

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 1101
HOUSE BILL 1660

AN ACT TO MAKE TECHNICAL CHANGES TO THE SAFE ROADS ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.01(3a) is amended by deleting from the first sentence the word "chemical" that appears between the words "A" and "test".

Sec. 2. G.S. 20-4.01(32), as found in the 1983 Replacement Volume, is amended on line 3 by adding between the word "public" and the comma the words "for vehicular traffic".

Sec. 3. G.S. 20-13(a) is amended by deleting the second sentence of that subsection; and G.S. 20-4.01 is amended by adding a new subsection (31a) to read:

"(31a) Provisional Licensee. A person under the age of 18 years."

Sec. 4. G.S. 20-16(a)(8) is amended by deleting the following: "or has been convicted under G.S. 18B-302(e) or (f) of fraudulent use of a driver's license to obtain alcoholic beverages".

Sec. 5. G.S. 20-16.2(d) is amended by:

(a) Inserting between the second and third sentences the following: "The hearing officer may subpoena any witnesses or documents he deems necessary.";

(b) Adding between the fourth and the fifth sentences the following: "The hearing officer is authorized to administer oaths to witnesses appearing at the hearing."; and

(c) Substituting in the fifth sentence the words, "and must be" for the following: "under the provisions for hearings held under G.S. 20-16(d), except that the hearing is".

Sec. 6. G.S. 20-16.2(d) is amended by substituting for the seventh sentence the following: "If the Division finds that any of conditions (1), (2), (4), or (5) is not met, it must rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it must order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation."

Sec. 7. G.S. 20-16.2(e) is amended by deleting "10 years" in subdivisions (2) and (3) and substituting "seven years"; and by rewriting subdivision (1) to read:

"(1) At the time of the refusal he held either a valid driver's license or a license that had been expired for less than one year;"

Sec. 8. G.S. 20-16.2(i) is amended by:

(a) Rewriting the second sentence to read: "Upon this request, the officer must afford the person the opportunity to have a chemical analysis of his breath, if available, in accordance with the procedures required by G.S. 20-139.1(b)."; and

(b) Rewriting the fourth sentence to read: "Before the chemical analysis is made, the person must confirm his request in writing and he must be notified:

- (1) That the test results will be admissible in evidence and may be used against him in any implied-consent offense that may arise;
- (2) That his license will be revoked for at least 10 days if the test reveals an alcohol concentration of 0.10 or more; and
- (3) That if he fails to comply fully with the test procedures, the officer may charge him with any offense for which the officer has probable cause, and if he is charged with an implied-consent offense, his refusal to submit to the testing required as a result of that charge would result in revocation of his driver's license."

Sec. 9. G.S. 20-16.4(b) is amended by inserting between the second and third sentences the following: "The hearing officer may subpoena any witnesses or documents he deems necessary."

Sec. 10. G.S. 20-16.4(c) is amended by inserting between the caption and the first sentence the following: "The hearing officer is authorized to administer oaths to witnesses appearing at the hearing."; and in the first sentence by substituting the words, "and must be" for the following: "under the provisions for hearings held under G.S. 20-16(d), except that the hearing is".

Sec. 11. G.S. 20-16.5(a)(5) is amended by adding at the end the following: "A person who is validly licensed but who is unable to locate his license card may file an affidavit with the clerk setting out facts that indicate that he is unable to locate his license card and that he is validly licensed; the filing of the affidavit constitutes a surrender of the person's license."

Sec. 12. G.S. 20-16.5(b)(1) is amended in the first line by substituting "charging" for "law-enforcement".

Sec. 13. G.S. 20-16.5 is amended by adding a new subsection to read:

"(b1) Precharge Test Results as Basis for Revocation.

Notwithstanding the provisions of subsection (b), a person's driver's license is subject to revocation under this section if:

- (1) He requests a precharge chemical analysis pursuant to G.S. 20-16.2(i); and
- (2) He has, at any relevant time after the driving, an alcohol concentration of 0.10 or more; and
- (3) He is charged with an implied-consent offense."

Sec. 14. G.S. 20-16.5(c) is amended by rewriting the second sentence to read: "If the person has refused to submit to a chemical analysis, a copy of the affidavit to be submitted to the Division under G.S. 20-16.2(c) may be substituted for the revocation report if it contains the information required by this section."

Sec. 15. G.S. 20-16.5(e) is amended by adding at the end the following: "If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk must immediately issue a pick-up order. The pick-up order under this subsection may be issued by the

clerk to any law enforcement officer to pick up the person's driver's license in accordance with G.S. 20-29 as if the pick-up order had been issued by the Division."

Sec. 16. G.S. 20-16.5(g) is amended:

(a) In the second sentence by substituting "within 10 days of the effective date of the revocation" for "at any later time";

(b) By adding at the end of the subsection the following: "If the person requesting the hearing fails to appear at the hearing or any rescheduling thereof after having been properly notified, he forfeits his right to a hearing."; and

(c) By adding at the end of the seventh sentence the phrase "and the hearing must be limited to the grounds specified in the request".

Sec. 17. G.S. 20-16.5(h) is amended by adding at the end the following: "If the person's license is revoked under this section and under another section of this Chapter, the clerk must surrender the license to the Division if the revocation under this section can terminate before the other revocation; in such cases, the costs required by subsection (j) must still be paid before the revocation under this section is terminated."

Sec. 18. G.S. 20-19, as found in the 1983 Replacement, is amended:

(a) By rewriting lines 2 and 3 of subsection (d) to read: "G.S. 20-17 and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years imme-";

(b) By rewriting lines 2 and 3 of subsection (e) to read: "G.S. 20-17 and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense"; and

(c) By adding a new subsection (j) to read:

"(j) The Division is authorized to issue amended revocation orders issued under subsections (d) or (e), if necessary because convictions do not respectively occur in the same order as offenses for which the license may be revoked under those subsections."

Sec. 18A. G.S. 20-28 is amended by adding a new subsection (a1) to read:

"(a1) A person convicted under subsection (a) shall be punished as if he had been convicted of driving without a driver's license under G.S. 20-7 if he demonstrates to the court that:

1. At the time of the offense, his license was revoked solely under G.S. 20-16.5; and
2. a. The offense occurred more than 30 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 30 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 10 days after the effective date of a revocation order issued under any other provision of G.S. 20- 16.5.

In addition, a person punished under this subsection shall be treated for driver's license and insurance rating purposes as if he had been convicted of driving without a license under G.S. 20- 7, and the conviction report sent to the Division must indicate that the person is to be so treated."

Sec. 19. G.S. 20-28.2(a)(2) is amended by substituting "G.S. 20-16(a)(7)" for "G.S. 20-16(7)".

Sec. 20. G.S. 20-139.1 is amended by adding a new subsection to read:

"(b4) Introducing Routine Records Kept as Part of Breath- Testing Program. In civil and criminal proceedings, any party may introduce, without further authentication, Simulator logs and logs for other devices used to verify a breath-testing instrument, certificates and other records concerning the check of ampoules and of Simulator stock solution and the stock solution used in any other equilibration device, preventive maintenance records, and other records that are routinely kept concerning the maintenance and operation of breath-testing instruments. In a criminal case, however, this subsection does not authorize the State to introduce records to prove the results of a chemical analysis of the defendant or of any validation test of the instrument that is conducted during that chemical analysis."

Sec. 21. G.S. 20-179(c) is amended:

(a) In both the second sentence and subdivision (1) by substituting "before" for "of" immediately after "years";

(b) In subdivision (2) by adding immediately after the word "defendant" the words "at the time of the offense"; and

(c) In subdivision (3) by adding immediately after the word "driving" the words "at the time of the offense".

Sec. 22. G.S. 20-179(d) is amended:

(a) By adding at the end the following: "Except for the factor in subdivision (5) the conduct constituting the aggravating factor must occur during the same transaction or occurrence as the impaired driving offense.";

(b) In subdivision (6) by deleting the comma and the language after the word "apprehension"; and

(c) In subdivision (7) by deleting the comma and the words appearing after the word "limit."

Sec. 23. G.S. 20-179(e) is amended:

(a) By adding at the end the following: "Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor must occur during the same transaction or occurrence as the impaired driving offense.";

(b) In subdivision (6) by substituting "the impaired driving offense for which he is being sentenced" for "impaired driving"; and

(c) In subdivision (4) by substituting "motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation" for "serious traffic violation".

Sec. 24. G.S. 20-179 is amended by adding two subsections to read:

"(f1) Aider and Abettor Punishment. Notwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge must determine if the sentencing factors described in subsections (c), (d) and (e) are

applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment."

Sec. 25. G.S. 20-179(g), (h), (i), (j), and (k), as found in the 1983 Replacement Volume, are each amended by inserting in the third line immediately after "imprisonment" the words "that includes a minimum term" and on line 4 by inserting immediately after "and" the words "a maximum term of".

Sec. 26. G.S. 20-179(k), as found in the 1983 Replacement Volume, is amended on line 12 by inserting immediately after "required" the word "by".

Sec. 27. G.S. 20-179(l) is amended by substituting "; or" for the period at the end of subdivision (2) and by adding a new subdivision to read:

"(3) There is no alcohol and drug education traffic school within a reasonable distance of the defendant's residence."

Sec. 28. G.S. 20-179(o) is amended by rewriting the last sentence to read: "If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor."

Sec. 29. G.S. 20-179(p) is rewritten to read:

"(p) Limit on Amelioration of Punishment. For active terms of imprisonment imposed under this section:

- (1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.
- (2) The defendant must serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.
- (3) The defendant may not be released on parole unless he is otherwise eligible and has served the mandatory minimum period of imprisonment.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial."

Sec. 30. G.S. 20-179.3(b) is amended by deleting "10 years" in subdivision (2) and substituting "seven years"; and by rewriting subdivision (1) to read:

- (1) At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;".

Sec. 31. G.S. 20-179.3(d), as found in the 1983 Replacement Volume, is amended in line 2 by substituting "at any time after the day of" for "subsequent to".

Sec. 32. G.S. 20-179.3 is amended as follows:

- (a) By rewriting subsection (f) to read:

"(f) Overall Provisions on Use of Privilege. Every limited driving privilege must restrict the applicant to essential driving related to the purposes listed in subsection (a), and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege. If the privilege is granted, driving related to emergency medical care is authorized at any time and without

restriction as to routes, but all other driving must be for a purpose and done within the restrictions specified in the privilege.";

(b) By adding new subsection (f1) to read:

"(f1) Definition of 'Standard Working Hours.' Under this section, 'standard working hours' are 6:00 a.m. to 8:00 p.m. on Monday through Friday.";

(c) By rewriting subsection (g) to read:

"(g) Driving for Work-Related Purposes in Standard Working Hours. In a limited driving privilege, the court may authorize driving for work-related purposes during standard working hours without specifying the times and routes in which the driving must occur. If the applicant is not required to drive for essential work-related purposes except during standard working hours, the limited driving privilege must prohibit driving during nonstandard working hours unless the driving is for emergency medical care or is authorized by subsection (g2). The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving in the discretion of the court."; and

(d) By adding new subsections (g1) and (g2) to read:

"(g1) Driving for Work-Related Purposes in Nonstandard Hours.

If the applicant is required to drive during nonstandard working hours for an essential work-related purpose, he must present documentation of that fact before the judge may authorize him to drive for this purpose during those hours. If the applicant is self-employed, the documentation must be attached to or made a part of the limited driving privilege. If the judge determines that it is necessary for the applicant to drive during nonstandard hours for a work-related purpose, he may authorize the applicant to drive subject to these limitations:

- (1) If the applicant is required to drive to and from a specific place of work at regular times, the limited driving privilege must specify the general times and routes in which the applicant will be driving to and from work, and restrict driving to those times and routes.
- (2) If the applicant is required to drive to and from work at a specific place, but is unable to specify the times at which that driving will occur, the limited driving privilege must specify the general routes in which the applicant will be driving to and from work, and restrict the driving to those general routes.
- (3) If the applicant is required to drive to and from work at regular times but is unable to specify the places at which work is to be performed, the limited driving privilege must specify the general times and geographic boundaries in which the applicant will be driving, and restrict driving to those times and within those boundaries.
- (4) If the applicant can specify neither the times nor places in which he will be driving to and from work, or if he is required to drive during these nonstandard working hours as a condition of employment, the limited driving privilege must specify the geographic boundaries in which he will drive and restrict driving to that within those boundaries.

The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving, in the discretion of the court.

(g2) Driving for Other than Work-Related Purposes. A limited driving privilege may not allow driving for maintenance of the household except during standard working hours, and the limited driving privilege may contain any additional restrictions on that driving, in the discretion of the court. The limited driving privilege must authorize driving essential to the completion of any community work assignments, course of instruction at an Alcohol and Drug Education Traffic School, or substance abuse assessment or treatment, to which the applicant is ordered by the court as a condition of probation for the impaired driving conviction. If this driving will occur during nonstandard working hours, the limited driving privilege must specify the same limitations required by subsection (g1) for work-related driving during those hours, and it must include or have attached to it the name and address of the Alcohol and Drug Education Traffic School, the community service coordinator, or mental health treatment facility to which the applicant is assigned. Driving for educational purposes other than the course of instruction at an Alcohol and Drug Education Traffic School is subject to the same limitations applicable to work related driving under subsections (g) and (g1)."

Sec. 33. G.S. 20-179.3(j) is amended in the third sentence by inserting between the words "with" and "violating" the words "driving while license revoked by".

Sec. 34. G.S. 20-179.4(c) is amended by substituting for the second and third sentences the following: "That fee must be paid to the clerk of court in the county in which the person is convicted. The fee must be paid in full within two weeks unless the court, upon a showing of hardship by the person, allows him additional time to pay the fee. The person may not be required to pay the fee before he begins the community service unless the court specifically orders that he do so."

Sec. 35. G.S. 20-179.4(e) is rewritten to read:

"(e) The coordinator must report to the court in which the community service was ordered a significant violation of the terms of the probation judgment related to community service. In such cases, the court must conduct a hearing to determine if there is a willful failure to comply. If the court determines there is a willful failure to pay the prescribed fee or to complete the work as ordered by the coordinator within the applicable time limits, the court must revoke any limited driving privilege issued in the impaired driving case, and in addition may take any further action authorized by Article 82 of General Statutes Chapter 15A for violation of a condition of probation."

Sec. 36. G.S. 20-179(n) is amended by deleting the last sentence.

Sec. 37. Section 32 of this act is effective upon ratification: Provided that a judge authorized to issue a limited driving privilege under G.S. 20-179.3(d) is authorized, upon application of a holder of a limited driving privilege who has been convicted of the offense of impaired driving under G.S. 20-138.1, to modify that limited driving privilege in accordance with G.S. 20-179.3, as amended by Section 32 of this act.

Sec. 38. Sections 3, 8, 13, 16, 22, 23, 34, 35, and 36 of this act shall become effective October 1, 1984. Except as provided in Section 37 of this act, the remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified, this the 6th day of July, 1984.