

GENERAL ASSEMBLY OF NORTH CAROLINA

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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.

- 1           b.     The person was convicted under G.S. 20-138.2 of commercial  
2           DWI and the person's license was revoked under G.S. 20-17(2).
- 3           c.     The person was convicted under G.S. 20-138.3 of driving while  
4           a provisional licensee after consuming alcohol or drugs and one  
5           of the following applies:
- 6                 1.     The person's license was revoked for at least one year.  
7                 2.     The person's license was revoked for less than one year,  
8                 it has been at least one year since the person was  
9                 convicted, and the person did not obtain a license after  
10                the revocation period ended.
- 11           (2)    End the person's period of disqualification, if the person was convicted  
12           under G.S. 20-138.2 of commercial DWI and the person's license was  
13           not revoked under G.S. 20-17(2).
- 14           (3)    Allow a person who was convicted under G.S. 20-138.3 of driving  
15           while a provisional licensee after consuming alcohol or drugs, and  
16           whose period of revocation was less than one year, to hold a license  
17           obtained by the person after the revocation period ended and before  
18           one year elapsed since the person was convicted.
- 19        (b)    When Certificate Is Issued. – A certificate of completion is issued after a  
20        person has had a substance abuse assessment and has completed either an alcohol and  
21        drug education traffic (ADET) school or a substance abuse treatment program.  
22        Completion of an ADET school is required if none of the following applies; completion  
23        of a substance abuse treatment program is required if any of the following applies:
- 24               (1)    The person took a chemical test at the time of the offense, and the test  
25                revealed that the person had an alcohol concentration at any relevant  
26                time after driving of at least 0.20.
- 27               (2)    The person has a prior conviction of an offense involving impaired  
28                driving.
- 29               (3)    The substance abuse assessment identifies a substance abuse disability.
- 30        (c)    Notice of Requirement. – When a court reports to the Division a conviction  
31        under G.S. 20-138.1 of DWI, under G.S. 20-138.2 of commercial DWI, or under G.S.  
32        20-138.3 of driving while a provisional licensee after consuming alcohol or drugs, the  
33        Division must send the appropriate substance abuse facility written notice of the  
34        conviction and a copy of the driving record of the person convicted. The appropriate  
35        substance abuse facility is the facility designated under G.S. 122C-142.1 by the area  
36        mental health, developmental disabilities, and substance abuse authority for the county  
37        in which the conviction occurred.
- 38        A substance abuse facility that receives notice under this subsection of a conviction  
39        must send the person convicted a letter informing the person of the requirements of this  
40        section and of the consequences of failing to comply with these requirements. The  
41        substance abuse facility must send with the letter a list of each agency or other entity  
42        that is authorized to make a substance abuse assessment needed in obtaining a  
43        certificate of completion is located in the same catchment area as the substance abuse  
44        facility.

1       (d) How to Obtain a Certificate. – To begin the process of obtaining a certificate  
2 of completion, a person must have a substance abuse assessment conducted by one of  
3 the entities named in the list the person received from the area mental health,  
4 developmental disabilities, and substance abuse authority. If the person had a substance  
5 abuse assessment conducted by one of these entities before being sentenced for the  
6 offense, the person must report to the substance abuse facility within 60 days after the  
7 conviction the name of the entity that conducted the assessment and the date the  
8 assessment was conducted. If the person did not have a substance abuse assessment  
9 from one of these entities before being sentenced, the person must schedule a substance  
10 abuse assessment with one of these entities within 60 days after the person was  
11 convicted. If the entity with which a substance abuse assessment is scheduled is not the  
12 substance abuse facility, the person must report to the substance abuse facility the entity  
13 with which the substance abuse assessment is scheduled. G.S. 122C-142.1 establishes  
14 the procedure for the remaining steps in obtaining a certificate of completion.

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

19           (1) Financial inability to pay the fees imposed under G.S. 122C-142.1  
20 after making a reasonable effort to obtain the funds to do so.

21           (2) A reason, other than alcoholism or drug abuse, over which the person  
22 had no control.

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

27       The hearing officer assigned to conduct the hearing may subpoena any witnesses or  
28 documents the hearing officer considers necessary and may administer oaths to  
29 witnesses who testify at the hearing. The hearing officer must subpoena personnel of an  
30 entity at which the person who requested the hearing obtained a substance abuse  
31 assessment, attended an ADET school, or had substance abuse treatment when the  
32 person makes a written request for the hearing officer to do so at least three days before  
33 the hearing. The person who requested the hearing may subpoena other witnesses. G.S.  
34 1A-1, Rule 45, applies to a subpoena issued under the authority of this subsection.

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

38           (1) Whether the person was convicted under G.S. 20-138.1 of DWI, under  
39 G.S. 20-138.2 of commercial DWI, or under G.S. 20-138.3 of driving  
40 while a provisional licensee after consuming alcohol or drugs.

41           (2) Whether the Division has received a certificate of completion from the  
42 Department of Human Resources for the person.

43           (3) Whether the person willfully failed to obtain a certificate of  
44 completion.

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

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

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

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

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

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

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

- 28 (1) For a revocation under a statute other than G.S. 20-13.2, 20-17(2), or  
29 20-17.6(h), the fee is twenty-five dollars (\$25.00).
- 30 (2) For a revocation under ~~A person whose drivers license has been revoked~~  
31 ~~under G.S. 20-17(2) shall pay a G.S. 20-17(2), the restoration fee of is~~  
32 ~~fifty dollars (\$50.00) fifty-five dollars (\$55.00) until the end of the fiscal~~  
33 ~~year in which the cumulative total amount of fees deposited under this~~  
34 ~~subsection in the General Fund exceeds five million dollars~~  
35 ~~(\$5,000,000), and shall pay a restoration fee of twenty-five dollars (\$25.00)~~  
36 ~~thereafter, is thirty dollars (\$30.00) after this threshold is reached.~~
- 37 (3) For a revocation under G.S. 20-13.2 or G.S. 20-17.6(h), the fee is  
38 thirty dollars (\$30.00).

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

1        ~~The twenty-five dollar (\$25.00) fee, and the first~~ Except for twenty-five dollars (\$25.00)  
2 of the ~~fifty-dollar (\$50.00) fee, fee set in subdivision (2) of this section, fees collected~~  
3 ~~under this subsection shall be deposited in~~ credited to the Highway Fund. ~~The remaining~~  
4 ~~twenty-five~~ Twenty-five dollars (\$25.00) of the ~~fifty-dollar (\$50.00) fee set in subdivision~~  
5 ~~(2) of this section shall be deposited in the General Fund of the State~~ Fund. The Office of  
6 State Budget and Management shall certify to the Department of Transportation and the  
7 General Assembly when the cumulative total amount of fees deposited in the General  
8 Fund under this subsection exceeds five million dollars (\$5,000,000), and shall annually  
9 report to the General Assembly the amount of fees deposited in the General Fund under  
10 this subsection.

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

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

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

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

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

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

1 provisions of subsection (m), he must include in the record of the case his reasons for not doing  
2 so."

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

4 "(i) Level Three Punishment. – A defendant subject to Level Three punishment  
5 may be fined up to five hundred dollars (\$500.00) and must be sentenced to a term of  
6 imprisonment that includes a minimum term of not less than 72 hours and a maximum  
7 term of not more than six months. The term of imprisonment must be suspended, on the  
8 condition that the defendant:

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

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

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

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

- 25 (1) Be imprisoned for a term of 48 hours as a condition of special  
26 probation; or  
27 (2) Perform community service for a term of 48 hours; or  
28 (3) Not operate a motor vehicle for a term of 60 days; or  
29 (4) Any combination of these conditions.

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

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

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

- 41 (1) Be imprisoned for a term of 24 hours as a condition of special  
42 probation; or  
43 (2) Perform community service for a term of 24 hours; or  
44 (3) Not operate a motor vehicle for a term of 30 days; or

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

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

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

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

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

19 "**§ 122C-142.1. Substance abuse services for those convicted of driving while**  
20 **impaired or driving while a provisional licensee after consuming alcohol**  
21 **or drugs.**

22 (a) Services. – An area authority shall provide, directly or by contract, the  
23 substance abuse services needed by a person to obtain a certificate of completion  
24 required under G.S. 20-17.6 as a condition for the restoration or continued enjoyment of  
25 a drivers license. An area authority shall designate either itself or another area facility  
26 as the designated substance abuse area facility for the catchment area served by the area  
27 authority.

28 A person may obtain the required services from an area facility, from a private  
29 facility that has complied with this subsection, or, with the approval of the Department,  
30 from an agency that is located in another state. Before a private facility located in this  
31 State provides the substance abuse services needed by a person to obtain a certificate of  
32 completion, the facility must notify both the designated area facility for the catchment  
33 area in which it is located and the Department of its intent to provide the services and  
34 must agree to comply with the laws and rules concerning these services that apply to  
35 area facilities.

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

43 (c) ADET Schools and Treatment Programs. – An ADET school shall offer the  
44 curriculum established by the Commission and shall comply with the rules adopted by

1 the Commission. A substance abuse treatment program offered to a person who needs  
2 the program to obtain a certificate of completion shall comply with the rules adopted by  
3 the Commission.

4 (d) Tracking. – A designated area facility that sent a person who needs to obtain  
5 a certificate of completion a letter, as required by G.S. 20-17.6, and that has not been  
6 contacted by the person within six months after sending the letter shall send the person  
7 another letter containing the same information as the first letter. A private facility that  
8 issues a certificate of completion shall send the original certificate of completion to the  
9 designated area facility. An designated area facility that issues a certificate of  
10 completion or receives a certificate of completion shall forward the original certificate  
11 of completion to the Department.

12 The Department shall review the certificate of completion for accuracy and  
13 completeness. If the Department finds the certificate of completion to be accurate and  
14 complete, the Department shall forward it to the Division of Motor Vehicles of the  
15 Department of Transportation. If the Department finds the certificate of completion is  
16 not accurate or complete, the Department shall return the certificate of completion to the  
17 area facility for appropriate action.

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

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

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

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

43 (g) Rules. – The Commission may adopt rules to implement this section. In  
44 developing rules for determining when a person needs to be placed in a substance abuse



1 treatment program, the Commission shall consider diagnostic criteria such as those  
2 contained in the most recent revision of the Diagnostic and Statistical Manual or used  
3 by the American Society of Addiction Medicine (ASAM)."

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

5           "(b) Area authorities may not use funds received under ~~G.S. 20-179.2(f)~~ or G.S. 90-  
6 96.01(a)(4) or G.S. 122C-142.1 to match funds under this section."

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