

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

3

SENATE BILL 182
Judiciary I Committee Substitute Adopted 5/14/13
Third Edition Engrossed 5/15/13

Short Title: Limit Appeals to Superior Court.

(Public)

Sponsors:

Referred to:

March 6, 2013

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE APPEALS FOR INFRACTIONS, TO MODIFY APPEALS TO THE SUPERIOR COURT IN PROBATION REVOCATIONS IN WHICH THE DEFENDANT HAS WAIVED A HEARING, TO AMEND THE LAW PERTAINING TO RESENTENCING UPON THE REVERSAL OF A SENTENCE ON APPELLATE REVIEW, AND TO RECLASSIFY CERTAIN MISDEMEANORS AS INFRACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1115 reads as rewritten:

"§ 15A-1115. ~~Review of disposition by superior court.~~ Review of infractions originally disposed of in superior court.

(a) ~~Appeal of District Court Decision.~~ — A person who denies responsibility and is found responsible for an infraction in the district court, within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo. Upon appeal, the defendant is entitled to a jury trial unless he consents to have the hearing conducted by the judge. The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility. Unless otherwise provided by law, the procedures applicable to misdemeanors disposed of in the superior court apply to those infraction hearings. In the superior court, a prosecutor must represent the State. Appeal from the judgment in the superior court is as provided for other criminal actions in superior court, and the Attorney General must represent the State in an appeal of such actions.

(b) Review of Infractions Originally Disposed of in Superior Court. — If the superior court disposes of an infraction pursuant to its jurisdiction in G.S. 7A-271(d), appeal from that judgment is as provided for criminal actions in the superior court."

SECTION 2. G.S. 15A-1347 reads as rewritten:

"§ 15A-1347. Appeal from revocation of probation or imposition of special probation upon violation. ~~violation; consequences of waiver of hearing.~~

(a) ~~When~~ Except as provided in subsection (b) of this section, when a district court judge, as a result of a finding of a violation of probation, activates a sentence or imposes special probation, the defendant may appeal to the superior court for a de novo revocation hearing. At the hearing the probationer has all rights and the court has all authority they have in a revocation hearing held before the superior court in the first instance. Appeals from lower courts to the superior courts from judgments revoking probation may be heard in term or out of term, in the county or out of the county by the resident superior court judge of the district or the superior court judge assigned to hold the courts of the district, or a judge of the superior court commissioned to hold court in the district, or a special superior court judge residing in the



* S 1 8 2 - V - 3 *

1 district. When the defendant appeals to the superior court because a district court has found he
2 violated probation and has activated his sentence or imposed special probation, and the superior
3 court, after a de novo revocation hearing, orders that the defendant continue on probation under
4 the same or modified conditions, the superior court is considered the court that originally
5 imposed probation with regard to future revocation proceedings and other purposes of this
6 Article. When a superior court judge, as a result of a finding of a violation of probation,
7 activates a sentence or imposes special probation, either in the first instance or upon a de novo
8 hearing after appeal from a district court, the defendant may appeal under G.S. 7A-27.

9 (b) If a defendant waives a revocation hearing, the finding of a violation of probation,
10 activation of sentence, or imposition of special probation may not be appealed to the superior
11 court."

12 **SECTION 3.** G.S. 15A-1335 reads as rewritten:

13 **"§ 15A-1335. Resentencing after appellate review.**

14 When a conviction or sentence imposed in superior court has been set aside on direct
15 review or collateral attack, the court may not impose a new sentence for the same offense, or
16 for a different offense based on the same conduct, which is more severe than the prior sentence
17 less the portion of the prior sentence previously served. This section shall not apply when a
18 defendant, on direct review or collateral attack, succeeds in having a plea of guilty vacated."

19 **SECTION 4.** G.S. 20-35 reads as rewritten:

20 **"§ 20-35. Penalties for violating Article; defense to driving without a license.**

21 (a) Penalty. – A~~Except as otherwise provided in subsection (a1) of this section,~~ a
22 violation of this Article is a Class 2 misdemeanor unless a statute in the Article sets a different
23 punishment for the violation. If a statute in this Article sets a different punishment for a
24 violation of the Article, the different punishment applies.

25 (a1) A person who does any of the following is responsible for an infraction:

- 26 (1) Fails to carry a valid license while driving a motor vehicle, in violation of
27 G.S. 20-7(a).
28 (2) Operates a motor vehicle with an expired license, in violation of
29 G.S. 20-7(f).
30 (3) Fails to notify the Division of an address change for a drivers license within
31 60 days after the change occurs, in violation of G.S. 20-7.1.

32 (b) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 4.

33 (c) Defenses. – A person may not be ~~convicted or found responsible for~~ failing to carry
34 a regular drivers license if, when tried for that offense, the person produces in court a regular
35 drivers license issued to the person that was valid when the person was charged with the
36 offense. A person may not be ~~convicted or found responsible for~~ driving a motor vehicle
37 ~~without a regular~~with an expired drivers license if, when tried for that offense, the person
38 shows all the following:

- 39 (1) That, at the time of the offense, the person had an expired license.
40 (2) The person renewed the expired license within 30 days after it expired and
41 now has a drivers license.
42 (3) The person could not have been charged with driving without a license if the
43 person had the renewed license when charged with the offense."

44 **SECTION 5.** G.S. 20-176 reads as rewritten:

45 "(a) Violation of a provision of Part 9, 10, 10A, or 11 of this Article is an infraction
46 unless the violation is specifically declared by law to be a misdemeanor or felony. ~~Violation~~
47 Except as otherwise provided in subsection (a1) of this section, violation of the remaining Parts
48 of this Article is a misdemeanor unless the violation is specifically declared by law to be an
49 infraction or a felony.

50 (a1) A person who does any of the following is responsible for an infraction:

- 1 (1) Fails to carry the registration card in the vehicle, in violation of
2 G.S. 20-57(c).
3 (2) Fails to sign the vehicle registration card, in violation of G.S. 20-57(c).
4 (3) Fails to notify the Division of an address change for a vehicle registration
5 card within 60 days after the change occurs, in violation of G.S. 20-67.

6 "

7 **SECTION 6.** G.S. 113-135(a) reads as rewritten:

8 "(a) Any person who violates any provision of this Subchapter or any rule adopted by
9 the Marine Fisheries Commission or the Wildlife Resources Commission, as appropriate,
10 pursuant to the authority of this Subchapter, is guilty of a misdemeanor except that fishing
11 without a license in violation of G.S. 113-174.1(a) or G.S. 113-270.1B(a) is punishable as an
12 infraction and punishment for violation of the rules of the Wildlife Resources Commission is
13 limited as set forth in G.S. 113-135.1. Unless a different level of punishment is elsewhere set
14 out, anyone convicted of a misdemeanor under this section is punishable as follows:

- 15 (1) For a first conviction, as a Class 3 misdemeanor.
16 (2) For a second or subsequent conviction within three years, as a Class 2
17 misdemeanor."

18 **SECTION 7.** Section 3 of the act becomes effective December 1, 2013, and applies
19 to resentencing hearings held on or after that date. The remainder of this act becomes effective
20 December 1, 2013, and applies to offenses committed on or after that date.