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Short Title: NC Drivers License Restoration Act.

(Public)

Sponsors:

Referred to:

April 2, 2015

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. This act shall be known as the "North Carolina Drivers License Restoration Act."

SECTION 2. 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 – Except as provided in ~~subsection~~ subsections (a1) or (a2) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 3 misdemeanor ~~unless the person's license was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) Driving While License Revoked for Impaired Driving. – Any person whose drivers license has been revoked for an impaired driving revocation as defined in G.S. 20-28.2(a) and who drives any motor vehicle upon the highways of the State is guilty of a Class 1 misdemeanor. 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 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.

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



- 1 (1) At the time of the offense, the person's license was revoked solely under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

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

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

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

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

28 ...

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

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

45 (c1) Upon the filing of an application the Division may, with or without a hearing, issue
46 a new license upon satisfactory proof that the former licensee has not been convicted of a
47 moving violation under this Chapter or the laws of another state, a violation of any provision of
48 the alcoholic beverage laws of this State or another state, or a violation of any provisions of the
49 drug laws of this State or another state when any of these violations occurred during the
50 revocation period. For purposes of this subsection, a violation of subsection (a) of this section
51 shall not be considered a moving violation.

1 ...
2 (c3) A person whose license is revoked for violation of subsection ~~(a)-(a1)~~ of this section
3 where the person's license was originally revoked for an impaired driving revocation, or a
4 person whose license is revoked for a violation of subsection ~~(a2)-(a3)~~ of this section, may only
5 have the license conditionally restored by the Division pursuant to the provisions of subsection
6 (c4) of this section.

7 ...
8 (d) Driving While Disqualified. – A person who was convicted of a violation that
9 disqualified the person and required the person's drivers license to be revoked who drives a
10 motor vehicle during the revocation period is punishable as provided in ~~the other subsections~~
11 subsection (a1) of this section. A person who has been disqualified who drives a commercial
12 motor vehicle during the disqualification period is guilty of a Class 1 misdemeanor and is
13 disqualified for an additional period as follows:

- 14 (1) For a first offense of driving while disqualified, a person is disqualified for a
15 period equal to the period for which the person was disqualified when the
16 offense occurred.
- 17 (2) For a second offense of driving while disqualified, a person is disqualified
18 for a period equal to two times the period for which the person was
19 disqualified when the offense occurred.
- 20 (3) For a third offense of driving while disqualified, a person is disqualified for
21 life.

22 The Division may reduce a disqualification for life under this subsection to 10 years in
23 accordance with the guidelines adopted under G.S. 20-17.4(b). A person who drives a
24 commercial motor vehicle while the person is disqualified and the person's drivers license is
25 revoked is punishable for both driving while the person's license was revoked and driving while
26 disqualified."

27 **SECTION 3.** G.S. 20-28.1(a) reads as rewritten:

28 "(a) Upon receipt of notice of conviction of any person of a motor vehicle moving
29 offense, ~~except a conviction punishable under G.S. 20-28(a1),~~ such offense having been
30 committed while such person's driving privilege was in a state of suspension or revocation, the
31 Division shall revoke such person's driving privilege for an additional period of time as set
32 forth in subsection (b) hereof. For purposes of this section a violation of G.S. 20-7(a), 20-24.1,
33 or 20-28(a) or (a2) shall not be considered a "motor vehicle moving offense" unless the offense
34 occurred in a commercial motor vehicle or the person held a commercial drivers license at the
35 time of the offense."

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

37 "(f) Effect of Violation of Restriction. – A person subject to this section who violates
38 any of the restrictions of this section commits the offense of driving while license revoked for
39 impaired driving under ~~G.S. 20-28(a)~~G.S. 20-28(a1) and is subject to punishment and license
40 revocation as provided in that section. If a law enforcement officer has reasonable grounds to
41 believe that a person subject to this section has consumed alcohol while driving or has driven
42 while he has remaining in his body any alcohol previously consumed, the suspected offense of
43 driving while license is revoked is an alcohol-related offense subject to the implied-consent
44 provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while
45 license revoked by violating a condition of subsection (b) of this section, and a judicial official
46 determines that there is probable cause for the charge, the person's license is suspended pending
47 the resolution of the case, and the judicial official must require the person to surrender the
48 license. The judicial official must also notify the person that he is not entitled to drive until his
49 case is resolved. An alcohol concentration report from the ignition interlock system shall not be
50 admissible as evidence of driving while license revoked, nor shall it be admissible in an
51 administrative revocation proceeding as provided in subsection (g) of this section, unless the

1 person operated a vehicle when the ignition interlock system indicated an alcohol concentration
2 in violation of the restriction placed upon the person by subdivision (b)(3) of this section."

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

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

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

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

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

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

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

- 1 Each prior conviction is a separate grossly aggravating factor.
- 2 (2) Driving by the defendant at the time of the offense while his driver's license
- 3 was revoked under ~~G.S. 20-28~~, G.S. 20-28(a1), and the revocation was an
- 4 impaired driving revocation under G.S. 20-28.2(a).

5 ...
6 In imposing an Aggravated Level One, a Level One, or a Level Two punishment, the judge
7 may consider the aggravating and mitigating factors in subsections (d) and (e) in determining
8 the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must
9 weigh all aggravating and mitigating factors and impose punishment as required by subsection
10 (f)."

11 **SECTION 7.** This act becomes effective December 1, 2015, and applies to
12 convictions on or after that date. Prosecutions for offenses committed before the effective date
13 of this act are not abated or affected by this act, and the statutes that would be applicable but for
14 this act remain applicable to those prosecutions.