

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 529
Committee Substitute Favorable 4/15/15
Senate Judiciary II Committee Substitute Adopted 7/21/15

Short Title: NC Drivers License Restoration Act.

(Public)

Sponsors:

Referred to:

April 2, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO REPEAL THE PUNISHMENT OF REVOKING A PERSON'S DRIVERS
3 LICENSE FOR COMMITTING CERTAIN DRIVING WHILE LICENSE REVOKED
4 OFFENSES; TO MAKE DRIVING WHILE LICENSE REVOKED A NONMOVING
5 VIOLATION FOR CERTAIN PURPOSES; AND TO MAKE OTHER CONFORMING
6 CHANGES.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** This act shall be known as the "North Carolina Drivers License
9 Restoration Act."

10 **SECTION 2.** G.S. 20-28 reads as rewritten:

11 "**§ 20-28. Unlawful to drive while license revoked, after notification, or while disqualified.**

12 (a) Driving While License Revoked. – Except as provided in ~~subsection~~ subsections
13 (a1) or (a2) of this section, any person whose drivers license has been revoked who drives any
14 motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 3
15 ~~misdemeanor unless the person's license was originally revoked for an impaired driving~~
16 ~~revocation, in which case the person is guilty of a Class 1 misdemeanor.~~

17 (a1) Driving While License Revoked for Impaired Driving. – Any person whose drivers
18 license has been revoked for an impaired driving revocation as defined in G.S. 20-28.2(a) and
19 who drives any motor vehicle upon the highways of the State is guilty of a Class 1
20 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of
21 one year for the first offense, two years for the second offense, and permanently for a third or
22 subsequent offense.

23 If the person's license was originally revoked for an impaired driving revocation, the court
24 may order as a condition of probation that the offender abstain from alcohol consumption and
25 verify compliance by use of a continuous alcohol monitoring system, of a type approved by the
26 Division of Adult Correction of the Department of Public Safety, for a minimum period of 90
27 days.

28 The restoree of a revoked drivers license who operates a motor vehicle upon the highways
29 of the State without maintaining financial responsibility as provided by law shall be punished
30 as for driving without a license.

31 ~~(a1)(a2)~~ Driving Without Reclaiming License. – A person convicted under subsection (a)
32 shall be punished as if the person had been convicted of driving without a license under
33 G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or
34 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 **SECTION 3.** G.S. 20-28.1(a) reads as rewritten:

9 "(a) Upon receipt of notice of conviction of any person of a motor vehicle moving
10 offense, ~~except a conviction punishable under G.S. 20-28(a1),~~ such offense having been
11 committed while such person's driving privilege was in a state of suspension or revocation, the
12 Division shall revoke such person's driving privilege for an additional period of time as set
13 forth in subsection (b) hereof. For purposes of this section a violation of G.S. 20-7(a), 20-24.1,
14 or 20-28(a) or (a2) shall not be considered a "motor vehicle moving offense.""

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

16 "(f) Effect of Violation of Restriction. – A person subject to this section who violates
17 any of the restrictions of this section commits the offense of driving while license revoked for
18 impaired driving under ~~G.S. 20-28(a)~~G.S. 20-28(a1) and is subject to punishment and license
19 revocation as provided in that section. If a law enforcement officer has reasonable grounds to
20 believe that a person subject to this section has consumed alcohol while driving or has driven
21 while he has remaining in his body any alcohol previously consumed, the suspected offense of
22 driving while license is revoked is an alcohol-related offense subject to the implied-consent
23 provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while
24 license revoked by violating a condition of subsection (b) of this section, and a judicial official
25 determines that there is probable cause for the charge, the person's license is suspended pending
26 the resolution of the case, and the judicial official must require the person to surrender the
27 license. The judicial official must also notify the person that he is not entitled to drive until his
28 case is resolved. An alcohol concentration report from the ignition interlock system shall not be
29 admissible as evidence of driving while license revoked, nor shall it be admissible in an
30 administrative revocation proceeding as provided in subsection (g) of this section, unless the
31 person operated a vehicle when the ignition interlock system indicated an alcohol concentration
32 in violation of the restriction placed upon the person by subdivision (b)(3) of this section."

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

34 "(j) Effect of Violation of Restriction. – A holder of a limited driving privilege who
35 violates any of its restrictions commits the offense of driving while ~~his license is revoked~~ for
36 impaired driving under ~~G.S. 20-28(a)~~G.S. 20-28(a1) and is subject to punishment and license
37 revocation as provided in that section. If a law-enforcement officer has reasonable grounds to
38 believe that the holder of a limited driving privilege has consumed alcohol while driving or has
39 driven while he has remaining in his body any alcohol previously consumed, the suspected
40 offense of driving while license is revoked is an alcohol-related offense subject to the
41 implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged
42 with driving while license revoked by violating a restriction contained in his limited driving
43 privilege, and a judicial official determines that there is probable cause for the charge, the
44 limited driving privilege is suspended pending the resolution of the case, and the judicial
45 official must require the holder to surrender the limited driving privilege. The judicial official
46 must also notify the holder that he is not entitled to drive until his case is resolved.

47 Notwithstanding any other provision of law, an alcohol screening test may be administered
48 to a driver suspected of violating this section, and the results of an alcohol screening test or the
49 driver's refusal to submit may be used by a law enforcement officer, a court, or an
50 administrative agency in determining if alcohol was present in the driver's body. No alcohol
51 screening tests are valid under this section unless the device used is one approved by the

1 Department of Health and Human Services, and the screening test is conducted in accordance
2 with the applicable regulations of the Department as to the manner of its use."

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

4 "(c) Determining Existence of Grossly Aggravating Factors. – At the sentencing hearing,
5 based upon the evidence presented at trial and in the hearing, the judge, or the jury in superior
6 court, must first determine whether there are any grossly aggravating factors in the case.
7 Whether a prior conviction exists under subdivision (1) of this subsection, or whether a
8 conviction exists under subdivision (d)(5) of this section, shall be matters to be determined by
9 the judge, and not the jury, in district or superior court. If the sentencing hearing is for a case
10 remanded back to district court from superior court, the judge shall determine whether the
11 defendant has been convicted of any offense that was not considered at the initial sentencing
12 hearing and impose the appropriate sentence under this section. The judge must impose the
13 Aggravated Level One punishment under subsection (f3) of this section if it is determined that
14 three or more grossly aggravating factors apply. The judge must impose the Level One
15 punishment under subsection (g) of this section if it is determined that the grossly aggravating
16 factor in subdivision (4) of this subsection applies or two of the other grossly aggravating
17 factors apply. If the judge does not find that the aggravating factor at subdivision (4) of this
18 subsection applies, then the judge must impose the Level Two punishment under subsection (h)
19 of this section if it is determined that only one of the other grossly aggravating factors applies.
20 The grossly aggravating factors are:

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

- 22 a. The conviction occurred within seven years before the date of the
23 offense for which the defendant is being sentenced; or
24 b. The conviction occurs after the date of the offense for which the
25 defendant is presently being sentenced, but prior to or
26 contemporaneously with the present sentencing; or
27 c. The conviction occurred in district court; the case was appealed to
28 superior court; the appeal has been withdrawn, or the case has been
29 remanded back to district court; and a new sentencing hearing has
30 not been held pursuant to G.S. 20-38.7.

31 Each prior conviction is a separate grossly aggravating factor.

32 (2) Driving by the defendant at the time of the offense while his driver's license
33 was revoked under ~~G.S. 20-28~~, ~~G.S. 20-28(a1)~~, and the revocation was an
34 impaired driving revocation under G.S. 20-28.2(a).

35 ...

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

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