

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015**

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**HOUSE BILL 877**

Short Title: Ignition Interlock Req'd/All DWIs. (Public)

Sponsors: Representatives Jordan, Faircloth, and Jackson (Primary Sponsors).  
*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Judiciary II, if favorable, Finance.

April 15, 2015

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PERSONS CONVICTED OF DRIVING AFTER CONSUMING ALCOHOL BEING LESS THAN TWENTY-ONE YEARS OF AGE, AND CERTAIN PERSONS WHO REFUSE A CHEMICAL ANALYSIS OR ARE CONVICTED OF DRIVING WHILE IMPAIRED OR ANY OTHER IMPAIRED DRIVING OFFENSE, TO HAVE AN IGNITION INTERLOCK SYSTEM INSTALLED ON EVERY VEHICLE THAT PERSON MAY DRIVE BEFORE THAT PERSON CAN GET A LIMITED DRIVING PRIVILEGE; TO REMOVE THE WAITING PERIOD BEFORE A PERSON MAY APPLY FOR A LIMITED DRIVING PRIVILEGE; AND TO PROVIDE FOR THE PAYMENT OF AN ADMINISTRATIVE FEE AND COSTS ASSOCIATED WITH AN IGNITION INTERLOCK SYSTEM AND CREATE AN IGNITION INTERLOCK DEVICE FUND TO ASSIST INDIGENT PERSONS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-16.2(c1) reads as rewritten:

"(c1) Procedure for Reporting Results and Refusal to Division. – Whenever a person refuses to submit to a chemical analysis, a person has an alcohol concentration of ~~0.150.08~~ or more, or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the law enforcement officer and the chemical analyst shall without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

- (1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;
- (2) A law enforcement officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;
- (3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;
- (4) The person was notified of the rights in subsection (a); and
- (5) The results of any tests given or that the person willfully refused to submit to a chemical analysis.

If the person's drivers license has an alcohol concentration restriction, pursuant to G.S. 20-19(c3), and an officer has reasonable grounds to believe the person has violated a provision of that restriction other than violation of the alcohol concentration level, the officer and chemical analyst shall complete the applicable sections of the affidavit and indicate the



1 restriction which was violated. The officer shall immediately mail the affidavit(s) to the  
2 Division. If the officer is also the chemical analyst who has notified the person of the rights  
3 under subsection (a), the officer may perform alone the duties of this subsection."

4 **SECTION 2.** G.S. 20-16.2(e1) reads as rewritten:

5 "(e1) Limited Driving Privilege ~~after Six Months~~ in Certain Instances. – A person whose  
6 driver's license has been revoked under this section may apply for and a judge authorized to do  
7 so by this subsection may issue a limited driving privilege ~~if~~ if all of the following  
8 requirements are met:

- 9 (1) At the time of the refusal the person held either a valid drivers license or a  
10 license that had been expired for less than one ~~year;~~ year.
- 11 (2) ~~At the time of the refusal, the person had not within the preceding seven~~  
12 ~~years been convicted of an offense involving impaired driving;~~
- 13 (3) ~~At the time of the refusal, the person had not in the preceding seven years~~  
14 ~~willfully refused to submit to a chemical analysis under this section;~~
- 15 (4) The implied consent offense charged did not involve death or critical injury  
16 to another ~~person;~~ person.
- 17 (5) The underlying charge for which the defendant was requested to submit to a  
18 chemical analysis has been finally disposed of:
  - 19 a. Other than by conviction; or
  - 20 b. By a conviction of impaired driving under G.S. 20-138.1, at a  
21 punishment level authorizing issuance of a limited driving privilege  
22 under G.S. 20-179.3(b), and the defendant has complied with at least  
23 one of the mandatory conditions of probation listed for the  
24 punishment level under which the defendant was  
25 ~~sentenced;~~ sentenced.
- 26 (6) Subsequent to the refusal the person has had no unresolved pending charges  
27 for or additional convictions of an offense involving impaired  
28 ~~driving;~~ driving.
- 29 (7) ~~The person's license has been revoked for at least six months for the refusal;~~  
30 ~~and~~
- 31 (8) The person has obtained a substance abuse assessment from a mental health  
32 facility and successfully completed any recommended training or treatment  
33 program.
- 34 (9) All vehicles that the person will be authorized to drive have been equipped  
35 with a type of ignition interlock system approved by the Commissioner.

36 Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure  
37 for application and conduct of the hearing and the restrictions required or authorized to be  
38 included in the limited driving privilege apply to applications under this subsection. If the case  
39 was finally disposed of in the district court, the hearing shall be conducted in the district court  
40 district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the  
41 case was finally disposed of in the superior court, the hearing shall be conducted in the superior  
42 court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a  
43 superior court judge. A limited driving privilege issued under this section authorizes a person to  
44 drive if the person's license is revoked solely under this section or solely under this section and  
45 G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving  
46 privilege is invalid."

47 **SECTION 3.** G.S. 20-16.5(p) reads as rewritten:

48 "(p) Limited Driving Privilege. – A person whose drivers license has been revoked for a  
49 specified period of 30 or 45 days under this section may apply for a limited driving privilege  
50 ~~if~~ if all of the following requirements are met:

- 1 (1) At the time of the alleged offense the person held either a valid drivers  
 2 license or a license that had been expired for less than one ~~year;~~year.  
 3 (2) Does not have an unresolved pending charge involving impaired driving  
 4 except the charge for which the license is currently revoked under this  
 5 section or additional convictions of an offense involving impaired driving  
 6 since being charged for the violation for which the license is currently  
 7 revoked under this ~~section;~~section.  
 8 (3) ~~The person's license has been revoked for at least 10 days if the revocation is~~  
 9 ~~for 30 days or 30 days if the revocation is for 45 days; and~~  
 10 (4) The person has obtained a substance abuse assessment from a mental health  
 11 facility and registers for and agrees to participate in any recommended  
 12 training or treatment program.  
 13 (5) All vehicles that the person will be authorized to drive have been equipped  
 14 with a type of ignition interlock system approved by the Commissioner.

15 A person whose license has been indefinitely revoked under this section may, after  
 16 completion of 30 days under subsection (e) or the applicable period of time under subdivision  
 17 (1), (2), or (3) of subsection (f), apply for a limited driving privilege. In the case of an indefinite  
 18 revocation, a judge of the division in which the current offense is pending may issue the limited  
 19 driving privilege only if ~~the privilege is necessary to overcome undue hardship and~~ the person  
 20 meets the eligibility requirements of G.S. 20-179.3, except that the requirements in  
 21 G.S. 20-179.3(b)(1)c. and G.S. 20-179.3(e) shall not apply. Except as modified in this  
 22 subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and  
 23 conduct of the hearing and the restrictions required or authorized to be included in the limited  
 24 driving privilege apply to applications under this subsection. Any district court judge  
 25 authorized to hold court in the judicial district is authorized to issue such a limited driving  
 26 privilege. A limited driving privilege issued under this section authorizes a person to drive if  
 27 the person's license is revoked solely under this section. If the person's license is revoked for  
 28 any other reason, the limited driving privilege is invalid."

29 **SECTION 4.** G.S. 20-17.8 reads as rewritten:

30 **"§ 20-17.8. Restoration of a license after certain driving while impaired convictions;  
 31 ignition interlock.**

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

- 34 (1) The person had an alcohol concentration of ~~0.15 or more;~~0.08 or more or  
 35 refused to submit to a chemical analysis;  
 36 (2) The person has been convicted of another offense involving impaired  
 37 driving, which offense occurred within seven years immediately preceding  
 38 the date of the offense for which the person's license has been revoked; or  
 39 (3) The person was sentenced pursuant to G.S. 20-179(f3).

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

43 (a1) Additional Scope. – This section applies to a person whose license was revoked as a  
 44 result of a conviction of habitual impaired driving, G.S. 20-138.5.

45 (a2) Under Age 21. – The provisions of this section apply to a person whose license was  
 46 revoked as the result of a conviction of driving by a person less than 21 years old after  
 47 consuming alcohol pursuant to G.S. 20-138.3.

48 (b) Ignition Interlock Required. – Except as provided in subsection (l) of this section,  
 49 when the Division restores the license of a person who is subject to this section, in addition to  
 50 any other restriction or condition, it shall require the person to agree to and shall indicate on the  
 51 person's drivers license the following restrictions for the period designated in subsection (c):

- 1 (1) A restriction that the person may operate only a vehicle that is equipped with  
2 a functioning ignition interlock system of a type approved by the  
3 Commissioner. The Commissioner shall not unreasonably withhold approval  
4 of an ignition interlock system and shall consult with the Division of  
5 Purchase and Contract in the Department of Administration to ensure that  
6 potential vendors are not discriminated against.
- 7 (2) A requirement that the person personally activate the ignition interlock  
8 system before driving the motor vehicle.
- 9 (3) An alcohol concentration restriction as follows:
- 10 a. If the ignition interlock system is required pursuant only to  
11 subdivision (a)(1) of this section, a requirement that the person not  
12 drive with an alcohol concentration of 0.04 or greater;
- 13 b. If the ignition interlock system is required pursuant to subdivision  
14 (a)(2) or (a)(3) of this section, or subsection (a1) of this section, a  
15 requirement that the person not drive with an alcohol concentration  
16 of greater than ~~0.00; or~~ 0.02;
- 17 c. If the ignition interlock system is required pursuant to subdivision  
18 (a)(1) of this section, and the person has also been convicted, based  
19 on the same set of circumstances, of: (i) driving while impaired in a  
20 commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21  
21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a  
22 violation of G.S. 20-141.4, or (iv) manslaughter or negligent  
23 homicide resulting from the operation of a motor vehicle when the  
24 offense involved impaired driving, a requirement that the person not  
25 drive with an alcohol concentration of greater than ~~0.00; or~~ 0.02; or
- 26 d. If the ignition interlock system is required pursuant to subsection (a2)  
27 of this section, a requirement that the person not drive with an  
28 alcohol concentration greater than 0.02.

29 ...

30 (e1) Disabling or Removing of Ignition Interlock System. – If an ignition interlock  
31 system is disabled or removed from a vehicle in which it is required to be installed pursuant to  
32 subsection (c1) of this section, the Division shall revoke the drivers license of the person  
33 subject to the provisions of this section and shall provide notice in accordance with G.S. 20-48.

34 ...

35 (g) Effect of Violation of Restriction When Driving While License Revoked Not  
36 Charged. – A person subject to this section who violates any of the restrictions of this section,  
37 or who disables or removes an ignition interlock system required by this section, but is not  
38 charged or convicted of driving while license revoked pursuant to G.S. 20-28(a), shall have the  
39 person's license revoked by the Division for a period of one year.

40 ...

41 (j) Right to Hearing Before Division; Issues. – If the person's license is revoked  
42 pursuant to subsection (g) of this section, before the effective date of the order issued under  
43 subsection (i) of this section, the person may request in writing a hearing before the Division.  
44 Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the  
45 Division that the person's license was surrendered to the court and remained in the court's  
46 possession, then the Division shall credit the amount of time for which the license was in the  
47 possession of the court against the revocation period required by subsection (g) of this section.  
48 If the person properly requests a hearing, the person retains the person's license, unless it is  
49 revoked under some other provision of law, until the hearing is held, the person withdraws the  
50 request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena  
51 any witnesses or documents that the hearing officer deems necessary. The person may request

1 the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at  
 2 the hearing if the person makes the request in writing at least three days before the hearing. The  
 3 person may subpoena any other witness whom the person deems necessary, and the provisions  
 4 of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the  
 5 authority of this section. The hearing officer is authorized to administer oaths to witnesses  
 6 appearing at the hearing. The hearing must be conducted in the county where the charge was  
 7 brought, except when the evidence of the violation is an alcohol concentration report from an  
 8 ignition interlock system, the hearing may be conducted in the county where the person resides.  
 9 The hearing must be limited to consideration of whether:

- 10 (1) The drivers license of the person had an ignition interlock requirement; and  
 11 (2) The person:  
 12 a. Was driving a vehicle that was not equipped with a functioning  
 13 ignition interlock ~~system; or~~system;  
 14 b. Did not personally activate the ignition interlock system before  
 15 driving the ~~vehicle; or~~vehicle;  
 16 c. Drove the vehicle in violation of an applicable alcohol concentration  
 17 restriction prescribed by subdivision (b)(3) of this ~~section~~section; or  
 18 Allowed an ignition interlock system required by this section to be  
 19 disabled or removed.

20 If the Division finds that the conditions specified in this subsection are met, it must order  
 21 the revocation sustained. If the Division finds that the condition of subdivision (1) is not met, or  
 22 that none of the conditions of subdivision (2) are met, it must rescind the revocation. If the  
 23 revocation is sustained, the person must surrender the person's license immediately upon  
 24 notification by the Division. If the revocation is sustained, the person may appeal the decision  
 25 of the Division pursuant to G.S. 20-25.

26 ...."

27 **SECTION 5.** G.S. 20-138.3(d) reads as rewritten:

28 "(d) Limited Driving Privilege. – A person who is convicted of violating subsection (a)  
 29 of this section and whose drivers license is revoked solely based on that conviction may apply  
 30 for a limited driving privilege as provided in G.S. 20-179.3. This subsection shall apply only if  
 31 the person meets ~~both~~each of the following requirements:

- 32 (1) Is 18, 19, or 20 years old on the date of the offense.  
 33 (2) Has not previously been convicted of a violation of this section.  
 34 (3) Has equipped all vehicles to be operated under a limited driving privilege  
 35 with approved ignition interlock systems.

36 The judge may issue the limited driving privilege only if the person meets the eligibility  
 37 requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c.  
 38 G.S. 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in  
 39 G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the issuance of a  
 40 limited driving privilege to a person who is convicted of violating subsection (a) of this section  
 41 and of driving while impaired as a result of the same transaction."

42 **SECTION 6.** G.S. 20-179.3(b) reads as rewritten:

43 "(b) Eligibility. –

- 44 (1) A person convicted of the offense of impaired driving under G.S. 20-138.1 is  
 45 eligible for a limited driving privilege if:  
 46 a. At the time of the offense he held either a valid driver's license or a  
 47 license that had been expired for less than one ~~year;~~year.  
 48 b. At the time of the offense he had not within the preceding seven  
 49 years been convicted of an offense involving impaired  
 50 ~~driving;~~driving.

- 1 c. Punishment Level Three, Four, or Five was imposed for the offense  
 2 of impaired ~~driving~~; driving.
- 3 d. Subsequent to the offense he has not been convicted of, or had an  
 4 unresolved charge lodged against him for, an offense involving  
 5 impaired ~~driving~~; and driving.
- 6 e. The person has obtained and filed with the court a substance abuse  
 7 assessment of the type required by G.S. 20-17.6 for the restoration of  
 8 a drivers license.
- 9 f. The person has installed an approved ignition interlock system on all  
 10 vehicles subject to ignition interlock requirements to be operated by  
 11 the applicant under a limited driving privilege.

12 A person whose North Carolina driver's license is revoked because of a  
 13 conviction in another jurisdiction substantially similar to impaired driving  
 14 under G.S. 20-138.1 is eligible for a limited driving privilege if he would be  
 15 eligible for it had the conviction occurred in North Carolina. Eligibility for a  
 16 limited driving privilege following a revocation under G.S. 20-16.2(d) is  
 17 governed by G.S. 20-16.2(e1)."

18 **SECTION 7.** G.S. 20-179.3(g5) reads as rewritten:

19 "(g5) Ignition Interlock Required. – If a person's drivers license is revoked for a  
 20 conviction of G.S. 20-138.1, and the person had an alcohol concentration of ~~0.150.08~~ or more,  
 21 or refused to submit to a chemical analysis, a judge shall include all of the following in a  
 22 limited driving privilege order:

- 23 (1) A restriction that the applicant may operate only a designated motor vehicle.
- 24 (2) A requirement that the designated motor vehicle be equipped with a  
 25 functioning ignition interlock system of a type approved by the  
 26 Commissioner, which is set to prohibit driving with an alcohol concentration  
 27 of greater than ~~0.00~~ 0.02. The Commissioner shall not unreasonably  
 28 withhold approval of an ignition interlock system and shall consult with the  
 29 Division of Purchase and Contract in the Department of Administration to  
 30 ensure that potential vendors are not discriminated against.
- 31 (3) A requirement that the applicant personally activate the ignition interlock  
 32 system before driving the motor vehicle.

33 For purposes of this subsection, the results of a chemical analysis presented at trial or  
 34 sentencing shall be sufficient to prove a person's alcohol concentration, shall be conclusive, and  
 35 shall not be subject to modification by any party, with or without approval by the court."

36 **SECTION 8.** Article 3 of Chapter 20 of the General Statutes is amended by adding  
 37 a new section to read:

38 "**§ 20-179.5. Ignition interlock; administrative fee and costs for installation and**  
 39 **monitoring; Ignition Interlock Device Fund.**

40 (a) The costs incurred in order to comply with the ignition interlock requirements  
 41 imposed by the court pursuant to this Article, including costs for installation and monitoring of  
 42 the ignition interlock system, shall be paid by the person ordered to install the system. The  
 43 person also shall pay an ignition interlock administrative fee in an amount which shall be  
 44 determined by the Division and which shall be no less than thirty dollars (\$30.00) nor more  
 45 than sixty dollars (\$60.00). The administrative fee shall be collected at the time of installation  
 46 by the vendor installing the ignition interlock system. Costs for installation and monitoring of  
 47 the ignition interlock system shall be collected under terms agreed upon by the vendor and the  
 48 person required to install the ignition interlock system.

49 (b) The vendor shall remit fees collected pursuant to subsection (a) of this section to the  
 50 Division on a quarterly basis. Fifty percent (50%) of the fees collected shall be used to pay

1 costs incurred by the Division in administering the interlock program; the remaining fifty  
2 percent (50%) of the fees shall be deposited in the Ignition Interlock Device Fund.

3 (c) There is created in the Department of Transportation the Ignition Interlock Device  
4 Fund to be used for the purpose of installing and removing the ignition interlock systems of  
5 persons deemed by the court to be indigent. If the court determines that the convicted person is  
6 unable to pay for the installation of an ignition interlock system, the court may order that the  
7 Division pay the cost of installation out of the Ignition Interlock Device Fund, provided the  
8 person agrees to pay the required costs for monitoring the system."

9 **SECTION 9.** This act becomes effective December 1, 2015, and applies to  
10 offenses committed on or after that date.