

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

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 – This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and:

- (1) The person had an alcohol concentration of 0.15 or more;
- (2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding the date of the offense for which the person's license has been revoked; or
- (3) The person was sentenced pursuant to G.S. 20-179(f3).

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

(a1) **(Expires December 1, 2016)** Additional Scope. – This section applies to a person whose license was revoked as a result of a conviction of habitual impaired driving, G.S. 20-138.5.

(b) **(Effective until December 1, 2016)** Ignition Interlock Required. – Except as provided in subsection (1) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

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

(b) **(Effective December 1, 2016)** Ignition Interlock Required. – Except as provided in subsection (1) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

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

(c) Length of Requirement. – The requirements of subsection (b) shall remain in effect for:

- (1) One year from the date of restoration if the original revocation period was one year;
- (2) Three years from the date of restoration if the original revocation period was four years; or
- (3) Seven years from the date of restoration if the original revocation was a permanent revocation.

(c1) Vehicles Subject to Requirement. – A person subject to this section shall have all registered vehicles owned by that person equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not issue a license to a person subject to this section until presented with proof of the installation of an ignition interlock system in all registered vehicles owned by the person. In order to avoid an undue financial hardship, a person subject to this section may seek a waiver from the Division for any vehicle registered to that person that is relied upon by another member of that person's family for transportation and that the vehicle is not in the possession of the person subject to this section. The Division shall determine such waiver on a case-by-case basis following an assessment of financial hardship to the person subject to this restriction. The Commissioner shall cancel the drivers license of any person subject to this section for registration of a motor vehicle owned by the person without an installed ignition interlock system or removal of the ignition interlock system from a motor vehicle owned by the person, other than when changing ignition interlock providers or upon sale of the vehicle.

(d) Effect of Limited Driving Privileges. – If the person was eligible for and received a limited driving privilege under G.S. 20-179.3, with the ignition interlock requirement contained in G.S. 20-179.3(g5), the period of time for which that limited driving privilege was held shall be applied towards the requirements of subsection (c).

(e) Notice of Requirement. – When a court reports to the Division a conviction of a person who is subject to this section, the Division must send the person written notice of the requirements of this section and of the consequences of failing to comply with these requirements. The notification must include a statement that the person may contact the Division for information on obtaining and having installed an ignition interlock system of a type approved by the Commissioner.

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

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

(h) Beginning of Revocation Period. – If the original period of revocation was imposed pursuant to G.S. 20-19(d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the revocation required by subsection (f) or (g) of this section begins after all other periods of revocation have terminated.

(i) Notification of Revocation. – If the person's license has not already been surrendered to the court, the Division must expeditiously notify the person that the person's license to drive is revoked pursuant to subsection (f) or (g) of this section effective on the tenth calendar day after the mailing of the revocation order.

(j) Right to Hearing Before Division; Issues. – If the person's license is revoked pursuant to subsection (g) of this section, before the effective date of the order issued under subsection (i) of this section, the person may request in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by subsection (g) of this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the

authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, except when the evidence of the violation is an alcohol concentration report from an ignition interlock system, the hearing may be conducted in the county where the person resides. The hearing must be limited to consideration of whether:

- (1) The drivers license of the person had an ignition interlock requirement; and
- (2) The person:
 - a. Was driving a vehicle that was not equipped with a functioning ignition interlock system; or
 - b. Did not personally activate the ignition interlock system before driving the vehicle; or
 - c. Drove the vehicle in violation of an applicable alcohol concentration restriction prescribed by subdivision (b)(3) of this section.

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

(k) Restoration After Violation. – When the Division restores the license of a person whose license was revoked pursuant to subsection (f) or (g) of this section and the revocation occurred prior to completion of time period required by subsection (c) of this section, in addition to any other restriction or condition, it shall require the person to comply with the conditions of subsection (b) of this section until the person has complied with those conditions for the cumulative period of time as set forth in subsection (c) of this section. The period of time for which the person successfully complied with subsection (b) of this section prior to revocation pursuant to subsection (f) or (g) of this section shall be applied towards the requirements of subsection (c) of this section.

(l) Medical Exception to Requirement. – A person subject to this section solely for the reason set forth in subdivision (a)(1) of this section and who has a medically diagnosed physical condition that makes the person incapable of personally activating an ignition interlock system may request an exception to the requirements of this section from the Division. The Division shall not issue an exception to this section unless the person has submitted to a physical examination by two or more physicians or surgeons duly licensed to practice medicine in this State or in any other state of the United States and unless such examining physicians or surgeons have completed and signed a certificate in the form prescribed by the Division. Such certificate shall be devised by the Commissioner with the advice of those qualified experts in the field of diagnosing and treating physical disorders that the Commissioner may select and shall be designed to elicit the maximum medical information necessary to aid in determining whether or not the person is capable of personally activating an ignition interlock system. The certificate shall contain a waiver of privilege and the recommendation of the examining physician to the Commissioner as to whether the person is capable of personally activating an ignition interlock system.

The Commissioner is not bound by the recommendations of the examining physicians but shall give fair consideration to such recommendations in acting upon the request for medical exception, the criterion being whether or not, upon all the evidence, it appears that the person is in fact incapable of personally activating an ignition interlock system. The burden of proof of such fact is upon the person seeking the exception.

Whenever an exception is denied by the Commissioner, such denial may be reviewed by a reviewing board upon written request of the person seeking the exception filed with the Division within 10 days after receipt of such denial. The composition, procedures, and review of the reviewing board shall be as provided in G.S. 20-9(g)(4). This subsection shall not apply to persons subject to an ignition interlock requirement under this section for the reasons set forth in subdivision (a)(2) or (a)(3) of this section. (1999-406, s. 3; 2000-155, ss. 1-3; 2001-487, s. 8; 2006-253, ss. 22.3, 22.4; 2007-493, ss. 5, 10, 28; 2009-369, ss. 5, 6; 2011-191, s. 3; 2013-348, s. 1; 2014-108, s. 1(a); 2014-115, s. 61.5; 2015-186, s. 4; 2015-264, s. 86.)