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SENATE DRS15172-MH-90 (03/07)

Short Title: MAP 21 Conforming Revisions.-AB

(Public)

Sponsors: Senators Harrington and Rabon (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CONFORM THE MOTOR VEHICLE LAW OF NORTH CAROLINA TO
3 SECTIONS 154 AND 164 OF THE FEDERAL HIGHWAY BILL.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 20-17.8 reads as rewritten:

6 "§ 20-17.8. Restoration of a license after certain driving while impaired convictions;
7 ignition interlock.

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 – This section applies to a person whose license was revoked as a result of a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

10 (1) The person had an alcohol concentration of 0.15 or more;

11 (2) The person has been convicted of another offense involving impaired
12 driving, which offense occurred within seven years immediately preceding
13 the date of the offense for which the person's license has been revoked; or

14 (3) The person was sentenced pursuant to G.S. 20-179(f3).

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

18 ...

19 (c1) Vehicles Subject to Requirement. – A person subject to this section shall have all
20 registered vehicles owned by that person equipped with a functioning ignition interlock system
21 of a type approved by the ~~Commissioner~~ Commissioner. The Commissioner shall not issue a
22 license to a person subject to this section until presented with proof of the installation of an
23 ignition interlock system in all registered vehicles owned by the person. In order to avoid an
24 undue financial hardship, a person subject to this section may seek a waiver from the Division
25 for any vehicle registered to that person that is unless the Division determines that one or more
26 specific registered vehicles owned by that person are relied upon by another member of that
27 person's family for transportation and that the vehicle is not in the possession of the person
28 subject to this section. The Division shall determine such waiver on a case-by-case basis
29 following an assessment of financial hardship to the person subject to this restriction. The
30 Commissioner shall cancel the drivers license of any person subject to this section for
31 registration of a motor vehicle owned by the person without an installed ignition interlock
32 system or removal of the ignition interlock system from a motor vehicle owned by the person,
33 other than when changing ignition interlock providers or upon sale of the vehicle.

34 (d) Effect of Limited Driving Privileges. – If the person was eligible for and received a
35 limited driving privilege under G.S. 20-179.3, with the ignition interlock requirement contained



1 in G.S. 20-179.3(g5), the period of time for which that limited driving privilege was held shall
2 be applied towards the requirements of subsection (c).

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

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

36 ...

37 (l) Medical Exception to Requirement. – A person subject to this section solely for the
38 reason set forth in subdivision (a)(1) of this section and who has a medically diagnosed
39 physical condition that makes the person incapable of personally activating an ignition
40 interlock system may request an exception to the requirements of this section from the
41 Division. The Division shall not issue an exception to this section unless the person has
42 submitted to a physical examination by two or more physicians or surgeons duly licensed to
43 practice medicine in this State or in any other state of the United States and unless such
44 examining physicians or surgeons have completed and signed a certificate in the form
45 prescribed by the Division. Such certificate shall be devised by the Commissioner with the
46 advice of those qualified experts in the field of diagnosing and treating physical disorders that
47 the Commissioner may select and shall be designed to elicit the maximum medical information
48 necessary to aid in determining whether or not the person is capable of personally activating an
49 ignition interlock system. The certificate shall contain a waiver of privilege and the
50 recommendation of the examining physician to the Commissioner as to whether the person is
51 capable of personally activating an ignition interlock system.

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

6 Whenever an exception is denied by the Commissioner, such denial may be reviewed by a
7 reviewing board upon written request of the person seeking the exception filed with the
8 Division within 10 days after receipt of such denial. The composition, procedures, and review
9 of the reviewing board shall be as provided in G.S. 20-9(g)(4). This subsection shall not apply
10 to persons subject to an ignition interlock requirement under this section for the reasons set
11 forth in subdivision (a)(2) or (a)(3) of this section."

12 **SECTION 2.** G.S. 20-179(h) reads as rewritten:

13 "(h) Level Two Punishment. – A defendant subject to Level Two punishment may be
14 fined up to two thousand dollars (\$2,000) and shall be sentenced to a term of imprisonment that
15 includes a minimum term of not less than seven days and a maximum term of not more than 12
16 months. The term of imprisonment may be suspended only if a condition of special probation is
17 imposed to require the defendant to serve a term of imprisonment of at least seven days or to
18 abstain from consuming alcohol for at least 90 consecutive days, as verified by a continuous
19 alcohol monitoring system, of a type approved by the Division of Adult Correction of the
20 Department of Public Safety. If the defendant is subject to Level Two punishment based on a
21 finding that the grossly aggravating factor in subdivision (1) or (2) of subsection (c) of this
22 section applies, the conviction for a prior offense involving impaired driving occurred within
23 five years before the date of the offense for which the defendant is being sentenced and the
24 judge suspends all active terms of imprisonment and imposes abstention from alcohol as
25 verified by a continuous alcohol monitoring system, then the judge must also impose as an
26 additional condition of special probation that the defendant must complete 240 hours of
27 community service. If the defendant is monitored on an approved continuous alcohol
28 monitoring system during the pretrial period, up to 60 days of pretrial monitoring may be
29 credited against the 90-day monitoring requirement for probation. If the defendant is placed on
30 probation, the judge shall impose a requirement that the defendant obtain a substance abuse
31 assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a
32 drivers license and as a condition of probation. The judge may impose any other lawful
33 condition of probation."

34 **SECTION 3.** G.S. 15A-1371(h) reads as rewritten:

35 "(h) Community Service Parole. – Notwithstanding the provisions of any other
36 subsection herein, prisoners serving sentences for impaired driving shall be eligible for
37 community service ~~parole~~, parole after serving the minimum sentence required by G.S. 20-179,
38 in the discretion of the Post-Release Supervision and Parole Commission.

39 Community service parole is early parole for the purpose of participation in community
40 service under the supervision of the Section of Community Corrections of the Division of Adult
41 Correction. A parolee who is paroled under this subsection must perform as a condition of
42 parole community service in an amount and over a period of time to be determined by the
43 Post-Release Supervision and Parole Commission. However, the total amount of community
44 service shall not exceed an amount equal to 32 hours for each month of active service
45 remaining in his minimum sentence. The Post-Release Supervision and Parole Commission
46 may grant early parole under this section without requiring the performance of community
47 service if it determines that such performance is inappropriate to a particular case.

48 The probation/parole officer and the judicial services coordinator shall develop a program
49 of community service for the parolee. The coordinator shall report any willful failure to
50 perform community service work to the probation/parole officer. Parole may be revoked for
51 any parolee who willfully fails to perform community service work as directed by the Section

1 of Community Corrections of the Division of Adult Correction. The provisions of
2 G.S. 15A-1376 shall apply to this violation of a condition of parole.

3 Community service parole eligibility shall be available to a prisoner:

- 4 (1) Who is serving an active sentence the term of which exceeds six months;
5 and
- 6 (2) Who, in the opinion of the Post-Release Supervision and Parole
7 Commission, is unlikely to engage in further criminal conduct; and
- 8 (3) Who agrees to complete service of his sentence as herein specified; and
- 9 (4) Who has served one-half of his minimum ~~sentence~~-sentence, at least 10 days
10 if sentenced to Level One punishment or at least seven days if sentenced to
11 Level Two punishment, whichever is longer.

12 In computing the service requirements of subdivision (4) of this subsection, credit shall be
13 given for good time and gain time credit earned pursuant to ~~G.S. 148-13~~-G.S. 148-13 but only
14 after a person has served at least 10 days if sentenced to Level One punishment or at least seven
15 days if sentenced to Level Two punishment. Nothing herein is intended to create or shall be
16 construed to create a right or entitlement to community service parole in any prisoner.

17 (i) The fee required by G.S. 143B-708 shall be paid by all persons who participate in
18 the Community Service Parole Program.

19 (j) The Post-Release Supervision and Parole Commission may terminate a prisoner's
20 community service parole before the expiration of the term of imprisonment where doing so
21 will not endanger the public, unduly depreciate the seriousness of the crime, or promote
22 disrespect for the law."

23 **SECTION 4.** G.S. 20-138.7(a3) reads as rewritten:

24 "(a3) Meaning of Terms. – Under this section, the term "motor vehicle" means ~~only those~~
25 ~~types of motor vehicles which North Carolina law requires to be registered, whether the motor~~
26 ~~vehicle is registered in North Carolina or another jurisdiction.~~any vehicle driven or drawn by
27 mechanical power and manufactured primarily for use on public highways and includes
28 mopeds."

29 **SECTION 5.** This act becomes effective October 1, 2013, and applies to offenses
30 committed on or after that date.