

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1489

Short Title: Ignition Interlock-All DWI Offenders. (Public)

Sponsors: Representatives Harrell, Tillis (Primary Sponsors); Burris-Floyd, Cotham, Faison, Hurley, Insko, Jackson, Neumann, Rapp, and Stewart.

Referred to: Science and Technology, if favorable, Judiciary III.

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ANYONE WHO IS CONVICTED OF DRIVING WHILE IMPAIRED, DRIVING AFTER CONSUMING ALCOHOL BEING LESS THAN TWENTY-ONE YEARS OF AGE, OR ANY OTHER IMPAIRED DRIVING OFFENSE, OR ANY PERSON WHO REFUSES A CHEMICAL ANALYSIS, TO HAVE AN IGNITION INTERLOCK SYSTEM INSTALLED ON EVERY VEHICLE THEY MAY DRIVE BEFORE THEY CAN GET A LIMITED DRIVING PRIVILEGE.

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 ~~0.150.08~~ 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 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. 20-16.2(e1) is amended by adding a new subdivision to read:



1 "(e1) Limited Driving Privilege after Six Months in Certain Instances. – A person whose
2 driver's license has been revoked under this section may apply for and a judge authorized to do
3 so by this subsection may issue a limited driving privilege if:

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

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

40 **SECTION 3.** G.S. 20-17.8 reads as rewritten:

41 "**§ 20-17.8. Restoration of a license after certain driving while impaired convictions;**
42 **ignition interlock.**

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

- 45 (1) The person had an alcohol concentration of ~~0.15 or more; or~~ 0.08 or more or
46 refused to submit to a chemical analysis; or
- 47 (2) The person has been convicted of another offense involving impaired
48 driving, which offense occurred within seven years immediately preceding
49 the date of the offense for which the person's license has been revoked.

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

4 (a1) Under Age 21. – The provisions of this section apply to a person whose license was
5 revoked as the result of a conviction of driving by a person less than 21 after consuming
6 alcohol or drugs, G.S. 20-138.3.

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

11 (1) A restriction that the person may operate only a vehicle that is equipped with
12 a functioning ignition interlock system of a type approved by the
13 Commissioner. The Commissioner shall not unreasonably withhold approval
14 of an ignition interlock system and shall consult with the Division of
15 Purchase and Contract in the Department of Administration to ensure that
16 potential vendors are not discriminated against.

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

19 (3) An alcohol concentration restriction as follows:

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

23 b. If the ignition interlock system is required pursuant to subdivision
24 (a)(2) of this section, a requirement that the person not drive with an
25 alcohol concentration of greater than ~~0.00~~; ~~or~~ 0.00;

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

35 d. If the ignition interlock system is required pursuant to subsection (a1)
36 of this section, a requirement that the person not drive with an
37 alcohol concentration greater than 0.00.

38 (c) Length of Requirement. – The requirements of subsection (b) shall remain in effect
39 for:

40 (1) One year from the date of restoration if the original revocation period was
41 one year;

42 (2) Three years from the date of restoration if the original revocation period was
43 four years; or

44 (3) Seven years from the date of restoration if the original revocation was a
45 permanent revocation.

46 (c1) Vehicles Subject to Requirement. – A person subject to this section shall have all
47 registered vehicles owned by that person equipped with a functioning ignition interlock system
48 of a type approved by the Commissioner, unless the Division determines that one or more
49 specific registered vehicles owned by that person are relied upon by another member of that
50 person's family for transportation and that the vehicle is not in the possession of the person
51 subject to this section.

1 (d) Effect of Limited Driving Privileges. – If the person was eligible for and received a
2 limited driving privilege under G.S. 20-179.3, with the ignition interlock requirement contained
3 in G.S. 20-179.3(g5), the period of time for which that limited driving privilege was held shall
4 be applied towards the requirements of subsection (c).

5 (e) Notice of Requirement. – When a court reports to the Division a conviction of a
6 person who is subject to this section, the Division must send the person written notice of the
7 requirements of this section and of the consequences of failing to comply with these
8 requirements. The notification must include a statement that the person may contact the
9 Division for information on obtaining and having installed an ignition interlock system of a
10 type approved by the Commissioner.

11 (e1) Installation of Ignition Interlock Systems. – The Divisions shall not issue a drivers
12 license with an ignition interlock restriction unless the applicant presents proof, satisfactory to
13 the Division, that an approved ignition interlock system has been installed on all vehicles
14 subject to the ignition interlock requirements of subsection (c1) of this section.

15 (e2) Disabling or Removing of Ignition Interlock System. – If an ignition interlock
16 system is disabled or removed from a vehicle in which it is required to be installed pursuant to
17 subsection (c1) of this section, the Division shall revoke the drivers license of the person
18 subject to the provisions of this section and shall provide notice in accordance with G.S. 20-48.

19 (f) Effect of Violation of Restriction. – A person subject to this section who violates
20 any of the restrictions of this section commits the offense of driving while license revoked
21 under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that
22 section. If a law enforcement officer has reasonable grounds to believe that a person subject to
23 this section has consumed alcohol while driving or has driven while he has remaining in his
24 body any alcohol previously consumed, the suspected offense of driving while license is
25 revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2.
26 If a person subject to this section is charged with driving while license revoked by violating a
27 condition of subsection (b) of this section, and a judicial official determines that there is
28 probable cause for the charge, the person's license is suspended pending the resolution of the
29 case, and the judicial official must require the person to surrender the license. The judicial
30 official must also notify the person that he is not entitled to drive until his case is resolved. An
31 alcohol concentration report from the ignition interlock system shall not be admissible as
32 evidence of driving while license revoked, nor shall it be admissible in an administrative
33 revocation proceeding as provided in subsection (g) of this section, unless the person operated a
34 vehicle when the ignition interlock system indicated an alcohol concentration in violation of the
35 restriction placed upon the person by subdivision (b)(3) of this section. If a person subject to
36 this section is charged with driving while license revoked by violating the requirements of
37 subsection (c1) of this section, and no other violation of this section is alleged, the court may
38 make a determination at the hearing of the case that the vehicle, on which the ignition interlock
39 system was not installed, was relied upon by another member of that person's family for
40 transportation and that the vehicle was not in the possession of the person subject to this
41 section, and therefore the vehicle was not required to be equipped with a functioning ignition
42 interlock system. If the court determines that the vehicle was not required to be equipped with a
43 functioning ignition interlock system and the person subject to this section has committed no
44 other violation of this section, the court shall find the person not guilty of driving while license
45 revoked.

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

1 (h) Beginning of Revocation Period. – If the original period of revocation was imposed
2 pursuant to G.S. 20-19(d) or (e), any remaining period of the original revocation, prior to its
3 reduction, shall be reinstated and the revocation required by subsection (f) or (g) of this section
4 begins after all other periods of revocation have terminated.

5 (i) Notification of Revocation. – If the person's license has not already been
6 surrendered to the court, the Division must expeditiously notify the person that the person's
7 license to drive is revoked pursuant to subsection (f) or (g) of this section effective on the tenth
8 calendar day after the mailing of the revocation order.

9 (j) Right to Hearing Before Division; Issues. – If the person's license is revoked
10 pursuant to subsection (g) of this section, before the effective date of the order issued under
11 subsection (i) of this section, the person may request in writing a hearing before the Division.
12 Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the
13 Division that the person's license was surrendered to the court and remained in the court's
14 possession, then the Division shall credit the amount of time for which the license was in the
15 possession of the court against the revocation period required by subsection (g) of this section.
16 If the person properly requests a hearing, the person retains the person's license, unless it is
17 revoked under some other provision of law, until the hearing is held, the person withdraws the
18 request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena
19 any witnesses or documents that the hearing officer deems necessary. The person may request
20 the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at
21 the hearing if the person makes the request in writing at least three days before the hearing. The
22 person may subpoena any other witness whom the person deems necessary, and the provisions
23 of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the
24 authority of this section. The hearing officer is authorized to administer oaths to witnesses
25 appearing at the hearing. The hearing must be conducted in the county where the charge was
26 brought, and must be limited to consideration of whether:

27 (1) The drivers license of the person had an ignition interlock requirement; and

28 (2) The person:

29 a. Was driving a vehicle that was not equipped with a functioning
30 ignition interlock ~~system; or~~ system.

31 b. Did not personally activate the ignition interlock system before
32 driving the ~~vehicle; or~~ vehicle.

33 c. Drove the vehicle in violation of an applicable alcohol concentration
34 restriction prescribed by subdivision (b)(3) of this section.

35 d. Allowed an ignition interlock system required by this section to be
36 disabled or removed.

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

44 (k) Restoration After Violation. – When the Division restores the license of a person
45 whose license was revoked pursuant to subsection (f) or (g) of this section and the revocation
46 occurred prior to completion of time period required by subsection (c) of this section, in
47 addition to any other restriction or condition, it shall require the person to comply with the
48 conditions of subsection (b) of this section until the person has complied with those conditions
49 for the cumulative period of time as set forth in subsection (c) of this section. The period of
50 time for which the person successfully complied with subsection (b) of this section prior to

1 revocation pursuant to subsection (f) or (g) of this section shall be applied towards the
2 requirements of subsection (c) of this section.

3 (l) Medical Exception to Requirement. – A person subject to this section who has a
4 medically diagnosed physical condition that makes the person incapable of personally
5 activating an ignition interlock system may request an exception to the requirements of this
6 section from the Division. The Division shall not issue an exception to this section unless the
7 person has submitted to a physical examination by two or more physicians or surgeons duly
8 licensed to practice medicine in this State or in any other state of the United States and unless
9 such examining physicians or surgeons have completed and signed a certificate in the form
10 prescribed by the Division. Such certificate shall be devised by the Commissioner with the
11 advice of those qualified experts in the field of diagnosing and treating physical disorders that
12 the Commissioner may select and shall be designed to elicit the maximum medical information
13 necessary to aid in determining whether or not the person is capable of personally activating an
14 ignition interlock system. The certificate shall contain a waiver of privilege and the
15 recommendation of the examining physician to the Commissioner as to whether the person is
16 capable of personally activating an ignition interlock system.

17 The Commissioner is not bound by the recommendations of the examining physicians but
18 shall give fair consideration to such recommendations in acting upon the request for medical
19 exception, the criterion being whether or not, upon all the evidence, it appears that the person is
20 in fact incapable of personally activating an ignition interlock system. The burden of proof of
21 such fact is upon the person seeking the exception.

22 Whenever an exception is denied by the Commissioner, such denial may be reviewed by a
23 reviewing board upon written request of the person seeking the exception filed with the
24 Division within 10 days after receipt of such denial. The composition, procedures, and review
25 of the reviewing board shall be as provided in G.S. 20-9(g)(4)."

26 **SECTION 4.** G.S. 20-138.3(d) reads as rewritten:

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

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

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

41 **SECTION 5.** G.S. 20-179.3(b) reads as rewritten:

42 "(b) Eligibility. –

- 43 (1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is
44 eligible for a limited driving privilege if:
 - 45 a. At the time of the offense he held either a valid driver's license or a
46 license that had been expired for less than one ~~year~~; year.
 - 47 b. At the time of the offense he had not within the preceding seven
48 years been convicted of an offense involving impaired
49 ~~driving~~; driving.
 - 50 c. Punishment Level Three, Four, or Five was imposed for the offense
51 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 6.** 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 ~~0.15~~ 0.08 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. The Commissioner shall not unreasonably withhold
26 approval of an ignition interlock system and shall consult with the Division
27 of Purchase and Contract in the Department of Administration to ensure that
28 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 7.** This act becomes effective December 1, 2009, and applies to
35 offenses committed on or after that date.