
34 with a type of ignition interlock system approved by the Commissioner.

35 Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure
36 for application and conduct of the hearing and the restrictions required or authorized to be
37 included in the limited driving privilege apply to applications under this subsection. If the case
38 was finally disposed of in the district court, the hearing shall be conducted in the district court
39 district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the
40 case was finally disposed of in the superior court, the hearing shall be conducted in the superior
41 court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a
42 superior court judge. A limited driving privilege issued under this section authorizes a person to
43 drive if the person's license is revoked solely under this section or solely under this section and
44 G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving
45 privilege is invalid."

46 **SECTION 3.** G.S. 20-16.5(p) reads as rewritten:

47 "(p) Limited Driving Privilege. – A person whose drivers license has been revoked for a
48 specified period of 30 or 45 days under this section may apply for a limited driving privilege
49 if if all of the following requirements are met:

- 50 (1) At the time of the alleged offense the person held either a valid drivers
51 license or a license that had been expired for less than one ~~year;~~ year.

- 1 (2) Does not have an unresolved pending charge involving impaired driving
2 except the charge for which the license is currently revoked under this
3 section or additional convictions of an offense involving impaired driving
4 since being charged for the violation for which the license is currently
5 revoked under this ~~section;~~section.
- 6 (3) ~~The person's license has been revoked for at least 10 days if the revocation is~~
7 ~~for 30 days or 30 days if the revocation is for 45 days; and~~
- 8 (4) The person has obtained a substance abuse assessment from a mental health
9 facility and registers for and agrees to participate in any recommended
10 training or treatment program.
- 11 (5) All vehicles that the person will be authorized to drive have been equipped
12 with a type of ignition interlock system approved by the Commissioner.

13 A person whose license has been indefinitely revoked under this section may, after
14 completion of 30 days under subsection (e) or the applicable period of time under subdivision
15 (1), (2), or (3) of subsection (f), apply for a limited driving privilege. In the case of an indefinite
16 revocation, a judge of the division in which the current offense is pending may issue the limited
17 driving privilege only if ~~the privilege is necessary to overcome undue hardship and~~ the person
18 meets the eligibility requirements of G.S. 20-179.3, except that the requirements in
19 G.S. 20-179.3(b)(1)c. and G.S. 20-179.3(e) shall not apply. Except as modified in this
20 subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and
21 conduct of the hearing and the restrictions required or authorized to be included in the limited
22 driving privilege apply to applications under this subsection. Any district court judge
23 authorized to hold court in the judicial district is authorized to issue such a limited driving
24 privilege. A limited driving privilege issued under this section authorizes a person to drive if
25 the person's license is revoked solely under this section. If the person's license is revoked for
26 any other reason, the limited driving privilege is invalid."

27 **SECTION 4.** G.S. 20-17.8 reads as rewritten:

28 "**§ 20-17.8. Restoration of a license after certain driving while impaired convictions;**
29 **ignition interlock.**

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

- 32 (1) The person had an alcohol concentration of ~~0.15 or more;~~0.08 or more or
33 refused to submit to a chemical analysis;
- 34 (2) The person has been convicted of another offense involving impaired
35 driving, which offense occurred within seven years immediately preceding
36 the date of the offense for which the person's license has been revoked; or
- 37 (3) The person was sentenced pursuant to G.S. 20-179(f3).

38 For purposes of subdivision (1) of this subsection, the results of a chemical analysis, as
39 shown by an affidavit or affidavits executed pursuant to G.S. 20-16.2(c1), shall be used by the
40 Division to determine that person's alcohol concentration.

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

43 (a2) Under Age 21. – The provisions of this section apply to a person whose license was
44 revoked as the result of a conviction of driving by a person less than 21 years old after
45 consuming alcohol pursuant to G.S. 20-138.3.

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

- 50 (1) A restriction that the person may operate only a vehicle that is equipped with
51 a functioning ignition interlock system of a type approved by the

1 Commissioner. The Commissioner shall not unreasonably withhold approval
2 of an ignition interlock system and shall consult with the Division of
3 Purchase and Contract in the Department of Administration to ensure that
4 potential vendors are not discriminated against.

5 (2) A requirement that the person personally activate the ignition interlock
6 system before driving the motor vehicle.

7 (3) An alcohol concentration restriction as follows:

8 a. If the ignition interlock system is required pursuant only to
9 subdivision (a)(1) of this section, a requirement that the person not
10 drive with an alcohol concentration of 0.04 or greater;

11 b. If the ignition interlock system is required pursuant to subdivision
12 (a)(2) or (a)(3) of this section, or subsection (a1) of this section, a
13 requirement that the person not drive with an alcohol concentration
14 of greater than ~~0.00~~; ~~or~~ 0.02;

15 c. If the ignition interlock system is required pursuant to subdivision
16 (a)(1) of this section, and the person has also been convicted, based
17 on the same set of circumstances, of: (i) driving while impaired in a
18 commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21
19 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a
20 violation of G.S. 20-141.4, or (iv) manslaughter or negligent
21 homicide resulting from the operation of a motor vehicle when the
22 offense involved impaired driving, a requirement that the person not
23 drive with an alcohol concentration of greater than ~~0.00~~ 0.02; or

24 d. If the ignition interlock system is required pursuant to subsection (a2)
25 of this section, a requirement that the person not drive with an
26 alcohol concentration greater than 0.02.

27 ...

28 (e1) Disabling or Removing of Ignition Interlock System. – If an ignition interlock
29 system is disabled or removed from a vehicle in which it is required to be installed pursuant to
30 subsection (c1) of this section, the Division shall revoke the drivers license of the person
31 subject to the provisions of this section and shall provide notice in accordance with G.S. 20-48.

32 ...

33 (g) Effect of Violation of Restriction When Driving While License Revoked Not
34 Charged. – A person subject to this section who violates any of the restrictions of this section,
35 or who disables or removes an ignition interlock system required by this section, but is not
36 charged or convicted of driving while license revoked pursuant to G.S. 20-28(a), shall have the
37 person's license revoked by the Division for a period of one year.

38 ...

39 (j) Right to Hearing Before Division; Issues. – If the person's license is revoked
40 pursuant to subsection (g) of this section, before the effective date of the order issued under
41 subsection (i) of this section, the person may request in writing a hearing before the Division.
42 Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the
43 Division that the person's license was surrendered to the court and remained in the court's
44 possession, then the Division shall credit the amount of time for which the license was in the
45 possession of the court against the revocation period required by subsection (g) of this section.
46 If the person properly requests a hearing, the person retains the person's license, unless it is
47 revoked under some other provision of law, until the hearing is held, the person withdraws the
48 request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena
49 any witnesses or documents that the hearing officer deems necessary. The person may request
50 the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at
51 the hearing if the person makes the request in writing at least three days before the hearing. The

1 person may subpoena any other witness whom the person deems necessary, and the provisions
 2 of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the
 3 authority of this section. The hearing officer is authorized to administer oaths to witnesses
 4 appearing at the hearing. The hearing must be conducted in the county where the charge was
 5 brought, except when the evidence of the violation is an alcohol concentration report from an
 6 ignition interlock system, the hearing may be conducted in the county where the person resides.
 7 The hearing must be limited to consideration of whether:

- 8 (1) The drivers license of the person had an ignition interlock requirement; and
- 9 (2) The person:
 - 10 a. Was driving a vehicle that was not equipped with a functioning
 11 ignition interlock ~~system; or system;~~
 - 12 b. Did not personally activate the ignition interlock system before
 13 driving the ~~vehicle; or vehicle;~~
 - 14 c. Drove the vehicle in violation of an applicable alcohol concentration
 15 restriction prescribed by subdivision (b)(3) of this ~~section; or~~
 16 section.
 - 17 d. Allowed an ignition interlock system required by this section to be
 disabled or removed.

18 If the Division finds that the conditions specified in this subsection are met, it must order
 19 the revocation sustained. If the Division finds that the condition of subdivision (1) is not met, or
 20 that none of the conditions of subdivision (2) are met, it must rescind the revocation. If the
 21 revocation is sustained, the person must surrender the person's license immediately upon
 22 notification by the Division. If the revocation is sustained, the person may appeal the decision
 23 of the Division pursuant to G.S. 20-25.

24"

25 **SECTION 5.** G.S. 20-138.3(d) reads as rewritten:

26 "(d) Limited Driving Privilege. – A person who is convicted of violating subsection (a)
 27 of this section and whose drivers license is revoked solely based on that conviction may apply
 28 for a limited driving privilege as provided in G.S. 20-179.3. This subsection shall apply only if
 29 the person meets ~~both each~~ of the following requirements:

- 30 (1) Is 18, 19, or 20 years old on the date of the offense.
- 31 (2) Has not previously been convicted of a violation of this section.
- 32 (3) Has equipped all vehicles to be operated under a limited driving privilege
 33 with approved ignition interlock systems.

34 The judge may issue the limited driving privilege only if the person meets the eligibility
 35 requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c.
 36 G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in
 37 G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a
 38 limited driving privilege to a person who is convicted of violating subsection (a) of this section
 39 and of driving while impaired as a result of the same transaction."

40 **SECTION 6.** G.S. 20-179.3(b) reads as rewritten:

41 "(b) Eligibility. –

- 42 (1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is
 43 eligible for a limited driving privilege if:
 - 44 a. At the time of the offense he held either a valid driver's license or a
 45 license that had been expired for less than one ~~year; year.~~
 - 46 b. At the time of the offense he had not within the preceding seven
 47 years been convicted of an offense involving impaired
 48 ~~driving; driving.~~
 - 49 c. Punishment Level Three, Four, or Five was imposed for the offense
 50 of impaired ~~driving; driving.~~

- 1 d. Subsequent to the offense he has not been convicted of, or had an
2 unresolved charge lodged against him for, an offense involving
3 impaired ~~driving; and driving.~~
4 e. The person has obtained and filed with the court a substance abuse
5 assessment of the type required by G.S. 20-17.6 for the restoration of
6 a drivers license.
7 f. The person has installed an approved ignition interlock system on all
8 vehicles subject to ignition interlock requirements to be operated by
9 the applicant under a limited driving privilege.

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

16 **SECTION 7.** G.S. 20-179.3(g5) reads as rewritten:

17 "(g5) Ignition Interlock Required. – If a person's drivers license is revoked for a
18 conviction of G.S. 20-138.1, and the person had an alcohol concentration of ~~0.150.08~~ or more,
19 or refused to submit to a chemical analysis, a judge shall include all of the following in a
20 limited driving privilege order:

- 21 (1) A restriction that the applicant may operate only a designated motor vehicle.
22 (2) A requirement that the designated motor vehicle be equipped with a
23 functioning ignition interlock system of a type approved by the
24 Commissioner, which is set to prohibit driving with an alcohol concentration
25 of greater than ~~0.00-0.02~~. The Commissioner shall not unreasonably
26 withhold approval of an ignition interlock system and shall consult with the
27 Division of Purchase and Contract in the Department of Administration to
28 ensure that potential vendors are not discriminated against.
29 (3) A requirement that the applicant personally activate the ignition interlock
30 system before driving the motor vehicle.

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

34 **SECTION 8.** Article 3 of Chapter 20 of the General Statutes is amended by adding
35 a new section to read:

36 **"§ 20-179.5. Ignition interlock; administrative fee and costs for installation and**
37 **monitoring; Ignition Interlock Device Fund.**

38 (a) The costs incurred in order to comply with the ignition interlock requirements
39 imposed by the court pursuant to this Article, including costs for installation and monitoring of
40 the ignition interlock system, shall be paid by the person ordered to install the system. The
41 person also shall pay an ignition interlock administrative fee in an amount which shall be
42 determined by the Division and which shall be no less than thirty dollars (\$30.00) nor more
43 than sixty dollars (\$60.00). The administrative fee shall be collected at the time of installation
44 by the vendor installing the ignition interlock system. Costs for installation and monitoring of
45 the ignition interlock system shall be collected under terms agreed upon by the vendor and the
46 person required to install the ignition interlock system.

47 (b) The vendor shall remit fees collected pursuant to subsection (a) of this section to the
48 Division on a quarterly basis. Fifty percent (50%) of the fees collected shall be used to pay
49 costs incurred by the Division in administering the interlock program; the remaining fifty
50 percent (50%) of the fees shall be deposited in the Ignition Interlock Device Fund.

1 (c) There is created in the Department of Transportation the Ignition Interlock Device
2 Fund to be used for the purpose of installing and removing the ignition interlock systems of
3 persons deemed by the court to be indigent. If the court determines that the convicted person is
4 unable to pay for the installation of an ignition interlock system, the court may order that the
5 Division pay the cost of installation out of the Ignition Interlock Device Fund, provided the
6 person agrees to pay the required costs for monitoring the system."

7 **SECTION 9.** This act becomes effective December 1, 2015, and applies to
8 offenses committed on or after that date.