

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1499*

Short Title: Interlock/Open Container Changes.

(Public)

Sponsors: Representatives Crawford; Buchanan, Dedmon, Dockham, Hurley, Melton, and Saunders.

Referred to: Judiciary I.

May 10, 2000

A BILL TO BE ENTITLED

1
2 AN ACT TO AMEND NORTH CAROLINA LAW CONCERNING USE OF
3 IGNITION INTERLOCK DEVICES BY REPEAT DWI OFFENDERS AND
4 POSSESSION OF OPEN CONTAINERS IN VEHICLES TO COMPLY WITH
5 FEDERAL LAW AND AVOID A MANDATORY TRANSFER OF FEDERAL
6 HIGHWAY FUNDS.

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 20-17.8(b) reads as rewritten:

9 "(b) Ignition Interlock Required. – When the Division restores the license of a
10 person who is subject to this section, in addition to any other restriction or condition, it
11 shall require the person to agree to and shall indicate on the person's drivers license the
12 following restrictions for the period designated in subsection (c):

13 (1) A restriction that the person may operate only a vehicle that is equipped
14 with a functioning ignition interlock system of a type approved by the
15 ~~Commissioner~~ Commissioner and that all vehicles owned by that person
16 shall be equipped with the system. The Commissioner shall not
17 unreasonably withhold approval of an ignition interlock system and
18 shall consult with the Division of Purchase and Contract in the

1 Department of Administration to ensure that potential vendors are not
2 discriminated against.

3 (2) A requirement that the person personally activate the ignition interlock
4 system before driving the motor vehicle.

5 (3) A requirement that the person not drive with an alcohol concentration of
6 0.04 or greater."

7 Section 2. G.S. 20-138.7 reads as rewritten:

8 **"§ 20-138.7. Transporting an open container of alcoholic beverage after consuming**
9 **alcohol beverage.**

10 (a) Offense. – No person shall drive a motor vehicle on a highway or public
11 vehicular area:

12 (1) While there is an alcoholic beverage other than in the unopened
13 manufacturer's original container in the passenger area; and

14 (2) While the driver is consuming alcohol or while alcohol remains in the
15 driver's body.

16 (a1) Offense. – No person shall drive a motor vehicle on a highway or public
17 vehicular area while there is an alcoholic beverage other than in the unopened
18 manufacturer's original container in the passenger area.

19 (a2) Exception. – It shall not be a violation of subsection (a1) of this section for a
20 driver to drive a motor vehicle while any passenger is in possession of an alcoholic
21 beverage other than in the unopened manufacturer's original container if the container is:

22 (1) In the passenger area of a motor vehicle designed, maintained, or used
23 primarily for the transportation of persons for compensation;

24 (2) In the living quarters of a motor home or house car as defined in G.S.
25 20-4.01(27)d2.; or

26 (3) In a house trailer as defined in 20-4.01(14).

27 (b) Subject to Implied-Consent Law. – An offense under this section is an alcohol-
28 related offense subject to the implied-consent provisions of G.S. 20-16.2.

29 (c) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the
30 driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was
31 remaining in the driver's body in violation of this section, unless the driver was offered an
32 alcohol screening test or chemical analysis and refused to provide all required samples of
33 breath or blood for analysis.

34 (d) Alcohol Screening Test. – Notwithstanding any other provision of law, an
35 alcohol screening test may be administered to a driver suspected of violating subsection
36 (a) of this section, and the results of an alcohol screening test or the driver's refusal to
37 submit may be used by a law enforcement officer, a court, or an administrative agency in
38 determining if alcohol was present in the driver's body. No alcohol screening tests are
39 valid under this section unless the device used is one approved by the Commission for
40 Health Services, and the screening test is conducted in accordance with the applicable
41 regulations of the Commission as to the manner of its use.

42 (e) Punishment; Effect When Impaired Driving Offense Also Charged. – Violation
43 of ~~this section~~ subsection (a) of this section shall be ~~punished as~~ a Class 3 misdemeanor for

1 the first offense and shall be ~~punished as a~~ Class 2 misdemeanor for a second or
2 subsequent offense. ~~A fine imposed for a second or subsequent offense may not exceed one~~
3 ~~thousand dollars (\$1,000).~~ ~~Violation of this section—subsection (a) of this section~~ is not a
4 lesser included offense of impaired driving under G.S. 20-138.1, but if a person is
5 convicted under ~~this section—subsection (a) of this section~~ and of an offense involving
6 impaired driving arising out of the same transaction, the punishment imposed by the court
7 shall not exceed the maximum applicable to the offense involving impaired driving, and
8 any minimum applicable punishment shall be imposed. Violation of subsection (a1) of
9 this section is a lesser included offense of subsection (a) of this section. A violation of
10 ~~this section—subsection (a)~~ shall be considered a moving violation for purposes of G.S. 20-
11 16(c).

12 Violation of subsection (a1) of this section shall be an infraction and shall not be
13 considered a moving violation for purposes of G.S. 20-16(c).

14 (f) Definitions. – If the seal on a container of alcoholic beverages has been
15 broken, it is opened within the meaning of this section. For purposes of this section,
16 "passenger area of a motor vehicle" means the area designed to seat the driver and
17 passengers and any area within the reach of a seated driver or passenger, including the
18 glove compartment. The area of the trunk or the area behind the last upright back seat of
19 a station wagon, hatchback, or similar vehicle shall not be considered part of the
20 passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

21 (g) Pleading. – In any prosecution for a violation of ~~this section—subsection (a) of~~
22 this section, the pleading is sufficient if it states the time and place of the alleged offense
23 in the usual form and charges that the defendant drove a motor vehicle on a highway or
24 public vehicular area with an open container of alcoholic beverage after drinking.

25 In any prosecution for a violation of subsection (a1) of this section, the pleading
26 is sufficient if it states the time and place of the alleged offense in the usual form and
27 charges that the defendant drove a motor vehicle on a highway or public vehicular area
28 with an open container of alcoholic beverage.

29 (h) Limited Driving Privilege. – A person who is convicted of violating subsection
30 (a) of this section and whose drivers license is revoked solely based on that conviction
31 may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge
32 may issue the limited driving privilege only if the driver meets the eligibility
33 requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S.
34 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in
35 G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the
36 issuance of a limited driving privilege to a person who is convicted of violating
37 subsection (a) of this section and of driving while impaired as a result of the same
38 transaction."

39 Section 3. This act become effective December 1, 2000, and applies to
40 offenses committed on or after that date.