

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

3

HOUSE BILL 551
Committee Substitute Favorable 4/26/93
Committee Substitute #2 Favorable 6/7/93

Short Title: No Drivers License Until Treatment.

(Public)

Sponsors:

Referred to:

March 25, 1993

A BILL TO BE ENTITLED

AN ACT TO IMPOSE CONDITIONS FOR THE RESTORATION OR CONTINUED ENJOYMENT OF A DRIVING PRIVILEGE AFTER A CONVICTION FOR DRIVING WHILE IMPAIRED OR DRIVING WHILE A PROVISIONAL LICENSEE AFTER CONSUMING DRUGS OR ALCOHOL, AND TO PROMOTE COMPLIANCE WITH THESE CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 20 of the General Statutes is amended by adding the following new sections to read:

"§ 20-17.6. Restoration of a license after a conviction of driving while impaired or driving while a provisional licensee after consuming alcohol or drugs; effect of failure to comply.

(a) Certificate of Completion Required. – Before the Division can take one of the following actions concerning the license of a person who was convicted under G.S. 20-138.1 of driving while impaired (DWI), under G.S. 20-138.2 of commercial DWI, or under G.S. 20-138.3 of driving while a provisional licensee after consuming alcohol or drugs, the Division must have received from the Department of Human Resources a certificate of completion for that individual:

(1) Restore the person's license, if one of the following applies:

a. The person was convicted under G.S. 20-138.1 of DWI.

b. The person was convicted under G.S. 20-138.2 of commercial DWI and the person's license was revoked under G.S. 20-17(2).

- 1 c. The person was convicted under G.S. 20-138.3 of driving while
2 a provisional licensee after consuming alcohol or drugs and one
3 of the following applies:
- 4 1. The person's license was revoked for at least one year.
5 2. The person's license was revoked for less than one year,
6 it has been at least one year since the person was
7 convicted, and the person did not obtain a license after
8 the revocation period ended.
- 9 (2) End the person's period of disqualification, if the person was convicted
10 under G.S. 20-138.2 of commercial DWI and the person's license was
11 not revoked under G.S. 20-17(2).
- 12 (3) Allow a person who was convicted under G.S. 20-138.3 of driving
13 while a provisional licensee after consuming alcohol or drugs, and
14 whose period of revocation was less than one year, to hold a license
15 obtained by the person after the revocation period ended and before
16 one year elapsed since the person was convicted.
- 17 (b) When Certificate Is Issued. – A certificate of completion is issued after a
18 person has had a substance abuse assessment and has completed either an alcohol and
19 drug education traffic (ADET) school or a substance abuse treatment program.
20 Completion of an ADET school is required if none of the following applies; completion
21 of a substance abuse treatment program is required if any of the following applies:
- 22 (1) The person took a chemical test at the time of the offense, and the test
23 revealed that the person had an alcohol concentration at any relevant
24 time after driving of at least 0.20.
- 25 (2) The person has a prior conviction of an offense involving impaired
26 driving.
- 27 (3) The substance abuse assessment identifies a substance abuse disability.
- 28 (c) Notice of Requirement. – When a court reports to the Division a conviction
29 under G.S. 20-138.1 of DWI, under G.S. 20-138.2 of commercial DWI, or under G.S.
30 20-138.3 of driving while a provisional licensee after consuming alcohol or drugs, the
31 Division must send the appropriate area mental health, developmental disabilities, and
32 substance abuse authority written notice of the conviction and a copy of the driving
33 record of the person convicted. The appropriate area authority is the area authority for
34 the county in which the conviction occurred.
- 35 An area authority that receives notice under this subsection of a conviction must
36 send the person convicted a letter informing the person of the requirements of this
37 section and of the consequences of failing to comply with these requirements. The area
38 authority must send with the letter a list of each agency or other entity that is authorized
39 to make a substance abuse assessment needed in obtaining a certificate of completion
40 and is located in the catchment area served by the area authority.
- 41 (d) How to Obtain a Certificate. – To begin the process of obtaining a certificate
42 of completion, a person must have a substance abuse assessment conducted by one of
43 the entities named in the list the person received from the area mental health,
44 developmental disabilities, and substance abuse authority. If the person had a substance

1 abuse assessment conducted by one of these entities before being sentenced for the
2 offense, the person must report to the area authority within 60 days after the conviction
3 the name of the entity that conducted the assessment and the date the assessment was
4 conducted. If the person did not have a substance abuse assessment from one of these
5 entities before being sentenced, the person must schedule a substance abuse assessment
6 with one of these entities within 60 days after the person was convicted. If the entity
7 with which a substance abuse assessment is scheduled is not the area authority, the
8 person must report to the area authority the entity with which the substance abuse
9 assessment is scheduled. G.S. 122C-142.1 establishes the procedure for the remaining
10 steps in obtaining a certificate of completion.

11 (e) When Failure to Comply Is Not Willful. – The Division can take one of the
12 actions listed in subsection (a) of this section if a person fails to obtain a certificate of
13 completion and the Division finds that the person's failure to do so is not willful. A
14 person's failure is not willful if it is due to one of the following reasons:

- 15 (1) Financial inability to pay the fees imposed under G.S. 122C-142.1
16 after making a reasonable effort to obtain the funds to do so.
- 17 (2) A reason, other than alcoholism or drug abuse, over which the person
18 had no control.

19 (f) Right to Hearing. – A person may obtain a hearing to determine if the
20 person's failure to obtain a certificate of completion is willful by filing a written request
21 for a hearing with the Division. The Division must conduct a hearing in the county in
22 which the person resides.

23 The hearing officer assigned to conduct the hearing may subpoena any witnesses or
24 documents the hearing officer considers necessary and may administer oaths to
25 witnesses who testify at the hearing. The hearing officer must subpoena personnel of an
26 entity at which the person who requested the hearing obtained a substance abuse
27 assessment, attended an ADET school, or had substance abuse treatment when the
28 person makes a written request for the hearing officer to do so at least three days before
29 the hearing. The person who requested the hearing may subpoena other witnesses. G.S.
30 1A-1, Rule 45, applies to a subpoena issued under the authority of this subsection.

31 A person who requests a hearing has the burden of establishing that the person's
32 failure to obtain a certificate of completion was not willful. The hearing must be limited
33 to consideration of the following issues concerning that person:

- 34 (1) Whether the person was convicted under G.S. 20-138.1 of DWI, under
35 G.S. 20-138.2 of commercial DWI, or under G.S. 20-138.3 of driving
36 while a provisional licensee after consuming alcohol or drugs.
- 37 (2) Whether the Division has received a certificate of completion from the
38 Department of Human Resources for the person.
- 39 (3) Whether the person willfully failed to obtain a certificate of
40 completion.

41 A person who is dissatisfied with the Division's decision after the hearing may
42 petition for **de novo** review in the superior court. The provisions of G.S. 20-25 for
43 review of decisions concerning discretionary revocations apply to the review of a
44 decision under this subsection.

1 (g) Revocation and Disqualification Periods Extended. – The period of
2 revocation for a license that was revoked and cannot be restored under subsection (a) of
3 this section until the Division receives a certificate of completion from the Department
4 of Human Resources is extended until the certificate of completion is received. The
5 period of disqualification imposed for a conviction under G.S. 20-138.2 of commercial
6 DWI is extended until the Division receives a certificate of completion from the
7 Department of Human Resources.

8 (h) Revocation for Failure to Obtain Certificate. – The Division must revoke the
9 license of a person who was convicted under G.S. 20-138.3 of driving while a
10 provisional licensee after consuming alcohol or drugs and to whom all of the following
11 applies:

- 12 (1) The person's license was revoked for less than one year.
- 13 (2) The person obtained a license at the end of the revocation period.
- 14 (3) It has been at least one year since the person was convicted.
- 15 (4) The Division has not received a certificate of completion from the
16 Department of Human Resources for that person.

17 The period of revocation is indefinite. The period extends until the Division obtains
18 the required certificate of completion or the person's failure to obtain the certificate is
19 determined not to be willful."

20 Sec. 2. G.S. 20-7(i1) reads as rewritten:

21 "(i1) ~~Any~~ ~~A~~ person whose drivers license has been revoked pursuant to the
22 provisions of under this Chapter, other than G.S. 20-17(2), shall ~~Chapter must~~ pay a
23 restoration fee of in the following amount:

- 24 (1) For a revocation under a statute other than G.S. 20-13.2, 20-17(2), or
25 20-17.6(h), the fee is twenty-five dollars (\$25.00).
- 26 (2) For a revocation under ~~A person whose drivers license has been revoked~~
27 ~~under G.S. 20-17(2) shall pay a G.S. 20-17(2), the restoration fee of is~~
28 ~~fifty dollars (\$50.00) fifty-five dollars (\$55.00) until the end of the fiscal~~
29 ~~year in which the cumulative total amount of fees deposited under this~~
30 ~~subsection in the General Fund exceeds five million dollars~~
31 ~~(\$5,000,000), and shall pay a restoration fee of twenty-five dollars (\$25.00)~~
32 ~~thereafter, is thirty dollars (\$30.00) after this threshold is reached.~~
- 33 (3) For a revocation under G.S. 20-13.2 or G.S. 20-17.6(h), the fee is
34 thirty dollars (\$30.00).

35 The fee shall be paid to the Division prior to the issuance to such person of a new
36 drivers license or the restoration of the drivers license. The restoration fee shall be paid
37 to the Division in addition to any and all fees which may be provided by law. This
38 restoration fee shall not be required from any licensee whose license was revoked or
39 voluntarily surrendered for medical or health reasons whether or not a medical
40 evaluation was conducted pursuant to this Chapter.

41 ~~The twenty-five dollar (\$25.00) fee, and the first~~ Except for twenty-five dollars (\$25.00)
42 ~~of the fifty dollar (\$50.00) fee, fee set in subdivision (2) of this section, fees collected~~
43 ~~under this subsection shall be deposited in credited to the Highway Fund. The remaining~~
44 ~~twenty-five~~ Twenty-five dollars (\$25.00) of the fifty dollar (\$50.00) fee set in subdivision

1 (2) of this section shall be deposited in the General Fund of the State Fund. The Office of
2 State Budget and Management shall certify to the Department of Transportation and the
3 General Assembly when the cumulative total amount of fees deposited in the General
4 Fund under this subsection exceeds five million dollars (\$5,000,000), and shall annually
5 report to the General Assembly the amount of fees deposited in the General Fund under
6 this subsection.

7 It is the intent of the General Assembly to annually appropriate the funds deposited
8 in the General Fund under this subsection to the Board of Governors of The University
9 of North Carolina to be used for the Center for Alcohol Studies Endowment at The
10 University of North Carolina at Chapel Hill, but not to exceed this cumulative total of
11 five million dollars (\$5,000,000)."

12 Sec. 3. G.S. 20-179(m), 20-179(r)(2), and 20-179(t) are repealed.

13 Sec. 4. G.S. 20-179(g) reads as rewritten:

14 "(g) Level One Punishment. – A defendant subject to Level One punishment may
15 be fined up to two thousand dollars (\$2,000) and must be sentenced to a term of
16 imprisonment that includes a minimum term of not less than 14 days and a maximum
17 term of not more than 24 months. The term of imprisonment may be suspended only if
18 a condition of special probation is imposed (i) to require the defendant to serve a term of
19 imprisonment of at least 14 days, or (ii) to require the defendant to serve a term of
20 imprisonment of at least four consecutive days and then be placed under house arrest for
21 twice the length of time remaining in the minimum term prescribed in (i) above. ~~If the~~
22 ~~defendant is placed on probation, the judge must, if required by subsection (m), impose the~~
23 ~~conditions relating to assessment, treatment, and education described in that subsection.~~ The
24 judge may impose any other lawful condition of probation. ~~If the judge does not place on~~
25 ~~probation a defendant who is otherwise subject to the mandatory assessment and treatment~~
26 ~~provisions of subsection (m), he must include in the record of the case his reasons for not doing~~
27 ~~so.~~"

28 Sec. 5. G.S. 20-179(h) reads as rewritten:

29 "(h) Level Two Punishment. – A defendant subject to Level Two punishment may
30 be fined up to one thousand dollars (\$1,000) and must be sentenced to a term of
31 imprisonment that includes a minimum term of not less than seven days and a maximum
32 term of not more than 12 months. The term of imprisonment may be suspended only if
33 a condition of special probation is imposed (i) to require the defendant to serve a term of
34 imprisonment of at least seven days or, (ii) to require the defendant to serve a term of
35 imprisonment of at least two consecutive days and then be placed under house arrest for
36 twice the length of time remaining in the minimum term prescribed in (i) above. ~~If the~~
37 ~~defendant is placed on probation, the judge must, if required by subsection (m), impose the~~
38 ~~conditions relating to assessment, treatment, and education described in that subsection.~~ The
39 judge may impose any other lawful condition of probation. ~~If the judge does not place on~~
40 ~~probation a defendant who is otherwise subject to the mandatory assessment and treatment~~
41 ~~provisions of subsection (m), he must include in the record of the case his reasons for not doing~~
42 ~~so.~~"

43 Sec. 6. G.S. 20-179(i) reads as rewritten:

44 "(i) Level Three Punishment. – A defendant subject to Level Three punishment
45 may be fined up to five hundred dollars (\$500.00) and must be sentenced to a term of

1 imprisonment that includes a minimum term of not less than 72 hours and a maximum
2 term of not more than six months. The term of imprisonment must be suspended, on the
3 condition that the defendant:

- 4 (1) Be imprisoned for a term of at least 72 hours as a condition of special
5 probation; or
- 6 (2) Perform community service for a term of at least 72 hours; or
- 7 (3) Not operate a motor vehicle for a term of at least 90 days; or
- 8 (4) Any combination of these conditions.

9 The judge in his discretion may impose any other lawful condition of ~~probation and, if~~
10 ~~required by subsection (m), must impose the conditions relating to assessment,~~
11 ~~treatment, and education described in that subsection.~~ probation. This subsection does
12 not affect the right of a defendant to elect to serve the suspended sentence of
13 imprisonment as provided in G.S. 15A-1341(c)."

14 Sec. 7. G.S. 20-179(j) reads as rewritten:

15 "(j) Level Four Punishment. – A defendant subject to Level Four punishment may
16 be fined up to two hundred fifty dollars (\$250.00) and must be sentenced to a term of
17 imprisonment that includes a minimum term of not less than 48 hours and a maximum
18 term of not more than 120 days. The term of imprisonment must be suspended, on the
19 condition that the defendant:

- 20 (1) Be imprisoned for a term of 48 hours as a condition of special
21 probation; or
- 22 (2) Perform community service for a term of 48 hours; or
- 23 (3) Not operate a motor vehicle for a term of 60 days; or
- 24 (4) Any combination of these conditions.

25 The judge in his discretion may impose any other lawful condition of ~~probation and, if~~
26 ~~required by subsection (m), must impose the conditions relating to assessment,~~
27 ~~treatment, and education described in that subsection.~~ probation. This subsection does
28 not affect the right of a defendant to elect to serve the suspended sentence of
29 imprisonment as provided in G.S. 15A-1341(c)."

30 Sec. 8. G.S. 20-179(k) reads as rewritten:

31 "(k) Level Five Punishment. – A defendant subject to Level Five punishment may
32 be fined up to one hundred dollars (\$100.00) and must be sentenced to a term of
33 imprisonment that includes a minimum term of not less than 24 hours and a maximum
34 term of not more than 60 days. The term of imprisonment must be suspended, on the
35 condition that the defendant:

- 36 (1) Be imprisoned for a term of 24 hours as a condition of special
37 probation; or
- 38 (2) Perform community service for a term of 24 hours; or
- 39 (3) Not operate a motor vehicle for a term of 30 days; or
- 40 (4) Any combination of these conditions.

41 The judge may in his discretion impose any other lawful condition of ~~probation and, if~~
42 ~~required by subsection (m), must impose the conditions relating to assessment,~~
43 ~~treatment, and education described in that subsection.~~ probation. This subsection does

1 not affect the right of a defendant to elect to serve the suspended sentence of
2 imprisonment as provided in G.S. 15A-1341(c)."

3 Sec. 9. G.S. 20-179.2 is repealed.

4 Sec. 10. G.S. 20-179.4(c) reads as rewritten:

5 "(c) A fee of one hundred dollars (\$100.00) must be paid by all persons serving a
6 community service sentence. That fee must be paid to the clerk of court in the county in
7 which the person is convicted. The fee must be paid in full within two weeks unless the
8 court, upon a showing of hardship by the person, allows him additional time to pay the
9 fee. The person may not be required to pay the fee before he begins the community
10 service unless the court specifically orders that he do so. ~~If the person is also ordered to~~
11 ~~attend an Alcohol and Drug Education Traffic School established pursuant to G.S. 20-179.2,~~
12 ~~the fee for supervision of community service punishment is fifty dollars (\$50.00)."~~

13 Sec. 11. Part 4 of Article 4 of Chapter 122C of the General Statutes is
14 amended by adding a new section to read:

15 "**§ 122C-142.1. Substance abuse services for those convicted of driving while**
16 **impaired or driving while a provisional licensee after consuming alcohol**
17 **or drugs.**

18 (a) Services. – An area authority shall provide, directly or by contract, the
19 substance abuse services needed by a person to obtain a certificate of completion
20 required under G.S. 20-17.6 as a condition for the restoration or continued enjoyment of
21 a drivers license. A person may obtain the required services from an area facility, from
22 a private facility that has complied with this subsection, or, with the approval of the
23 Department, from an agency that is located in another state. Before a private facility
24 located in this State provides the substance abuse services needed by a person to obtain
25 a certificate of completion, the facility must notify both the area authority for the
26 catchment area in which it is located and the Department of its intent to provide the
27 services and must agree to comply with the laws and rules concerning these services
28 that apply to area facilities.

29 (b) Assessments. – To conduct a substance abuse assessment, a facility shall give
30 a client a standardized test approved by the Department to determine chemical
31 dependency. Before recommending that a client attend an alcohol and drug education
32 traffic (ADET) school or obtain treatment, a facility shall conduct a clinical interview
33 with the client. A recommendation shall be reviewed and signed by a certified
34 alcoholism, drug abuse, or substance abuse counselor, as defined by the Commission, or
35 by a physician certified by the American Society of Addiction Medicine (ASAM).

36 (c) ADET Schools and Treatment Programs. – An ADET school shall offer the
37 curriculum established by the Commission and shall comply with the rules adopted by
38 the Commission. A substance abuse treatment program offered to a person who needs
39 the program to obtain a certificate of completion shall comply with the rules adopted by
40 the Commission.

41 (d) Tracking. – An area authority that sent a person who needs to obtain a
42 certificate of completion a letter, as required by G.S. 20-17.6, and that has not been
43 contacted by the person within six months after sending the letter shall send the person
44 another letter containing the same information as the first letter. A private facility or a

1 facility under contract with an area authority that issues a certificate of completion shall
2 send the original certificate of completion to the area authority. An area authority that
3 issues a certificate of completion or receives a certificate of completion shall forward
4 the original certificate of completion to the Department.

5 The Department shall review the certificate of completion for accuracy and
6 completeness. If the Department finds the certificate of completion to be accurate and
7 complete, the Department shall forward it to the Division of Motor Vehicles of the
8 Department of Transportation. If the Department finds the certificate of completion is
9 not accurate or complete, the Department shall return the certificate of completion to the
10 area authority for appropriate action.

11 (e) Fees. – A person who has a substance abuse assessment conducted by an area
12 facility or a private facility for the purpose of obtaining a certificate of completion shall
13 pay to the facility that makes the assessment a fee of seventy-five dollars (\$75.00).
14 Twenty-five dollars (\$25.00) of this fee shall be retained by or remitted to the area
15 authority for administrative and tracking costs, and the remainder shall be retained by
16 the facility that conducted the assessment. A person who attends an ADET school for
17 the purpose of obtaining a certificate of completion shall pay to the area facility that
18 provides the school a fee of seventy-five dollars (\$75.00). A person who attends a
19 substance abuse treatment program conducted by an area facility or a private facility for
20 the purpose of obtaining a certificate of completion shall pay the fee set by the facility
21 for the program.

22 A facility that provides to a person who is required to obtain a certificate of
23 completion a substance abuse assessment, an ADET school, or a substance abuse
24 treatment program may require the person to pay a fee required by this subsection
25 before it issues a certificate of completion. As stated in G.S. 122C-146, however, an
26 area facility may not deny a service to a person because the person is unable to pay.

27 An area authority shall remit to the Department five percent (5%) of each fee paid to
28 the area authority under this subsection by a person who attends an ADET school
29 conducted by the area authority. The Department may use amounts remitted to it under
30 this subsection only to support, evaluate, and administer ADET schools.

31 (f) Out-of-State Services. – A person may obtain a substance abuse service
32 needed to obtain a certificate of completion from a provider located in another state if
33 the service offered by that provider is substantially similar to the service offered by a
34 provider located in this State. A person who obtains a service from a provider located
35 in another state is responsible for paying any fees imposed by the provider.

36 (g) Rules. – The Commission may adopt rules to implement this section. In
37 developing rules for determining when a person needs to be placed in a substance abuse
38 treatment program, the Commission shall consider diagnostic criteria such as those
39 contained in the most recent revision of the Diagnostic and Statistical Manual or used
40 by the American Society of Addiction Medicine (ASAM)."

41 Sec. 12. G.S. 122C-149(b) reads as rewritten:

42 "(b) Area authorities may not use funds received under G.S. 20-179.2(f) or G.S. 90-
43 96.01(a)(4) or G.S. 122C-142.1 to match funds under this section."

1 Sec. 13. This act becomes effective January 1, 1994, and applies to offenses
2 occurring on or after that date.