

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1135, 6th

SHORT TITLE: 1999 Governor's DWI Amendments

SPONSOR(S): Rep. Hackney, Bowie and Wainwright

FISCAL IMPACT					
	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>	<u>FY 2002-03</u>	<u>FY 2003-04</u>
<u>HIGHWAY FUND</u>					
REVENUES	\$0	\$0	\$256,710	\$513,420	\$513,420
EXPENDITURES	\$171,320	\$389,522	\$339,322	\$339,322	\$339,322
<i>(first year cost to be covered with grant funds from Governor's Highway Safety Program)</i>					
<u>GENERAL FUND</u>					
Judicial Branch	\$ 71,167	\$122,000	\$122,000	\$122,000	\$122,000
(indigent defense costs)		additional impact on workload			
<i>(6th edition specified Bill to be implemented with funds available or appropriated)</i>					
<u>Other (Local)</u>		Increase in the number of jail inmates of 6-16 per year			
POSITIONS:					
Highway Fund		10	10	10	10
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Motor Vehicles; Administrative Office of the Courts; Department of Correction; Community Service Work Program and Local Jails.					
EFFECTIVE DATE: Parts I and II (Lower Tolerance Repeat Offenders and Ignition Interlock) are effective July 1, 2000; Remainder of Bill effective December 1, 1999. Applies to offenses committed on or after that date.					

BILL SUMMARY: I. LOWER TOLERANCE FOR REPEAT OFFENDERS/ RESTRICTIONS ON RESTORATION OF DRIVERS LICENSE Amends GS 20-19 to provide that when Division of Motor Vehicles (DMV) restores person's drivers license that was revoked under GS 20-13.2(a) (provisional license offense), GS 20-23 (conviction in another state) when involving impaired driving, GS 20-23.2 (impaired driving in federal court), GS 20-17(a)(2) (impaired driving under 20-138.1 and 20-138.2), GS 20-17(a)(1) or (a)(9) (homicides or death by vehicle involving impaired driving), or GS 20-19(c3), DMV must place applicable restriction on person's drivers license. (1) For first restoration of drivers license for person convicted of impaired driving (GS 20-

138.1) or driver's license revoked under GS 20-23 or GS 20-23.2, when offense substantially similar to NC's impaired driving offense, DMV must place restriction on person's drivers license that person not operate vehicle with alcohol concentration of 0.04 or more at any relevant time after driving; for second or subsequent restoration of driver's license, that person not operate vehicle with alcohol concentration greater than 0.00 at relevant time after driving. (2) For restoration of drivers license for person convicted of impaired driving in commercial motor vehicle (GS 20-138.2), driving while less than 21 after consuming alcohol or drugs (GS 20-138.3), felony death by vehicle [GS 20-141.4(a1)], manslaughter or negligent homicide resulting from operation of motor vehicle when offense involved impaired driving, DMV must place restriction on person's drivers license that person not operate vehicle with alcohol concentration of 0.00 or more at any relevant time after driving; this restriction also applies to restoration of drivers license revoked under GS 20-23 or GS 20-23.2, when offense substantially similar to these NC offenses. Person seeking restoration of license must agree to submit to chemical analysis under GS 20-16.2 at request of law enforcement officer who has reasonable grounds to believe person is operating motor vehicle on highway in violation of restrictions; person must also agree that, when requested by officer, person will agree to be transported by officer to place where chemical analysis is to be administered. Restrictions placed on license are in effect (i) seven years from date of restoration if person's license was permanently revoked, (ii) until person's twenty-first birthday if revocation was for conviction under GS 20-138.3, or (iii) three years in all other cases. Violation of restriction or willful refusal to submit to chemical analysis will result in one-year revocation. If period of revocation was imposed under GS 20-16.2(d) or (e), any remaining period of original revocation, before its reduction, will be reinstated and one-year revocation begins after all other periods of revocation have terminated. Sets out procedures for person contesting revocation to request hearing before DMV and possible review by superior court. Makes conforming amendments to GS 20-16.2, and adds provision allowing information by charging officer and chemical analyst to be sent to DMV by electronic means instead of by mailing affidavits.

II. IGNITION INTERLOCK Adds new GS 20-17.7, which is applicable to person whose license was revoked as result of conviction of impaired driving (GS 20-138.1) if (1) person had alcohol concentration of 0.16 or more; or (2) person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding date of offense for which person's license has been revoked. Provides that when DMV restores license of person subject to section, it must require person to agree to and must indicate on person's drivers license the following restrictions: (1) person may operate only a vehicle that is equipped with functioning interlock system of type approved by Comm'r of Motor Vehicles; (2) person must personally activate ignition interlock system before driving motor vehicle; and (3) person may not drive with alcohol concentration of 0.01 or greater. Sets out how long interlock requirement must be imposed. Adds new GS 20-179.3(g5) to require that if person's drivers license is revoked for conviction of GS 20-138.1, and person had alcohol concentration of 0.16 or more, judge must include all of following in limited driving privilege: (1) applicant may operate only designated motor vehicle; (2) such vehicle must be equipped with functioning interlock system; and (3) applicant must personally activate ignition interlock system before driving vehicle. Provides that person who violates section commits the offense of driving while license revoked under GS 20-28(a). Provides for length of license revocation for violation of restriction, right to hearing, and related matters.

III. OPEN CONTAINER CHANGES. Deletes from GS 18B-401(a) offense of person driving motor vehicle on highway or public vehicular area while consuming malt beverage or unfortified wine. Adds new GS 20-138.7(a1) to prohibit person from driving motor vehicle on highway or public vehicular area while there is alcoholic beverage other than in unopened manufacturer's original container in passenger area. However, if the driver is not consuming alcohol and has no alcohol remaining in driver's body, it is not a violation if the container is: (1) in passenger area of motor vehicle designed, maintained, or used primarily for transportation of people for compensation; or (2) in living quarters of house trailer, motor home, or house car. Violation is a lesser included offense of GS 20-138.7(a) and is an infraction.

IV. HGN TEST ADMISSIBILITY. Adds new GS 8-50.3 to provide that results of horizontal gaze nystagmus (HGN) test are admissible as evidence of person's impairment by impairing substance in criminal, civil, or administrative proceeding and for purpose of corroborating opinion about another's mental or physical impairment from impairing substance. However, results are not admissible unless person administering HGN test (i) had received training in administering HGN test before conducting test and (ii) had followed training in administering test.

V. LIMITED PRIVILEGE ALCOHOL SCREENING TEST ADMISSIBILITY Amends GS 20-179.3(j) to allow alcohol screening test to be administered to driver suspected of violating section (violation of limited driving privilege), and results of test or driver's refusal to submit may be used by officer, court, or administrative agency in determining if alcohol was present in driver's body, provided that device is approved device and test was conducted according to regulations.

VI., INCREASE PUNISHMENT FOR 19-20 year old PURCHASE OR POSSESSION of beer or unfortified wine. Repeals GS 18B-302(i). Repeal effectively increases punishment from infraction to Class 3 misdemeanor for nineteen or twenty year old who purchases or possesses malt beverage or unfortified wine under GS 18B-302(b)(1). Makes conforming amendment to GS 15A-146(a).

VII. OTHER DWI CHANGES . Amends GS 20-28.2(a) to include within impaired driving revocation, making motor vehicle subject to forfeiture under certain conditions, a revocation pursuant to laws of another state and offense for which person's license is revoked prohibits substantially similar conduct that if committed in this state would result in revocation under GS 20-28.2(a)(1) and (a)(2). Amends GS 20-139.1(b3) (sequential tests required) to delete the word "willful" before the word "refusal" throughout the subsection. Amends GS 20-138.2A (operating commercial vehicle after consuming alcohol) and 20-138.2B (operating school bus, school activity bus, or child care vehicle after consuming alcohol) to (1) change element of each offense from a reference to a specific alcohol concentration to a prohibition against driving while consuming alcohol or while alcohol remains in person's body; (2) provide that odor of alcoholic beverage on driver's breath is insufficient evidence by itself to convict unless driver was offered alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis; and (3) allows use of results of alcohol screening tests by law enforcement officer, court, or administrative body under certain conditions.; rewrites GS 20-28.2(a1)(2)b. (defining an "innocent owner") to provide that an owner is innocent if (a) the motor vehicle owner knew that the defendant's driver's license was revoked; (b) the defendant drove the vehicle without the owner's expressed or implied permission; and (c) the owner files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle (1st edition, only first two requirements applied); Adds amendment to GS 15A-145(a) to allow expunction of conviction of misdemeanor possession of alcohol under GS 18B-302(b)(1) (possession of beer or unfortified wine by person under 21) if person has not yet attained age of 21 years and has not previously been convicted of felony, or misdemeanor other than traffic violation.

CHANGES TO 4TH EDITION: Deletes from amendment to GS 20-16.2 provision that affidavit of the charging officer and chemical analyst is not required when information specified by the statute is provided to DMV by approved electronic means. Makes several minor editorial changes.

CHANGES TO 5TH EDITION . Adds requirement that act be implemented with funds available or appropriated to Dep't of Transportation and Administrative Office of the Courts. Deletes proposed new GS 8-50.3 concerning admissibility in evidence of test of horizontal gaze nystagmus.

ASSUMPTIONS AND METHODOLOGY:

I. ADMINISTRATIVE OFFICE OF THE COURTS

The Administrative Office of the Courts notes that several sections of the Bill will affect Judicial System workload but is unable to provide a specific estimate of fiscal impact.

- Section 2 specifies that if restrictions on restored drivers licenses are violated and after certain hearings by DMV, a defendant may petition for review by Superior Court.
- Section 3 requires ignition interlock in certain circumstances. They anticipate some increases in workload due to new cases and appeal hearings resulting from violations of this restriction.
- Section 6 creates a new infraction level offense within GS 18B-401 for transporting open containers of beer or wine in the passenger area of a vehicle. In 1998, there were 7,634 defendants under GS 18B-401, suggesting there could be a number of infractions due to this new offense.

Section 11 of the Bill changes the penalty for 19-20 year old purchase of possession of beer or wine from an infraction to a Class 3 Misdemeanor. The Judicial Branch expects this section to have an impact as follows:

Based on 1998 data, there were 7,252 19 and 20 year olds charged with underage possession and 313 charged with purchase/attempt to purchase.

Personnel Cost

- ❖ The 313 charged with purchase would face a Class 3 Misdemeanor and a 1-year revocation of their license. The Judicial Branch estimates each of these cases would require 1 hour of court time. **Total impact: 313 hours in District Court**
- ❖ Some of the 7,252 charged with possession would waive their rights for trial (pay the fine, result in a criminal conviction on their record) but a lower percentage than under current law. Currently, 55% of those charged with the infraction choose to waive; The Judicial Branch estimates conservatively that 37% of those charged with the higher Misdemeanor 1 will choose to waive. That leaves 63% or 4,569 defendants involved in court trials.
- ❖ Of these 4,569 defendants, 1,305 of them (18%) are cases that would have been otherwise waived. The incremental effect on court time is estimated at 30 minutes per case or a total of **653 court hours**.
- ❖ The remaining 3,264 would go to trial under existing law, but the trials will be lengthier due to the greater penalty. The Judicial Branch estimates an increase of 15 minutes per case or a **total of 816 hours**

Based on the analysis above, court workload will increase by 1,782 hours, equivalent to a fulltime District Court Judge, Assistant DA and Deputy Clerk of Court. Personnel costs for these 3 positions total \$217,766 full year recurring. However, since this increased workload will be spread statewide, Fiscal Research believes it can be absorbed within existing resources.

There will also be an estimated \$43,200 in costs for programming changes to the Court Information System to allow electronic transmittal of information to DMV. These costs can be absorbed within the existing information systems resources.

Indigent Defense Cost

The increased penalty for underage possession/purchase would also increase indigent defense costs. The Judicial Branch estimates 25% of defendants would qualify as indigent with a fee of \$100/case or an annual cost of \$122,000. This cost is reflected on page 1.

II. DEPARTMENT OF CORRECTION

HB 1135 changes the penalty for purchase or possession by a 19 or 20 year old of malt beverage or unfortified wine from an infraction to a Class 3 Misdemeanor. Class 3 Misdemeanors receive active time only after 5 or more convictions. At that point the sentence is 1-20 days. The NC Sentencing Commission projected that approximately 5.8% of convictions (202 people) would receive active time if this offense was a Class 3 Misdemeanor. The number of *jail* beds needed per year would be approximately 6 for the first year and increases to 16 at the end of 10 years.

There were 5,745 defendants found responsible for the charge of 19-20 year old possession and purchase in 1997-98. Some of these defendants may receive probation under the new penalty. However, with a projected daily probation and parole population of 121,000, this can be absorbed within existing resources of the Division of Community Corrections.

III. DIVISION OF MOTOR VEHICLES (DMV)

HB 1135 would require DMV to hold additional hearings. DMV conducted a total of 34,227 hearings in 1998. While DMV was not able to provide the number of these hearings that were alcohol-related, DMV notes that 58,974 alcohol-related suspensions were imposed.

There are no data available on the potential increase in hearings due to this legislation. DMV assumes that the number of hearings would increase by 25%, or 8556, requiring six Hearing Officers at grade 68 (Hearing Officers conduct approximately 1500 hearings per year). Also, DMV projects up to five times as many drivers would be required to utilize the ignition interlock program, requiring an increase of four clerical positions (1 at grade 63 and 3 at grade 61). The total personnel cost of six Hearing Officers and four clerical positions would be \$321,562 beginning in FY2000-01 plus \$67,960 in that year for furniture and equipment for a total of \$389,522. In subsequent years the cost would be \$339,322..

Information Systems Technology (IST) states that HB 1135 would require extensive modifications to four main functions of the State Automated Driver License System (SADLS). IST judges the technical level of effort for these modifications to be complex and estimates 1960 hours of effort at \$80 per hour plus \$14,520 for ITS charges for a total of \$171,320. This would be incurred in FY1999-2000.

DMV estimates revenues as follows:

DWI Restoration Fee \$50 x 8557 = \$427,850
Restoration Renewal Fee, approximately \$10 x 8557 = \$85,570
Total = \$427,850 + \$85,570 = \$513,420

These revenues would not begin immediately. DMV assumes that it will take two years from date of implementation to reach maximum projected income. It is assumed here that revenues would be one-half of projected income (\$256,710) in 2001-2 and reach the full projected income in 2002-3.

TECHNICAL CONSIDERATIONS:

SB120 (Up some Underage Penalties) makes 19 and 20 year old possession/purchase a Class 1 Misdemeanor. Neither the Sentencing Commission nor the Judicial Branch see any significant difference between the fiscal impact of a Class 1 Misdemeanor and a Class 3 Misdemeanor in this case.

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