

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1336*

Judiciary Committee Substitute Adopted 7/21/98

Finance Committee Substitute #2 Adopted 8/3/98

Short Title: 1998 Gov. DWI Amendments.

(Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE AND THE JOINT CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE TO REVISE THE DWI FORFEITURE LAWS AND OTHER RELATED LAWS; TO PROVIDE FOR "ZERO-TOLERANCE" FOR COMMERCIAL DRIVERS, DRIVERS OF SCHOOL BUSES, SCHOOL ACTIVITY BUSES, AND CHILD CARE VEHICLES; AND TO PROVIDE FOR IMMEDIATE ADMINISTRATIVE LICENSE REVOCATIONS FOR ALL PERSONS UNDER TWENTY-ONE YEARS OF AGE.

The General Assembly of North Carolina enacts:

PART I. DWI FORFEITURE REVISIONS.

Section 1. G.S. 20-4.01(1b) reads as rewritten:

"(1b) Alcohol Concentration. – The concentration of alcohol in a person, expressed either as:

- a. Grams of alcohol per 100 milliliters of blood; or
b. Grams of alcohol per 210 liters of breath.

The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth.

Section 1.1. G.S. 20-4.01(24a) reads as rewritten:

1 "(24a) Offense Involving Impaired Driving. – Any of the following
2 offenses:

- 3 a. Impaired driving under G.S. 20-138.1.
4 b. Death by vehicle under G.S. 20-141.4 when conviction is based
5 upon impaired driving or a substantially equivalent offense
6 under previous law.
7 c. ~~Second~~ First or second degree murder under G.S. 14-17 or
8 involuntary manslaughter under G.S. 14-18 when conviction is
9 based upon impaired driving or a substantially equivalent
10 offense under previous law.
11 d. An offense committed in another jurisdiction substantially
12 equivalent to the offenses in subparagraphs a through c.
13 e. A repealed or superseded offense substantially equivalent to
14 impaired driving, including offenses under former G.S. 20-138
15 or G.S. 20-139.
16 f. Impaired driving in a commercial motor vehicle under G.S. 20-
17 138.2, except that convictions of impaired driving under G.S.
18 20-138.1 and G.S. 20-138.2 arising out of the same transaction
19 shall be considered a single conviction of an offense involving
20 impaired driving for any purpose under this Chapter.
21 g. Habitual impaired driving under G.S. 20-138.5.

22 A conviction under former G.S. 20-140(c) is not an offense
23 involving impaired driving."

24 Section 2. G.S. 20-28.2 reads as rewritten:

25 "**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving**
26 **license revocation.**

27 (a) Meaning of 'Impaired Driving License Revocation'. – The revocation of a
28 person's ~~driver's~~ drivers license is an impaired driving license revocation if the
29 revocation is pursuant to:

- 30 (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-
31 17(a)(12), ~~or 20-17.2, 20-17.2, or 20-138.5; or~~
32 (2) G.S. 20-16(a)(7), 20-17(a)(1), ~~or 20-17(a)(3),~~ 20-17(a)(9), or 20-
33 17(a)(11), if the offense involves impaired driving.

34 (a1) ~~[Definitions.]~~ Definitions. – As used in this section and in G.S. 20-28.3, 20-
35 28.4, 20-28.5, ~~and 20-28.6, 20-28.7, 20-28.8, and 20-28.9,~~ the following terms mean:

- 36 (1) Acknowledgment. – A written document acknowledging that:
37 a. The motor vehicle was operated by a person charged with an
38 offense involving impaired driving while that person's drivers
39 license was revoked as a result of a prior impaired drivers
40 license revocation;
41 b. If the motor vehicle is again operated by this particular person,
42 at any time while that person's drivers license is revoked, and
43 the person is charged with an offense involving impaired

- 1 driving, the motor vehicle is subject to impoundment and
2 forfeiture; and
- 3 c. A lack of knowledge or consent to the operation will not be a
4 defense in the future, unless the motor vehicle owner has taken
5 all reasonable precautions to prevent the use of the motor
6 vehicle by this particular person and immediately reports, upon
7 discovery, any unauthorized use to the appropriate law
8 enforcement agency.
- 9 (1a) Fair market value. – The value of the seized motor vehicle, as
10 determined in accordance with the schedule of values adopted by the
11 Commissioner pursuant to G.S. 105-187.3.
- 12 (2) Innocent Partyowner. – A ~~motor~~ vehicle ~~owner who:~~ owner:
- 13 a. ~~Did not~~ Who did not know and had no reason to know that the
14 defendant's drivers license was revoked;
- 15 b. ~~Knew~~ Who knew that the defendant's drivers license was
16 revoked, but the defendant drove the vehicle without the
17 person's expressed or implied permission;
- 18 c. Whose vehicle was reported stolen;
- 19 d. Who files a police report for unauthorized use of the motor
20 vehicle and agrees to prosecute the unauthorized operator of the
21 motor vehicle;
- 22 e. Who is in the business of renting vehicles, the driver is not
23 listed as an authorized driver on the rental contract; or
- 24 f. Who is in the business of leasing motor vehicles, who holds
25 legal title to the motor vehicle as a lessor at the time of seizure
26 and who has no actual knowledge of the revocation of the
27 lessee's drivers license at the time the lease is entered.
- 28 (2a) Insurance company. – Any insurance company that has coverage on or
29 is otherwise liable for repairs or damages to the motor vehicle at the
30 time of the seizure.
- 31 (2b) Insurance proceeds. – Proceeds paid under an insurance policy for
32 damage to a seized motor vehicle less any payments actually paid to
33 valid lienholders and for towing and storage costs incurred for the
34 motor vehicle after the time the motor vehicle became subject to
35 seizure.
- 36 (3) Lienholder. – A person who holds a perfected security interest in a
37 motor vehicle at the time of seizure.
- 38 (3a) Motor vehicle owner. – A person in whose name a registration card or
39 certificate of title for a motor vehicle is issued at the time of seizure.
- 40 (4) Order of Forfeiture. – An order by the court which terminates the
41 rights and ownership interest of a motor vehicle owner in a motor
42 vehicle and any insurance proceeds or proceeds of sale in accordance
43 with G.S. 20-28.2.

1 (5) ~~Possessory Lien.~~— A lien for all costs and fees associated with the
2 towing, storage, or sale of a vehicle pursuant to this section. This lien
3 shall have priority over perfected and unperfected security interests.
4 Storage fees subject to this lien shall not exceed five dollars (\$5.00)
5 per day.

6 (6) Registered Owner. – A person in whose name a registration card for a
7 motor vehicle is ~~issued.~~ issued at the time of seizure.

8 (7) ~~Vehicle Owner.~~— A person in whose name a registration card or
9 certificate of title for a motor vehicle is issued.

10 (b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture. – If at
11 a sentencing hearing ~~conducted pursuant to G.S. 20-179 or 20-138.5~~ the judge
12 determines that the grossly aggravating factor described in G.S. 20-179(e)(2) applies,
13 for the underlying offense involving impaired driving, at a separate hearing after
14 conviction of the defendant, or at a forfeiture hearing held at least 60 days after the
15 defendant failed to appear at the scheduled trial for the underlying offense and the
16 defendant's order of arrest for failing to appear has not been set aside, the judge
17 determines by the greater weight of the evidence that the defendant is guilty of an
18 offense involving impaired driving and that the defendant's license was revoked
19 pursuant to an impaired driving license revocation as defined in subsection (a) of this
20 section, the motor vehicle that was driven by the defendant at the time the defendant
21 committed the offense of ~~impaired driving~~ becomes property subject to an order of
22 forfeiture.

23 (c) Duty of Prosecutor to Notify Possible Innocent Parties. – In any case in which
24 a prosecutor determines that a motor vehicle driven by a defendant may be subject to
25 forfeiture under this ~~section,~~ section, and the motor vehicle has not been permanently
26 released to a nondefendant vehicle owner pursuant to G.S. 20-28.3(e1), a defendant
27 owner pursuant to G.S. 20-28.3(e2), or a lienholder, pursuant to G.S. 20-28.3(e3), the
28 prosecutor shall ~~determine the identity of every vehicle owner. The prosecutor shall also~~
29 ~~determine if there are any lienholders noted on the vehicle's certificate of title. The State shall~~
30 notify the defendant, each motor vehicle owner, and each lienholder that the motor
31 vehicle may be subject to forfeiture and that the defendant, motor vehicle owner, or the
32 lienholder may intervene to protect that person's interest. The notice may be served by
33 any means reasonably likely to provide actual notice, and shall be served at least
34 ~~fourteen~~ 10 days before the hearing at which an order of forfeiture may be entered.

35 (c1) Motor Vehicles Involved in Accidents. – If a motor vehicle subject to
36 forfeiture was damaged while the defendant operator was committing the underlying
37 offense involving impaired driving, or was damaged incident to the seizure of the motor
38 vehicle, the Division shall determine the name of any insurance companies that are the
39 insurers of record with the Division for the motor vehicle at the time of the seizure or
40 that may otherwise be liable for repair to the motor vehicle. In any case where a seized
41 motor vehicle was involved in an accident, the Division shall notify the insurance
42 companies that the claim for insurance proceeds for damage to the seized motor vehicle
43 shall be paid to the clerk of superior court of the county where the motor vehicle was
44 seized to be held and disbursed pursuant to further orders of the court. Any insurance

1 company that receives written or other actual notice of seizure pursuant to this section
 2 shall not be relieved of any legal obligation under any contract of insurance unless the
 3 claim for property damage to the seized motor vehicle minus the policy owner's
 4 deductible is paid directly to the clerk of court. The insurance company paying
 5 insurance proceeds to the clerk of court pursuant to this section shall be immune from
 6 suit by the motor vehicle owner for any damages alleged to have occurred as a result of
 7 the motor vehicle seizure. The proceeds shall be held by the clerk. The clerk shall
 8 disburse the insurance proceeds pursuant to further orders of the court.

9 (d) Duty of Judge-Forfeiture Hearing. — The trial judge—Unless a motor vehicle that
 10 has been seized pursuant to G.S. 20-28.3 has been permanently released to an innocent
 11 owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or
 12 to a lienholder pursuant to G.S. 20-28.3(e3), the court shall conduct a hearing on the
 13 forfeiture of the motor vehicle. The hearing may be held at the sentencing hearing on
 14 the operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle
 15 is subject to forfeiture under this section—underlying offense involving impaired driving, at
 16 a separate hearing after conviction of the defendant, or at a separate forfeiture hearing
 17 held not less than 60 days after the defendant failed to appear at the scheduled trial for
 18 the underlying offense and the defendant's order of arrest for failing to appear has not
 19 been set aside. If at the sentencing hearing, or at a subsequent forfeiture hearing, the judge
 20 determines that the requirements of subsections (a) through (c) of this section exist and the
 21 defendant was the only motor vehicle owner at the time of the offense, motor vehicle is
 22 subject to forfeiture pursuant to this section and proper notice of the hearing has been
 23 given, the judge shall order the motor vehicle forfeited. If at the sentencing hearing or at
 24 a subsequent forfeiture hearing, the judge determines that the requirements of subsections
 25 (a) through (c) of this section exist and the defendant was not the only vehicle owner at the time
 26 of the offense, motor vehicle is subject to forfeiture pursuant to this section and proper
 27 notice of the hearing has been given, the judge shall order the motor vehicle forfeited
 28 unless another motor vehicle owner establishes, by the greater weight of the evidence,
 29 that such motor vehicle owner is an innocent party-owner as defined by subdivision
 30 (a1)(2) of in this section, in which case the trial judge shall order the motor vehicle
 31 released to the innocent party-vehicle owner pursuant to the provisions of subsection (e)
 32 of this section. In any case where the motor vehicle is ordered forfeited, the judge shall
 33 either—shall:

- 34 (1) a. Authorize the school board to sell sale of the motor vehicle at public
 35 sale or allow the county board of education to retain the motor vehicle
 36 for its own use pursuant to G.S. 20-28.5; or
 37 (2-) b. Release—Order the motor vehicle released to an intervening
 38 lienholder pursuant to the provisions of subsection (g)—(f) of this
 39 section—section; and
 40 (2) a. Order any proceeds of sale or insurance proceeds held by the clerk
 41 of court to be disbursed to the county board of education; and
 42 b. Order any outstanding insurance claims be assigned to the
 43 county board of education in the event the motor vehicle has

1 been damaged in an accident incident to the seizure of the
2 motor vehicle.

3 If the judge determines that the requirements of subsection (a) and (b) of this section exist
4 motor vehicle is subject to forfeiture pursuant to this section, but that notice as required
5 by subsection (c) has not been given, the judge shall continue the forfeiture proceeding
6 until adequate notice has been given. In no circumstance shall the sentencing of the
7 defendant be delayed as a result of the failure of the prosecutor to give adequate notice.

8 (e) Return-Release of Vehicle to Innocent Motor Vehicle Owner. —~~If-At a~~
9 forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater
10 weight of the evidence that: (i) the motor vehicle was being driven by a person who was
11 not the only motor vehicle owner or had no ownership interest in the motor vehicle at
12 the time of the underlying offense and (ii) that the petitioner is an "innocent party",
13 'innocent owner', as defined by this section, a judge shall order the motor vehicle
14 returned-released to the-that owner-owner, conditioned upon payment of all towing and
15 storage charges incurred as a result of the seizure and impoundment of the motor
16 vehicle.

17 This release-Release to an innocent owner shall only be ordered upon satisfactory
18 proof of:

- 19 (1) The identity of the person as a motor vehicle owner;
- 20 (2) The existence of financial responsibility to the extent required by
21 Article 13 of this Chapter; and
- 22 (3) ~~The payment of towing and storage fees; fees, except in the case of~~
23 ~~release to an innocent vehicle owner; and~~
- 24 (4) The execution of an acknowledgment as defined in subdivision (a1)(1)
25 of this section.

26 If the nondefendant owner is a lessor, the release shall also be conditioned upon the
27 lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor
28 vehicle to the defendant or any person acting on the defendant's behalf. A lessor who
29 refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or
30 any person acting on the behalf of the defendant shall not be liable for damages arising
31 out of the refusal.

32 No motor vehicle subject to forfeiture under this section shall be released to a
33 nondefendant motor vehicle owner if the records of the Division indicate the motor
34 vehicle owner had previously signed an acknowledgment, as required by this section,
35 and the same person was operating the motor vehicle while that person's license was
36 revoked unless the innocent ~~vehicle~~-owner shows by the greater weight of the evidence
37 that the motor vehicle owner has taken all reasonable precautions to prevent the use of
38 the motor vehicle by this particular person and immediately reports, upon discovery,
39 any unauthorized use to the appropriate law enforcement agency. A determination by
40 the court at the forfeiture hearing held pursuant to subsection (d) of this section that
41 the petitioner is not an innocent owner is a final judgment and is immediately
42 appealable to the Court of Appeals.

43 (f) Release to Lienholder. —~~The-At a forfeiture hearing, the trial judge shall order~~
44 a forfeited motor vehicle released to the lienholder upon payment of all towing and

1 storage charges incurred as a result of the seizure of the motor vehicle if the judge
2 determines, by the greater weight of the evidence, that:

- 3 (1) The lienholder's interest is equal to or greater than the fair market value of
4 the vehicle; has been perfected and appears on the title to the forfeited
5 vehicle;
6 (2) The lienholder agrees not to sell, give, or otherwise transfer possession
7 of the forfeited motor vehicle to the defendant or to the motor vehicle
8 owner who owned the motor vehicle immediately prior to forfeiture, or
9 any person acting on the defendant's or motor vehicle owner's behalf;
10 (3) The forfeited motor vehicle had not previously been released to the
11 lienholder; and lienholder;
12 (4) The lienholder pays, in full, any towing and storage costs incurred as a result
13 of the seizure of the vehicle. The owner is in default under the terms of
14 the security instrument evidencing the interest of the lienholder and as
15 a consequence of the default the lienholder is entitled to possession of
16 the motor vehicle; and
17 (5) The lienholder agrees to sell the motor vehicle in accordance with the
18 terms of its agreement and pursuant to the provisions of Part 5 of
19 Article 9 of Chapter 25 of the General Statutes. Upon the sale of the
20 motor vehicle, the lienholder will pay to the clerk of court of the
21 county in which the vehicle was forfeited all proceeds from the sale,
22 less the amount of the lien in favor of the lienholder, and any towing
23 and storage costs paid by the lienholder.

24 A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle
25 to the defendant, the vehicle owner who owned the motor vehicle immediately prior to
26 forfeiture, or any person acting on the behalf of the defendant or motor vehicle owner
27 shall not be liable for damages arising out of such refusal. The defendant, the motor
28 vehicle owner who owned the motor vehicle immediately prior to forfeiture, and any
29 person acting on the defendant's or motor vehicle owner's behalf are prohibited from
30 purchasing the motor vehicle at any sale conducted by the lienholder.

31 ~~(g) Possessory Lien.—The entity that tows or stores the motor vehicle, other than~~
32 ~~the county school board, shall be entitled to a possessory lien as defined in G.S.~~
33 ~~28.2(a1)(5)."~~

34 Section 3. G.S. 20-28.3 reads as rewritten:

35 "**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses**
36 **involving impaired driving while license revoked.**

37 (a) ~~{Vehicles Subject to Seizure.}~~Motor Vehicles Subject to Seizure. – A motor
38 vehicle that is driven by a person in violation of G.S. 20-138.1 or G.S. 20-138.5 who is
39 charged with an offense involving impaired driving is subject to seizure if at the time of
40 the violation the drivers license of the person driving the motor vehicle was revoked as
41 a result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a).

42 (b) Duty of Officer. – If the charging officer has probable cause to believe that a
43 motor vehicle driven by the defendant may be subject to forfeiture under this section,
44 the officer shall seize the motor vehicle and have it impounded. If the officer determines

1 prior to seizure that the motor vehicle had been reported stolen or that the motor vehicle
2 was a rental vehicle driven by a person not listed as an authorized driver on the rental
3 contract, the officer shall not seize the motor vehicle pursuant to this section. Probable
4 cause may be based on the officer's personal knowledge, reliable information conveyed
5 by another officer, records of the Division, or other reliable source. ~~The officer shall~~
6 ~~cause to be issued written notification of impoundment to any vehicle owner who was not~~
7 ~~operating or present in the vehicle at the time of the offense. This notice shall be sent by first-~~
8 ~~class mail to the most recent address contained in the Division records. This written notification~~
9 ~~shall inform the vehicle owner(s) that the vehicle has been impounded, shall state the reason for~~
10 ~~the impoundment and the procedure for requesting release of the vehicle.~~ The seizing officer
11 shall notify the Division as soon as practical but no later than 72 hours after seizure of
12 the motor vehicle and the agency designated under subsection (b1) of this section of the
13 seizure in accordance with procedures established by the Division. ~~Division and the~~
14 agency designated under subsection (b1) of this section. ~~Within 72 hours of the seizure of~~
15 ~~the vehicle the officer shall also cause notice of the impoundment and intent to forfeit the~~
16 ~~vehicle to be given to any lienholder of record with the Division.~~

17 (b1) Notification of Impoundment. – Within 48 hours of receipt of the notice of
18 seizure, an agency designated by the Governor shall issue written notification of
19 impoundment to any lienholder of record and to any motor vehicle owner who was not
20 operating the motor vehicle at the time of the offense. This notice shall be sent by first-
21 class mail to the most recent address contained in the Division's records. If the motor
22 vehicle is registered in another state, notice shall be sent to the address shown on the
23 records of the state where the motor vehicle is registered. This written notification shall
24 provide notice that the motor vehicle has been seized, state the reason for the seizure
25 and the procedure for requesting release of the motor vehicle. Additionally, if the motor
26 vehicle was damaged while the defendant operator was committing an offense involving
27 impaired driving or incident to the seizure, the agency shall issue written notification of
28 the seizure to the owner's insurance company of record and to any other insurance
29 companies that may be insuring other motor vehicles involved in the accident. The
30 Division shall prohibit title to a seized motor vehicle from being transferred by a motor
31 vehicle owner unless authorized by court order.

32 (c) Review by Magistrate. – Upon ~~seizing~~ determining that there is probable
33 cause for seizing a motor vehicle, the seizing officer shall present to a magistrate within
34 the county where the ~~vehicle was seized~~ driver was charged an affidavit of impoundment
35 setting forth the basis upon which the motor vehicle has been or will be seized for
36 forfeiture. The magistrate shall review the affidavit of impoundment and if the
37 magistrate determines the requirements of this section have been met, shall order the
38 motor vehicle held. The magistrate may request additional information and may hear
39 from the ~~operator~~ defendant if the ~~operator~~ defendant is present. If the magistrate
40 determines the requirements of this section have not been met, the magistrate shall order
41 the motor vehicle released to a motor vehicle owner upon payment of towing and
42 storage fees. If the motor vehicle has not yet been seized, and the magistrate determines
43 that seizure is appropriate, the magistrate shall issue an order of seizure of the motor
44 vehicle. The magistrate shall provide a copy of the order of seizure to the clerk of court.

1 The clerk shall provide copies of the order of seizure to the district attorney and the
2 attorney for the county board of education.

3 (c1) Effecting an Order of Seizure. – An order of seizure shall be valid anywhere
4 in the State. Any officer with territorial jurisdiction and who has subject matter
5 jurisdiction for violations of this Chapter may use such force as may be reasonable to
6 seize the motor vehicle and to enter upon the property of the defendant to accomplish
7 the seizure. An officer who has probable cause to believe the motor vehicle is
8 concealed or stored on private property of a person other than the defendant may obtain
9 a search warrant to enter upon that property for the purpose of seizing the motor vehicle.

10 (d) Custody of Motor Vehicle. –~~The~~Unless the motor vehicle is towed pursuant
11 to a statewide or regional contract, or a contract with the county board of education, the
12 seized motor vehicle shall be towed by a commercial towing company designated by the
13 law enforcement agency that seized the motor vehicle. ~~to a location designated by the~~
14 ~~county school board for the county in which the operator of the vehicle is charged and~~ Seized
15 motor vehicles not towed pursuant to a statewide or regional contract or a contract with
16 a county board of education shall be retrieved from the commercial towing company
17 within a reasonable time, not to exceed 10 days, by the county board of education or
18 their agent who must pay towing and storage fees to the commercial towing company
19 when the motor vehicle is retrieved. If either a statewide or regional contractor, or the
20 county board of education, chooses to contract for local towing services, all towing
21 companies on the towing list for each law enforcement agency with jurisdiction within
22 the county shall be given written notice and an opportunity to submit proposals prior to
23 a contract for local towing services being awarded. The seized motor vehicle is placed
24 under the constructive possession of the ~~school board~~ county board of education for the
25 county in which the operator of the vehicle is charged at the time the vehicle is
26 delivered to a location designated by the county board of education or delivered to its
27 agent pending release or sale, or in the event a statewide or regional contract is in place,
28 under the constructive possession of the Department of Public Instruction, on behalf of
29 the State at the time the vehicle is delivered to a location designated by the Department
30 of Public Instruction or delivered to its agent pending release or sale. ~~Each~~ Absent a
31 statewide or regional contract that provides otherwise, each county ~~school board~~ board of
32 education may elect to have seized motor vehicles stored on property owned or leased
33 by the ~~school~~ county board of education and charge ~~no~~ a reasonable fee for storage.
34 storage, not to exceed ten dollars (\$10.00) per day. In the alternative, the county ~~school~~
35 ~~board~~ board of education may contract with a commercial towing and storage facility or
36 other private entity for the ~~storage~~ towing, storage, and disposal of seized motor
37 vehicles, and a storage fee of not more than ~~five~~ ten dollars (\$5.00)-(\$10.00) per day may
38 be charged. Except for gross negligence or intentional misconduct, the county board of
39 education, or any of its employees, shall not be liable to the owner or lienholder for
40 damage to or loss of the motor vehicle or its contents, or to the owner of personal
41 property in a seized vehicle, during the time the motor vehicle is being towed or stored
42 pursuant to this subsection.

43 (e) Release of Motor Vehicle Pending Trial. – A motor vehicle owner, or a
44 lienholder of a vehicle, other than the driver at the time of the underlying offense resulting

1 in the seizure, may apply to the clerk of superior court in the county where the charges
2 are pending for pretrial release of the motor vehicle.

3 The clerk shall release the motor vehicle to a ~~qualified nondefendant~~ motor vehicle
4 owner ~~or a lienholder~~ conditioned upon payment of all towing and storage charges
5 incurred as a result of seizure and impoundment of the motor vehicle under the
6 following conditions:

- 7 (1) The motor vehicle has been ~~stored~~ seized for not less than 24 hours;
- 8 (2) All towing and storage charges have been paid;
- 9 (3) Execution of a good and valid bond with sufficient sureties in an
10 amount equal to twice the value of the seized vehicle, as determined in
11 accordance with the schedule of values adopted by the Commissioner
12 of Motor Vehicles pursuant to G.S. 105-187.3, A bond in an amount
13 equal to the fair market value of the motor vehicle as defined by G.S.
14 20-28.2 has been executed and is secured by a cash deposit in the full
15 amount of the bond, by a recordable deed of trust to real property in
16 the full amount of the bond, by a bail bond under G.S. 58-71-1(2), or
17 by at least one solvent surety, payable to the county school fund and
18 conditioned on return of the motor vehicle, in substantially the same
19 condition as it was at the time of seizure and without any new or
20 additional liens or encumbrances, on the day of trial of the operator;
21 any hearing scheduled and noticed by the district attorney under G.S.
22 20-28.2(c), unless the motor vehicle has been permanently released;
- 23 (4) If a ~~qualified vehicle~~ owner, ~~execution~~ Execution of an acknowledgment
24 as described in G.S. 20-28.2(a1); and
- 25 (5) A check of the records of the Division indicates that the requesting
26 motor vehicle owner has not previously executed an acknowledgment
27 naming the operator of the seized ~~vehicle~~ motor vehicle; and
- 28 (6) A bond posted to secure the release of this motor vehicle under this
29 subsection has not been previously ordered forfeited under G.S. 20-
30 28.5.

31 In the event a nondefendant motor vehicle owner who obtains temporary possession
32 of a seized motor vehicle pursuant to this subsection does not return the motor vehicle
33 on the day of the forfeiture hearing as noticed by the district attorney under G.S. 20-
34 28.3(c) or otherwise violates a condition of pretrial release of the seized motor
35 vehicle as set forth in this subsection, the bond posted shall be ordered forfeited and an
36 order of seizure shall be issued by the court. Additionally, a nondefendant motor
37 vehicle owner or lienholder who willfully violates any condition of pretrial release may
38 be held in civil or criminal contempt.

39 (e1) Pretrial Release of Motor Vehicle to Innocent Owner. – A nondefendant
40 motor vehicle owner may file a petition with the clerk of court seeking a pretrial
41 determination that the petitioner is an innocent owner. The clerk shall schedule a
42 hearing before a judge to be held within 10 business days or as soon as thereafter may
43 be feasible. Notice of the hearing shall be given to the petitioner, the district attorney,
44 and the attorney for the county board of education. The clerk shall forward a copy of the

1 petition to the district attorney for the district attorney's review. If, based on available
2 information, the district attorney determines that the petitioner is an innocent owner and
3 that the motor vehicle is not subject to forfeiture, the district attorney may note the
4 State's consent to the release of the motor vehicle on the petition and return the petition
5 to the clerk of court who shall enter an order releasing the motor vehicle to the
6 petitioner subject to the conditions of release as set forth in G.S. 20-28.2(e) and no
7 hearing shall be held. The clerk shall send a copy of the order of release to the county
8 board of education attorney. At any pretrial hearing conducted pursuant to this
9 subsection, the court is not required to determine the issue of forfeiture, only the issue
10 of whether the petitioner is an innocent owner. Accordingly, the State shall not be
11 required to prove the underlying offense of impaired driving or the existence of a prior
12 drivers license revocation. If the court determines that the petitioner is an innocent
13 owner, the court shall release the motor vehicle to the petitioner subject to the same
14 conditions as if the petitioner were an innocent owner under G.S. 20-28.2(e). An order
15 issued under this subsection finding that the petitioner failed to establish that the
16 petitioner is an innocent owner may be reconsidered by the court as part of the forfeiture
17 hearing conducted pursuant to G.S. 20-28.2(d).

18 (e2) Pretrial Release of Motor Vehicle to Defendant Owner. – A defendant motor
19 vehicle owner may file a petition with the clerk of court seeking a pretrial determination
20 that the defendant's license was not revoked pursuant to an impaired driving license
21 revocation as defined in G.S. 20-28.2(a). The clerk shall schedule a hearing before a
22 judge of the division in which the underlying criminal charge is pending for a hearing to
23 be held within 10 business days or as soon thereafter as may be feasible. Notice of the
24 hearing shall be given to the defendant, the district attorney, and the attorney for the
25 county board of education. The clerk shall forward a copy of the petition to the district
26 attorney for the district attorney's review. If, based on available information, the district
27 attorney determines that the defendant's motor vehicle is not subject to forfeiture, the
28 district attorney may note the State's consent to the release of the motor vehicle on the
29 petition and return the petition to the clerk of court who shall enter an order releasing
30 the motor vehicle to the defendant upon payment of all towing and storage charges
31 incurred as a result of the seizure and impoundment of the motor vehicle, subject to the
32 satisfactory proof of the identity of the defendant as a motor vehicle owner and the
33 existence of financial responsibility to the extent required by Article 13 of this Chapter,
34 and no hearing shall be held. The clerk shall send a copy of the order of release to the
35 attorney for the county board of education. At any pretrial hearing conducted pursuant
36 to this subsection, the court is not required to determine the issue of the underlying
37 offense of impaired driving only the existence of a prior drivers license revocation as an
38 impaired driving license revocation. Accordingly, the State shall not be required to
39 prove the underlying offense of impaired driving. An order issued under this subsection
40 finding that the defendant failed to establish that the defendant's license was not revoked
41 pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a) may be
42 reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S.
43 20-28.2(d).

1 (e3) Pretrial Release of Motor Vehicle to Lienholder. – A lienholder may file a
2 petition with the clerk of court requesting the court to order pretrial release of a seized
3 motor vehicle. The lienholder shall serve a copy of the petition on all interested parties
4 which shall include the registered owner, the titled owner, the district attorney, and the
5 county board of education attorney. Upon 10 days' prior notice of the date, time, and
6 location of the hearing sent by the lienholder to all interested parties, a judge, after a
7 hearing, shall order a seized motor vehicle released to the lienholder conditioned upon
8 payment of all towing and storage costs incurred as a result of the seizure and
9 impoundment of the motor vehicle if the judge determines, by the greater weight of the
10 evidence, that:

- 11 (1) Default on the obligation secured by the motor vehicle has occurred;
- 12 (2) As a consequence of default, the lienholder is entitled to possession of
13 the motor vehicle;
- 14 (3) The lienholder agrees to sell the motor vehicle in accordance with the
15 terms of its agreement and pursuant to the provisions of Part 5 of
16 Article 9 of Chapter 25 of the General Statutes. Upon sale of the
17 motor vehicle, the lienholder will pay to the clerk of court of the
18 county in which the vehicle was seized all proceeds from the sale, less
19 the amount of the lien in favor of the lienholder, and any towing and
20 storage costs paid by the lienholder;
- 21 (4) The lienholder agrees not to sell, give, or otherwise transfer possession
22 of the forfeited motor vehicle to the defendant or the motor vehicle
23 owner; and
- 24 (5) The forfeited motor vehicle had not previously been released to the
25 lienholder.

26 The clerk of superior court may order a seized vehicle released to the lienholder
27 conditioned upon payment of all towing and storage costs incurred as a result of the
28 seizure and impoundment of the motor vehicle at any time when all interested parties
29 have, in writing, waived any rights that they may have to notice and a hearing, and the
30 lienholder has agreed to the provision of subdivision (4) above. A lienholder who
31 refuses to sell, give, or transfer possession of a forfeited motor vehicle to:

- 32 (1) The defendant;
- 33 (2) The motor vehicle owner who owned the motor vehicle immediately
34 prior to forfeiture; or
- 35 (3) Any person acting on the behalf of the defendant or the motor vehicle
36 owner,

37 shall not be liable for damages arising out of such refusal. However, any subsequent
38 violation of the conditions of release by the lienholder shall be punishable by civil or
39 criminal contempt.

40 ~~(f) Duty of Trial Judge.— The trial judge at the sentencing hearing on the~~
41 ~~operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the~~
42 ~~vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.~~

43 ~~(g) Possessory Lien.— The entity that tows and stores the vehicle, other than the~~
44 ~~county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5).~~

1 (h) Insurance Proceeds. – In the event a motor vehicle is damaged incident to the
2 conduct of the defendant which gave rise to the defendant's arrest and seizure of the
3 motor vehicle pursuant to this section, the county board of education, or its authorized
4 designee, is authorized to negotiate the county board of education's interest with the
5 insurance company and to compromise and accept settlement of any claim for damages.
6 Property insurance proceeds accruing to the defendant, or other owner of the seized
7 motor vehicle, shall be paid by the responsible insurance company directly to the clerk
8 of superior court in the county where the motor vehicle was seized. If the motor vehicle
9 is declared a total loss by the insurance company responsible for repairs to the motor
10 vehicle, the clerk of superior court, upon application of the county board of education,
11 shall enter an order that the motor vehicle be released to the insurance company upon
12 payment into the court of all insurance proceeds for damage to the motor vehicle after
13 payment of towing and storage costs and all valid liens. The clerk of superior court
14 shall provide the Division with a certified copy of the order entered pursuant to this
15 subsection, and the Division shall transfer title to the insurance company or to such
16 other person or entity as may be designated by the insurance company. Insurance
17 proceeds paid to the clerk of court pursuant to this subsection shall be subject to
18 forfeiture pursuant to G.S. 20-28.5 and shall be disbursed pursuant to further orders of
19 the court. An affected motor vehicle owner or lienholder who objects to any agreed
20 upon settlement under this subsection may file an independent claim with the insurance
21 company for any additional monies believed owed. Notwithstanding any other
22 provisions in this Chapter, nothing in this section shall require an insurance company to
23 make payments in excess of those required pursuant to its policy of insurance on the
24 seized motor vehicle.

25 (i) Expedited Sale of Seized Motor Vehicles in Certain Cases. – In order to avoid
26 additional liability for towing and storage costs pending resolution of the criminal
27 proceedings of the defendant, the county board of education may, after expiration of 90
28 days from the date of seizure, sell any motor vehicle having a fair market value of one
29 thousand five hundred dollars (\$1,500) or less. The county board of education may also
30 sell a motor vehicle, regardless of the fair market value, any time the towing and storage
31 costs exceed eighty-five percent (85%) of the fair market value of the vehicle, or with
32 the consent of all the motor vehicle owners. Any sale conducted pursuant to this
33 subsection shall take place upon not less than 10 days' prior notice to the motor vehicle
34 owners and lienholders, and the proceeds of the sale shall be deposited with the clerk of
35 superior court. If an order of forfeiture is entered by the court, the court shall order the
36 proceeds held by the clerk to be disbursed as provided in G.S. 20-28.5(b). If the court
37 determines that the motor vehicle is not subject to forfeiture, the court shall order the
38 proceeds held by the clerk to be disbursed first to pay the sale, towing, and storage
39 costs, second to pay outstanding liens on the motor vehicle, and the balance to be paid
40 to the motor vehicle owners.

41 (j) Retrieval of Certain Personal Property. – At reasonable times, the entity
42 charged with storing the motor vehicle may permit owners of personal property not
43 affixed to the motor vehicle to retrieve those items from the motor vehicle, provided

1 satisfactory proof of ownership of the motor vehicle or the items of personal property is
2 presented to the storing entity.

3 (k) County Board of Education Right to Appear and Participate in Proceedings. –
4 The attorney for the county board of education shall be given notice of all proceedings
5 regarding offenses involving impaired driving related to a motor vehicle subject to
6 forfeiture. The attorney for the county board of education shall also have the right to
7 appear and to be heard on all issues relating to the seizure, possession, release,
8 forfeiture, sale, and other matters related to the seized vehicle under this section. With
9 the prior consent of the county board of education, the district attorney may delegate to
10 the attorney for the county board of education any or all of the duties of the district
11 attorney under this section. Clerks of superior court, law enforcement agencies, and all
12 other agencies with information relevant to the seizure, impoundment, release, or
13 forfeiture of motor vehicles are authorized and directed to provide county boards of
14 education with access to that information and to do so by electronic means when
15 existing technology makes this type of transmission possible.

16 (l) Payment of Fees Upon Conviction. – If the driver of a motor vehicle seized
17 pursuant to this section is convicted of an offense involving impaired driving, the
18 defendant shall be ordered to pay as restitution to the county board of education, the
19 motor vehicle owner, or the lienholder the cost paid or owing for the towing, storage,
20 and sale of the motor vehicle to the extent the costs were not covered by the proceeds
21 from the forfeiture and sale of the motor vehicle. In addition, a civil judgment for the
22 costs under this section in favor of the party to whom the restitution is owed shall be
23 docketed by the clerk of superior court. If the defendant is sentenced to an active term
24 of imprisonment, the civil judgment shall become effective and be docketed when the
25 defendant's conviction becomes final. If the defendant is placed on probation, the civil
26 judgment in the amount found by a judge during the probation revocation or termination
27 hearing to be due, shall become effective and be docketed by the clerk when the
28 defendant's probation is revoked or terminated.

29 (m) Trial Priority. – Trials of impaired driving offenses involving forfeitures of
30 motor vehicles pursuant to G.S. 20-28.2 shall be scheduled on the arresting officer's
31 next court date or within 30 days of the offense, whichever comes first.

32 Once scheduled, the case shall not be continued unless all of the following
33 conditions are met:

34 (1) A written motion for continuance is filed with notice given to the
35 opposing party prior to the motion being heard.

36 (2) The judge makes a finding of a 'compelling reason' for the
37 continuance.

38 (3) The motion and finding are attached to the court case record.

39 Upon a determination of guilt, the issue of vehicle forfeiture shall be heard by the
40 judge immediately, or as soon thereafter as feasible, and the judge shall issue the
41 appropriate orders pursuant to G.S. 20-28.2(d).

42 Should a defendant appeal his conviction to superior court, the appeal shall be set
43 down for trial on the next available trial date and the limitations on continuances and

1 requirement for expedited hearing on the forfeiture of the vehicle, set forth above, shall
2 apply."

3 Section 4. G.S. 20-28.4 reads as rewritten:

4 **"§ 20-28.4. Release of impounded motor vehicles by judge.**

5 ~~(a) Release to Innocent Vehicle Owner. — A vehicle owner who was not the~~
6 ~~operator of the vehicle at the time of the offense may petition the court for return of the~~
7 ~~vehicle pursuant to the provisions of G.S. 20-28.2(e).~~

8 ~~(b) Acknowledgment Required. — The vehicle owner seeking release under this~~
9 ~~section or pretrial release under G.S. 20-28.3 shall sign an acknowledgment as~~
10 ~~described in G.S. 20-28.2(a1)(1).~~

11 ~~(c) Release to Lienholder. — A district court judge may order a forfeited vehicle~~
12 ~~released to a lienholder if the judge determines, by the greater weight of the evidence,~~
13 ~~that the lienholder satisfies the criteria as set out in G.S. 20-28.2(f).~~

14 (d) Release Upon Conclusion of Trial. — If the driver of a motor vehicle
15 seized pursuant to G.S. 20-28.3:

16 (1) ~~Is subsequently not convicted of either G.S. 20-138.1 or G.S. 20-138.5 an~~
17 ~~offense involving impaired driving due to dismissal or a finding of not~~
18 ~~guilty; or~~

19 (2) ~~The judge at the sentencing hearing fails to find the grossly aggravating~~
20 ~~factor described in G.S. 20-179(e)(2), a forfeiture hearing conducted~~
21 ~~pursuant to G.S. 20-28.2(d) fails to find that the driver's license was~~
22 ~~revoked as a result of a prior impaired driving license revocation as~~
23 ~~defined in G.S. 20-28.2; and~~

24 (3) ~~The vehicle has not previously been released to a lienholder pursuant~~
25 ~~to G.S. 20-28.3(e3).~~

26 ~~the seized motor vehicle or insurance proceeds held by the clerk of court pursuant to~~
27 ~~G.S. 20-28.2(c1) or G.S. 20-28.3(h) shall be returned—released to the motor vehicle~~
28 ~~owner—owner conditioned upon payment of towing and storage costs. Notwithstanding~~
29 ~~G.S. 44A-2(d), if the owner of the seized motor vehicle does not obtain release of the~~
30 ~~vehicle within 30 days from the date of the court's order, the possessor of the seized~~
31 ~~motor vehicle has a mechanics' lien on the seized motor vehicle for the full amount of~~
32 ~~the towing and storage charges incurred since the motor vehicle was seized and may~~
33 ~~dispose of the seized motor vehicle pursuant to Article 1 of Chapter 44A of the General~~
34 ~~Statutes.~~

35 ~~If the court finds that probable cause did not exist to seize the motor vehicle, the~~
36 ~~court shall order the vehicle released.~~

37 ~~A determination which results in the return or release of the seized vehicle under this~~
38 ~~section authorizes the driver, vehicle owner, or lienholder to recover towing or storage~~
39 ~~fees paid in order to obtain pretrial release of the motor vehicle. Towing or storage fees~~
40 ~~recovered pursuant to this subsection shall be paid by the county school board from~~
41 ~~forfeitures paid into the county school fund."~~

42 Section 5. G.S. 20-28.5 reads as rewritten:

43 **"§ 20-28.5. Forfeiture of impounded ~~vehicle—~~motor vehicle or funds.**

1 (a) Sale. —~~Unless a judge orders the vehicle returned to an innocent party or a~~
2 ~~lienholder pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered~~
3 ~~forfeited and sold or transferred to the school board in the county where the charges~~
4 ~~were filed. The sale of the vehicle shall be a judicial-~~A motor vehicle ordered forfeited
5 and sold shall be sold at a public sale conducted in accordance with the provisions of
6 Parts 1 and 2 of Article 29A of Chapter 1-Article 12 of Chapter 160A of the General
7 Statutes-Statutes, applicable to sales authorized pursuant to G.S. 160A-266(a)(2), (3), or
8 (4), subject to the notice requirements of this subsection, and shall be conducted by the
9 ~~county school board-~~board of education or a person acting on its behalf. In addition to
10 ~~the notice requirements of Part 2 of Article 29A of Chapter 1 of the General Statutes,~~
11 ~~notice of sale-~~Notice of sale, including the date, time, location, and manner of sale shall
12 ~~also be given by certified mail, return receipt requested, first-class mail to all motor~~
13 ~~vehicle owners at the address shown by the Division's records of the Division and at any~~
14 ~~other address of the motor vehicle owner as may be found in the criminal file in which~~
15 ~~the forfeiture was ordered. Notice-~~Written notice of sale shall also be by certified mail,
16 ~~return receipt requested, given to all lienholders on file with the Division. Notice of sale~~
17 ~~shall be given to the Division in accordance with the procedures established by the~~
18 ~~Division. Notices required to be given under this subsection shall be mailed at least 14~~
19 ~~days prior to the date of sale. A lienholder shall be permitted to purchase the motor~~
20 ~~vehicle at any such sale by bidding in the amount of its lien, if that should be the highest~~
21 ~~bid, without being required to tender any additional funds, other than the towing and~~
22 ~~storage fees. The county board of education, or its agent, shall not sell, give, or~~
23 ~~otherwise transfer possession of the forfeited motor vehicle to the defendant, the motor~~
24 ~~vehicle owner who owned the motor vehicle immediately prior to forfeiture, and any~~
25 ~~person acting on the defendant's or motor vehicle owner's behalf.~~

26 (b) Proceeds of Sale. — ~~Proceeds of any sale conducted under this section-~~section,
27 G.S. 20-28.2(f)(5), or G.S. 20-28.3(e3)(3) shall first be applied to the cost of sale and
28 then to satisfy towing and storage liens and the cost of sale costs. ~~The balance of the~~
29 ~~proceeds of sale, if any, shall be used to satisfy any other existing liens of record that~~
30 ~~were properly recorded with the Division prior to the date of initial seizure of the vehicle.~~
31 ~~Any remaining balance shall be paid to the county school fund in the county in which~~
32 ~~the motor vehicle was ordered forfeited. If there is more than one school board in the~~
33 ~~county, then the net proceeds of sale, after reimbursement to the county board of~~
34 ~~education of reasonable administrative costs incurred in connection with the forfeiture~~
35 ~~and sale of the motor vehicle, shall be distributed in the same manner as fines and other~~
36 ~~forfeitures. Vehicles sold-~~The sale of a motor vehicle pursuant to this section shall be
37 deemed to extinguish all existing liens on the motor vehicle and the motor vehicle shall
38 be transferred free and clear of any liens.

39 (c) Retention of Motor Vehicle. — ~~The county board of education may, at its~~
40 ~~option, retain any forfeited motor vehicle for its use-~~use upon payment of towing and
41 storage costs. ~~If the motor vehicle is retained, any valid lien of record at the time of the~~
42 ~~initial seizure of the motor vehicle shall be satisfied by the school board-~~county board of
43 education relieving the motor vehicle owner of all liability for the obligation secured by
44 the motor vehicle. If there is more than one school board in the county, and the motor

1 vehicle is retained by the county board of education, then the fair market value of the
2 motor vehicle, less the costs for towing, storage, reasonable administrative costs, and
3 liens paid, shall be used to determine and pay the share due each of the school boards in
4 the same manner as fines and other forfeitures.

5 ~~(d) [Counties with Multiple School Boards.]—If there is more than one school~~
6 ~~board in the county, then the fair market value of the vehicle shall be used to determine~~
7 ~~the share due each of the school boards in the same manner as fines and other~~
8 ~~forfeitures.~~

9 (e) Order of Forfeiture; Appeals. – An order of forfeiture is stayed pending
10 appeal of a conviction for an offense that is the basis for the order. When the conviction
11 of an offense that is the basis for an order of forfeiture is appealed from district court,
12 the issue of forfeiture shall be heard in superior court de novo. Appeal from a final order
13 of forfeiture shall be to the Court of Appeals."

14 Section 6. G.S. 20-28.6 is repealed.

15 Section 7. G.S. 20-28.7 reads as rewritten:

16 "**§ 20-28.7. Responsibility of Division of Motor Vehicles.**

17 The Division shall establish procedures by rule to provide for the orderly seizure,
18 forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-
19 28.2, 20-28.3, 20-28.4, ~~20-28.5, and 20-28.6.~~ and 20-28.5."

20 Section 8. Article 2 of Chapter 20 of the General Statutes is amended by
21 adding two new sections to read:

22 "**§ 20-28.8. Reports to the Division.**

23 In any case in which a vehicle has been seized pursuant to G.S. 20-28.3, in addition
24 to any other information that must be reported pursuant to this Chapter, the clerk of
25 superior court shall report to the Division by electronic means the execution of an
26 acknowledgment as defined in G.S. 20-28.2(a1)(1), the entry of an order of forfeiture as
27 defined in G.S. 20-28.2(a1)(4), and the entry of an order of release as defined in G.S.
28 20-28.3 and G.S. 20-28.4. Each report shall include any of the following information
29 that has not previously been reported to the Division in the case: the name, address, and
30 drivers license number of the defendant; the name, address, and drivers license number
31 of the nondefendant motor vehicle owner, if known; and the make, model, year, vehicle
32 identification number, state of registration, and vehicle registration plate number of the
33 seized vehicle, if known.

34 "**§ 20-28.9. Authority for the Department of Public Instruction to administer a**
35 **statewide or regional towing, storage, and sales program for driving**
36 **while impaired vehicles forfeited.**

37 (a) The Department of Public Instruction is authorized to enter into a contract for
38 a statewide service or contracts for regional services to tow, store, process, maintain,
39 and sell motor vehicles seized pursuant to G.S. 20-28.3. All motor vehicles seized
40 under G.S. 20-28.3 shall be subject to contracts entered into pursuant to this section.
41 Contracts shall be let by the Department of Public Instruction in accordance with the
42 provisions of Article 3 of Chapter 143 of the General Statutes. All contracts shall
43 ensure the safety of the motor vehicles while held and any funds arising from the sale of
44 any seized motor vehicle. The contract shall require the contractor to maintain and

1 make available to the agency a computerized up-to-date inventory of all motor vehicles
2 held under the contract, together with an accounting of all accrued charges, the status of
3 the vehicle, and the county school fund to which the proceeds of sale are to be paid.
4 The contract shall provide that the contractor shall pay the towing and storage charges
5 owed on a seized vehicle to a commercial towing company at the time the seized
6 vehicle is obtained from the commercial towing company, with the contractor being
7 reimbursed this expense when the vehicle is released or sold. The Department shall not
8 enter into any contract under this section under which the State will be obligated to pay
9 a deficiency arising from the sale of any forfeited motor vehicle.

10 (b) The Department, through its contractor or contractors designated in
11 accordance with subsection (a) of this section, may charge a reasonable fee for storage
12 not to exceed ten dollars (\$10.00) per day for the storage of seized vehicles pursuant to
13 G.S. 20-28.3.

14 (c) In order to help defray the administrative costs associated with the
15 administration of this section, the Department shall collect a ten dollar (\$10.00)
16 administrative fee from a person to whom a seized vehicle is released at the time the
17 motor vehicle is released and shall collect a ten dollar (\$10.00) administrative fee out of
18 the proceeds of the sale of any forfeited motor vehicle. The funds collected under this
19 subsection shall be paid to the General Fund."

20 Section 9. G.S. 20-54 reads as rewritten:

21 "**§ 20-54. Authority for refusing registration or certificate of title.**

22 The Division shall refuse registration or issuance of a certificate of title or any
23 transfer of registration upon any of the following grounds:

- 24 (1) The application contains a false or fraudulent statement, the applicant
25 has failed to furnish required information or reasonable additional
26 information requested by the Division, or the applicant is not entitled
27 to the issuance of a certificate of title or registration of the vehicle
28 under this Article.
- 29 (2) The vehicle is mechanically unfit or unsafe to be operated or moved
30 upon the highways.
- 31 (3) The Division has reasonable ground to believe that the vehicle is a
32 stolen or embezzled vehicle, or that the granting of registration or the
33 issuance of a certificate of title would constitute a fraud against the
34 rightful owner or another person who has a valid lien against the
35 vehicle.
- 36 (4) The registration of the vehicle stands suspended or revoked for any
37 reason as provided in the motor vehicle laws of this State.
- 38 (5) The required fee has not been paid.
- 39 (6) The vehicle is not in compliance with the emissions inspection
40 requirements of Part 2 of Article 3A of this Chapter or a civil penalty
41 assessed as a result of the failure of the vehicle to comply with that
42 Part has not been paid.

1 (7) The Division has been notified that the motor vehicle has been seized
2 by a law enforcement officer and is subject to forfeiture pursuant to
3 G.S. 20-28.2, et seq., or any other statute."

4 Section 10. Part 2 of Article 3 of Chapter 20 of the General Statutes is
5 amended by adding a new section to read:

6 **"§ 20-54.1. Forfeiture of right of registration.**

7 (a) Upon receipt of notice of conviction of a violation of an offense involving
8 impaired driving while the person's license is revoked as a result of a prior impaired
9 driving license revocation as defined in G.S. 20-28.2, the Division shall revoke the
10 registration of all motor vehicles registered in the convicted person's name and shall not
11 register a motor vehicle in the convicted person's name until the convicted person's
12 license is restored. Upon receipt of notice of revocation of registration from the
13 Division, the convicted person shall surrender the registration on all motor vehicles
14 registered in the convicted person's name to the Division within 10 days of the date of
15 the notice.

16 (b) Upon receipt of a notice of conviction under subsection (a) of this section, the
17 Division shall revoke the registration of the motor vehicle seized, and the owner shall
18 not be allowed to register the motor vehicle seized until the convicted operator's drivers
19 license has been restored. The Division shall not revoke the registration of the owner of
20 the seized motor vehicle if the owner is determined to be an innocent owner. The
21 Division shall revoke the owner's registration only after the owner is given an
22 opportunity for a hearing to demonstrate that the owner is an innocent owner as defined
23 in G.S. 20-28.2. Upon receipt of notice of revocation of registration from the Division,
24 the owner shall surrender the registration on the motor vehicle seized to the Division
25 within 10 days of the date of the notice."

26 Section 11. G.S. 20-55 reads as rewritten:

27 **"§ 20-55. Examination of registration records and index of ~~stolen-seized, stolen,~~**
28 **and recovered vehicles.**

29 The Division, upon receiving application for any transfer of registration or for
30 original registration of a vehicle, other than a new vehicle sold by a North Carolina
31 dealer, shall first check the engine and serial numbers shown in the application with its
32 record of registered motor vehicles, and against the index of ~~stolen-seized, stolen,~~ and
33 recovered motor vehicles required to be maintained by this Article."

34 Section 12. G.S. 20-114(c) reads as rewritten:

35 (c) ~~It shall also be the duty of every sheriff of every county of the State and of every~~
36 ~~police or peace officer of the State~~ law enforcement officer to make immediate report to
37 the Commissioner of all motor vehicles reported to ~~him~~ the officer as abandoned or that
38 are seized by ~~him~~ the officer for being used for illegal transportation of alcoholic
39 beverages or other unlawful purposes, or seized and are subject to forfeiture pursuant to
40 G.S. 20-28.2, et seq., or any other statute, and no motor vehicle shall be sold by any
41 sheriff, police or peace officer, or by any person, firm or corporation claiming a
42 mechanic's or storage lien, or under judicial proceedings, until notice on a form
43 approved by the Commissioner shall have been given the Commissioner at least 20 days
44 before the date of such sale."

1 Section 12.1. G. S. 20-166.1(h) reads as rewritten:

2 "(h) Forms. - The Division must provide forms to persons required to make
3 reports under this section and the reports must be made on the forms provided. The
4 forms must ask for the following information about a reportable accident:

- 5 (1) The cause of the accident.
- 6 (2) The conditions existing at the time of the accident.
- 7 (3) The persons and vehicles involved.
- 8 (4) Whether the vehicle has been seized and is subject to forfeiture under
9 G.S. 20-28.2."

10 Section 13. G.S. 1-339.4 reads as rewritten:

11 **"§ 1-339.4. Who may hold sale.**

12 An order of sale may authorize the persons designated below to hold the sale:

- 13 (1) In any proceeding, a commissioner specially appointed therefor; ~~or~~
- 14 (2) In a proceeding to sell property of a decedent, the administrator,
15 executor or collector of such decedent's estate;
- 16 (3) In a proceeding to sell property of a minor, the guardian of such
17 minor's estate;
- 18 (4) In a proceeding to sell property of an incompetent, the guardian or
19 trustee of such incompetent's estate;
- 20 (5) In a proceeding to sell property of an absent or missing person, the
21 administrator, collector, conservator, or guardian of the estate of such
22 absent or missing person;
- 23 (6) In a proceeding to foreclose a deed of trust, the trustee named in the
24 deed of trust;
- 25 (7) In a receivership proceeding, the receiver; or
- 26 (8) In a proceeding to sell property of a trust, the ~~trustee~~; trustee.
- 27 (9) ~~In a motor vehicle forfeiture proceeding pursuant to G.S. 20-28.5, the~~
28 ~~county school board or a person acting on its behalf."~~

29 Section 14. G.S. 44A-2(d) reads as rewritten:

30 "(d) Any person who repairs, services, tows, or stores motor vehicles in the
31 ordinary course of ~~his~~ the person's business pursuant to an express or implied contract
32 with an owner or legal possessor of the motor ~~vehicle~~ vehicle, except for a motor
33 vehicle seized pursuant to G.S. 20-28.3, has a lien upon the motor vehicle for reasonable
34 charges for such repairs, servicing, towing, storing, or for the rental of one or more
35 substitute vehicles provided during the repair, servicing, or storage. This lien shall have
36 priority over perfected and unperfected security interests. Payment for towing and
37 storing a motor vehicle seized pursuant to G.S. 20-28.3 shall be as provided for in G.S.
38 20-28.2 through G.S. 20-28.5."

39 Section 15. G.S. 44A-4(b)(1) reads as rewritten:

40 "(b) Notice and Hearings. -

- 41 (1) If the property upon which the lien is claimed is a motor vehicle that is
42 required to be registered, the lienor following the expiration of the
43 relevant time period provided by subsection (a) shall give notice to the
44 Division of Motor Vehicles that a lien is asserted and sale is proposed

1 and shall remit to the Division a fee of ten dollars (\$10.00). The
2 Division of Motor Vehicles shall issue notice by registered or certified
3 mail, return receipt requested, ~~within 15 days of receipt of notice from the~~
4 ~~lienor,~~ to the person having legal title to the property, if reasonably
5 ascertainable, to the person with whom the lienor dealt if different, and
6 to each secured party and other person claiming an interest in the
7 property who is actually known to the Division or who can be
8 reasonably ascertained. The notice shall state that a lien has been
9 asserted against specific property and shall identify the lienor, the date
10 that the lien arose, the general nature of the services performed and
11 materials used or sold for which the lien is asserted, the amount of the
12 lien, and that the lienor intends to sell the property in satisfaction of
13 the lien. The notice shall inform the recipient that the recipient has the
14 right to a judicial hearing at which time a determination will be made
15 as to the validity of the lien prior to a sale taking place. The notice
16 shall further state that the recipient has a period of 10 days from the
17 date of receipt in which to notify the Division by registered or certified
18 mail, return receipt requested, that a hearing is desired and that if the
19 recipient wishes to contest the sale of his property pursuant to such
20 lien, the recipient should notify the Division that a hearing is ~~desired~~
21 ~~and the Division shall notify lienor.~~ desired. The notice shall state the
22 required information in simplified terms and shall contain a form
23 whereby the recipient may notify the Division that a hearing is desired
24 by the return of such form to the Division. The Division shall notify
25 the lienor whether such notice is timely received by the Division. In
26 lieu of the notice by the lienor to the Division and the notices issued by
27 the Division described above, the lienor may issue notice on a form
28 approved by the Division pursuant to the notice requirements above.
29 If notice is issued by the lienor, the recipient shall return the form
30 requesting a hearing to the lienor, and not the Division, within 10 days
31 from the date the recipient receives the notice if a judicial hearing is
32 requested. Failure of the recipient to notify the Division or lienor, as
33 specified in the notice, within 10 days of the receipt of such notice that
34 a hearing is desired shall be deemed a waiver of the right to a hearing
35 prior to the sale of the property against which the lien is asserted, the
36 ~~Division shall notify the lienor,~~ and the lienor may proceed to enforce
37 the lien by public or private sale as provided in this section and the
38 Division shall transfer title to the property pursuant to such sale. If the
39 Division or lienor, as specified in the notice, is notified within the 10-
40 day period provided above that a hearing is desired prior to sale, the
41 lien may be enforced by sale as provided in this section and the
42 Division will transfer title only pursuant to the order of a court of
43 competent jurisdiction.

1 If the ~~Division notifies the lienor that the~~ registered or certified mail
2 notice has been returned as undeliverable, or if the ~~Division cannot~~
3 ~~ascertain~~ the name of the person having legal title to the vehicle cannot
4 reasonably be ascertained and the fair market value of the vehicle is
5 less than eight hundred dollars (\$800.00), the lienor may institute a
6 special proceeding in the county where the vehicle is being held, for
7 authorization to sell that vehicle. Market value shall be determined by
8 the schedule of values adopted by the Commissioner under G.S. 105-
9 187.3.

10 In such a proceeding a lienor may include more than one vehicle,
11 but the proceeds of the sale of each shall be subject only to valid
12 claims against that vehicle, and any excess proceeds of the sale shall
13 escheat to the State and be paid immediately to the treasurer for
14 disposition pursuant to Chapter 116B of the General Statutes. A
15 vehicle owner or possessor claiming an interest in such proceeds shall
16 have a right of action under G.S. 116B-38.

17 The application to the clerk in such a special proceeding shall
18 contain the notice of sale information set out in subsection (f) hereof.
19 If the application is in proper form the clerk shall enter an order
20 authorizing the sale on a date not less than 14 days therefrom, and the
21 lienor shall cause the application and order to be sent immediately by
22 first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom
23 ~~the Division has mailed notice~~ was mailed pursuant to this subsection.
24 Following the authorized sale the lienor shall file with the clerk a
25 report in the form of an affidavit, stating that the lienor has complied
26 with the public or private sale provisions of G.S. 44A-4, the name,
27 address, and bid of the high bidder or person buying at a private sale,
28 and a statement of the disposition of the sale proceeds. The clerk then
29 shall enter an order directing the Division to transfer title accordingly.

30 If prior to the sale the owner or legal possessor contests the sale or
31 lien in a writing filed with the clerk, the proceeding shall be handled in
32 accordance with G.S. 1-399."

33 Section 16. G.S. 58-71-1 reads as rewritten:

34 **"§ 58-71-1. Definitions.**

35 The following words when used in this Article shall have the following meanings:

- 36 (1) 'Accommodation bondsman' is a natural person who has reached the
37 age of 18 years and is a bona fide resident of this State and who, aside
38 from love and affection and release of the person concerned, receives
39 no consideration for action as surety and who endorses the bail bond
40 after providing satisfactory evidences of ownership, value and
41 marketability of real or personal property to the extent necessary to
42 reasonably satisfy the official taking bond that such real or personal
43 property will in all respects be sufficient to assure that the full
44 principal sum of the bond will be realized in the event of breach of the

1 conditions thereof. "Consideration" as used in this subdivision does
2 not include the legal rights of a surety against a principal by reason of
3 breach of the conditions of a bail bond nor does it include collateral
4 furnished to and securing the surety so long as the value of the surety's
5 rights in the collateral do not exceed the principal's liability to the
6 surety by reason of a breach in the conditions of said bail bond.

7 (2) 'Bail bond' shall mean an undertaking by the principal to appear in
8 court as required upon penalty of forfeiting bail to the State in a stated
9 amount; and may include an unsecured appearance bond, a premium-
10 secured appearance bond, an appearance bond secured by a cash
11 deposit of the full amount of the bond, an appearance bond secured by
12 a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured
13 by at least one surety. A bail bond may also include a bond securing
14 the return of a motor vehicle subject to forfeiture in accordance with
15 G.S. 20-28.3(e).

16 (3) 'Bail bondsman' shall mean a surety bondsman, professional bondsman
17 or an accommodation bondsman as hereinafter defined.

18 (4) 'Commissioner' shall mean the Commissioner of Insurance.

19 (5) 'Insurer' shall mean any domestic, foreign, or alien surety company
20 which has qualified generally to transact surety business and
21 specifically to transact bail bond business in this State.

22 (6) 'Obligor' shall mean a principal or a surety on a bail bond.

23 (7) 'Principal' shall mean a defendant or witness obligated to appear in
24 court as required upon penalty of forfeiting bail under a bail ~~bond~~
25 bond or a person obligated to return a motor vehicle subject to
26 forfeiture in accordance with G.S. 20-28.3(e).

27 (8) 'Professional bondsman' shall mean any person who is approved and
28 licensed by the Commissioner and who pledges cash or approved
29 securities with the Commissioner as security for bail bonds written in
30 connection with a judicial proceeding and receives or is promised
31 money or other things of value therefor.

32 (9) 'Runner' shall mean a person employed by a bail bondsman for the
33 purpose of assisting the bail bondsman in presenting the defendant in
34 court when required, or to assist in apprehension and surrender of
35 defendant to the court, or keeping defendant under necessary
36 surveillance, or to execute bonds on behalf of the licensed bondsman
37 when the power of attorney has been duly recorded. "Runner" does not
38 include, however, a duly licensed attorney-at-law or a law-
39 enforcement officer assisting a bondsman.

40 (10) 'Surety' shall mean one who, with the principal, is liable for the amount
41 of the bail bond upon forfeiture of bail.

42 (11) 'Surety bondsman' means any person who is licensed by the
43 Commissioner as a surety bondsman under this Article, is appointed
44 by an insurer by power of attorney to execute or countersign bail

1 bonds for the insurer in connection with judicial proceedings, and
2 receives or is promised consideration for doing so."

3 Section 17. G.S. 58-71-35(a) reads as rewritten:

4 "(a) ~~The Except for bonds issued to secure the return of a motor vehicle subject to~~
5 ~~forfeiture in accordance with G.S. 20-28.3(e), the procedure for forfeiture of bail shall~~
6 be that provided in Article 26 of Chapter 15A of the General Statutes and all provisions
7 of that Article shall continue in full force and effect."

8 PART II. ZERO TOLERANCE FOR COMMERCIAL DRIVERS.

9 Section 18. G.S. 20-17(a) reads as rewritten:

10 "(a) The Division shall forthwith revoke the license of any driver upon receiving a
11 record of the driver's conviction for any of the following offenses:

- 12 (1) Manslaughter (or negligent homicide) resulting from the operation of a
13 motor vehicle.
- 14 (2) Either of the following impaired driving offenses:
 - 15 a. Impaired driving under G.S. 20-138.1.
 - 16 b. Impaired driving under G.S. ~~20-138.2~~ ~~when the person~~
17 ~~convicted did not take a chemical test at the time of the offense~~
18 ~~or the person took a chemical test at the time of the offense and~~
19 ~~the test revealed that the person had an alcohol concentration at~~
20 ~~any relevant time after driving of less than 0.04 or of 0.08 or~~
21 ~~more.~~ 20-138.2.
- 22 (3) Any felony in the commission of which a motor vehicle is used.
- 23 (4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).
- 24 (5) Perjury or the making of a false affidavit or statement under oath to the
25 Division under this Article or under any other law relating to the
26 ownership of motor vehicles.
- 27 (6) Conviction upon two charges of reckless driving committed within a
28 period of 12 months.
- 29 (7) Conviction upon one charge of reckless driving while engaged in the
30 illegal transportation of intoxicants for the purpose of sale.
- 31 (8) Conviction of using a false or fictitious name or giving a false or
32 fictitious address in any application for a drivers license, or learner's
33 permit, or any renewal or duplicate thereof, or knowingly making a
34 false statement or knowingly concealing a material fact or otherwise
35 committing a fraud in any such application or procuring or knowingly
36 permitting or allowing another to commit any of the foregoing acts.
- 37 (9) Death by vehicle as defined in G.S. 20-141.4.
- 38 (10) Repealed by Session Laws 1997-443, s. 19.26(b).
- 39 (11) Conviction of assault with a motor vehicle.
- 40 (12) A second or subsequent conviction of transporting an open container
41 of alcoholic beverage under G.S. 20-138.7.
- 42 (13) A second or subsequent conviction, as defined in G.S. 20-138.2A(d),
43 of driving a commercial motor vehicle after consuming alcohol under
44 G.S. 20-138.2A.

1 (14) A conviction of driving a school bus, school activity bus, or child care
2 vehicle after consuming alcohol under G.S. 20-138.2B."

3 Section 19. G.S. 20-17.4 reads as rewritten:

4 **"§ 20-17.4. Disqualification to drive a commercial motor vehicle.**

5 (a) One Year. – Any of the following disqualifies a person from driving a
6 commercial motor vehicle for one year:

7 (1) A first conviction of G.S. 20-138.1, driving while impaired, that
8 occurred while the person was driving a motor vehicle not a
9 commercial motor vehicle.

10 (2) A first conviction of G.S. 20-138.2, driving a commercial motor
11 vehicle while impaired.

12 (3) A first conviction of G.S. 20-166, hit and run, involving a commercial
13 motor vehicle driven by the person.

14 (4) A first conviction of a felony in the commission of which a
15 commercial motor vehicle was used.

16 (5) Refusal to submit to a chemical test when charged with an implied-
17 consent offense, as defined in G.S. 20-16.2, that occurred while the
18 person was driving a commercial motor vehicle.

19 (6) A second or subsequent conviction, as defined in G.S. 20-138.2A(d),
20 of driving a commercial motor vehicle after consuming alcohol under
21 G.S. 20-138.2A.

22 (a1) 10-Day Disqualification. – A person who is convicted for a first offense of
23 driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A is
24 disqualified from driving a commercial motor vehicle for 10 days.

25 (b) Modified Life. – A person who has been disqualified from driving a
26 commercial motor vehicle for a conviction or refusal described in subsection (a) who, as
27 the result of a separate incident, is subsequently convicted of an offense or commits an
28 act requiring disqualification under subsection (a) is disqualified for life. The Division
29 may adopt guidelines, including conditions, under which a disqualification for life under
30 this subsection may be reduced to 10 years.

31 (b1) Life Without Reduction. – A person is disqualified from driving a
32 commercial motor vehicle for life, without the possibility of reinstatement after 10
33 years, if that person is convicted of a third or subsequent violation of G.S. 20-138.2, a
34 fourth or subsequent violation of G.S. 20-138.2A, or if the person refuses to submit to a
35 chemical test a third time when charged with an implied-consent offense, as defined in
36 G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

37 (c) Life. – A person is disqualified from driving a commercial motor vehicle for
38 life if that person uses a commercial motor vehicle in the commission of any felony
39 involving the manufacture, distribution, or dispensing of a controlled substance, or
40 possession with intent to manufacture, distribute, or dispense a controlled substance.

41 (d) Less Than a Year. – A person is disqualified from driving a commercial
42 motor vehicle for 60 days if that person is convicted of two serious traffic violations, or
43 120 days if convicted of three or more serious traffic violations, committed in a

1 commercial motor vehicle arising from separate incidents occurring within a three-year
2 period.

3 (e) Three Years. – A person is disqualified from driving a commercial motor
4 vehicle for three years if that person is convicted of an offense or commits an act
5 requiring disqualification under subsection (a) and the offense or act occurred while the
6 person was transporting a hazardous material that required the motor vehicle driven to
7 be placarded.

8 (f) Revocation Period. – A person is disqualified from driving a commercial
9 motor vehicle for the period during which the person's regular or commercial drivers
10 license is revoked."

11 Section 20. G.S. 20-17.6(a) reads as rewritten:

12 "(a) Scope. – This section applies to a person whose license was revoked as a
13 result of a conviction of any of the following offenses:

- 14 (1) G.S. 20-138.1, driving while impaired (DWI).
- 15 (2) G.S. 20-138.2, commercial ~~DWI, if the person's license was revoked~~
16 ~~under G.S. 20-17(2)DWI.~~
- 17 (3) G.S. 20-138.3, driving while less than 21 years old after consuming
18 alcohol or drugs.
- 19 (4) G.S. 20-138.2A, driving a commercial motor vehicle with an alcohol
20 concentration of greater than 0.00 and less than 0.04, if the person's
21 drivers license was revoked under G.S. 20-17(a)(13).
- 22 (5) G.S. 20-138.2B, driving a school bus, a school activity bus, or a child
23 care vehicle with an alcohol concentration of greater than 0.00, if the
24 person's drivers license was revoked under G.S. 20-17(a)(14)."

25 Section 21. G.S. 20-19 is amended to add a new subsection (c2) to read:

26 "(c2) When a license is suspended under G.S. 20-17(a)(14), the period of
27 revocation for a first conviction shall be for 10 days. For a second or subsequent
28 conviction as defined in G.S. 20-138.2B(d), the period of revocation shall be one year."

29 Section 22. G.S. 20-36 reads as rewritten:

30 "**§ 20-36. Ten-year-old convictions not considered.**

31 ~~No~~ Except for a second or subsequent conviction for violating G.S. 20-138.2, a third
32 or subsequent violation of G.S. 20-138.2A, or a second failure to submit to a chemical
33 test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that
34 occurred while the person was driving a commercial motor vehicle, no conviction of
35 any violation of the motor vehicle laws shall be considered by the Division in
36 determining whether any person's driving privilege shall be suspended or revoked or in
37 determining the appropriate period of suspension or revocation after 10 years has
38 elapsed from the date of ~~such~~ that conviction."

39 Section 23. Article 3 of Chapter 20, is amended by adding a new section to
40 read:

41 "**§ 138.2A. Operating a commercial vehicle after consuming alcohol.**

42 (a) Offense. – A person commits the offense of operating a commercial motor
43 vehicle after consuming alcohol if the person drives a commercial motor vehicle, as
44 defined in G.S. 20-4.01 (3d)a. and (3d)b., upon any highway, any street, or any public

1 vehicular area within the State after having consumed sufficient alcohol that the person
2 has, at any relevant time after the driving, an alcohol concentration greater than 0.00
3 and less than 0.04.

4 (b) Implied Consent Offense. – An offense under this section is an implied
5 consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-
6 139.1 shall apply to an offense committed under this section.

7 (c) Punishment. – Except as otherwise provided in this subsection, a violation of
8 the offense described in subsection (a) is an infraction, punishable by a penalty of one
9 hundred dollars (\$100.00). A second or subsequent violation of this section is a
10 misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of
11 impaired driving of a commercial vehicle under G.S. 20-138.2.

12 (d) Second or Subsequent Conviction Defined. – A conviction for violating this
13 offense is a second or subsequent conviction if at the time of the current offense the
14 person has a previous conviction under this section, and the previous conviction
15 occurred in the seven years immediately preceding the date of the current offense. This
16 definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S.
17 20-17.4(a)(6)."

18 Section 24. G.S. 20-138.2(e) reads as rewritten:

19 "(e) Punishment; Effect When Impaired Driving Offense Also Charged.—Punishment.
20 – The offense in this section is a Class 1—misdemeanor and any defendant convicted
21 under this section shall be sentenced under G.S. 20-179. This offense is not a lesser
22 included offense of impaired driving under G.S. 20-138.1, but and if a person is
23 convicted under this section and of an offense involving impaired driving under G.S.
24 20-138.1 arising out of the same transaction, the aggregate punishment imposed by the
25 Court may not exceed the maximum punishment applicable to the offense involving
26 impaired driving under G.S. 20-138.1."

27 Section 25. G.S. 20-179(a) reads as rewritten:

28 "(a) Sentencing Hearing Required. – After a conviction for impaired driving under
29 G.S. 20-138.1, G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under
30 G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, the judge
31 must hold a sentencing hearing to determine whether there are aggravating or mitigating
32 factors that affect the sentence to be imposed. Before the hearing the prosecutor must
33 make all feasible efforts to secure the defendant's full record of traffic convictions, and
34 must present to the judge that record for consideration in the hearing. Upon request of
35 the defendant, the prosecutor must furnish the defendant or his attorney a copy of the
36 defendant's record of traffic convictions at a reasonable time prior to the introduction of
37 the record into evidence. In addition, the prosecutor must present all other appropriate
38 grossly aggravating and aggravating factors of which he is aware, and the defendant or
39 his attorney may present all appropriate mitigating factors. In every instance in which a
40 valid chemical analysis is made of the defendant, the prosecutor must present evidence
41 of the resulting alcohol concentration."

42 PART III. ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS
43 OF CHILD CARE VEHICLES.

44 Section 26. G.S. 20-4.01(27) reads as rewritten:

1 "(27) Passenger Vehicles. –

- 2 a. Excursion passenger vehicles. – Vehicles transporting persons
3 on sight-seeing or travel tours.
- 4 b. For hire passenger vehicles. – Vehicles transporting persons for
5 compensation. This classification shall not include vehicles
6 operated as ambulances; vehicles operated by the owner where
7 the costs of operation are shared by the passengers; vehicles
8 operated pursuant to a ridesharing arrangement as defined in
9 G.S. 136-44.21; vehicles transporting students for the public
10 school system under contract with the State Board of Education
11 or vehicles leased to the United States of America or any of its
12 agencies on a nonprofit basis; or vehicles used for human
13 service or volunteer transportation.
- 14 c. Common carriers of passengers. – Vehicles operated under a
15 certificate of authority issued by the Utilities Commission for
16 operation on the highways of this State between fixed termini or
17 over a regular route for the transportation of persons for
18 compensation.
- 19 c1. Child care vehicles. – Vehicles under the direction and control
20 of a child care facility, as defined in G.S. 110-86(3), and driven
21 by an owner, employee, or agent of the child care facility for
22 the primary purpose of transporting children to and from the
23 child care facility, or to and from a place for participation in an
24 event or activity in connection with the child care facility.
- 25 d. Motorcycles. – Vehicles having a saddle for the use of the rider
26 and designed to travel on not more than three wheels in contact
27 with the ground, including motor scooters and motor-driven
28 bicycles, but excluding tractors and utility vehicles equipped
29 with an additional form of device designed to transport
30 property, three-wheeled vehicles while being used by law-
31 enforcement agencies and mopeds as defined in subdivision d1
32 of this subsection.
- 33 d1. Moped. – A vehicle that has two or three wheels, no external
34 shifting device, and a motor that does not exceed 50 cubic
35 centimeters piston displacement and cannot propel the vehicle
36 at a speed greater than 20 miles per hour on a level surface.
- 37 d2. Motor home or house car. – A vehicular unit, designed to
38 provide temporary living quarters, built into as an integral part,
39 or permanently attached to, a self-propelled motor vehicle
40 chassis or van. The vehicle must provide at least four of the
41 following facilities: cooking, refrigeration or icebox, self-
42 contained toilet, heating or air conditioning, a portable water
43 supply system including a faucet and sink, separate 110-125
44 volt electrical power supply, or an LP gas supply.

- 1 d3. School activity bus. – A vehicle, generally painted a different
 2 color from a school bus, whose primary purpose is to transport
 3 school students and others to or from a place for participation in
 4 an event other than regular classroom work. The term includes a
 5 public, private, or parochial vehicle that meets this description.
 6 d4. School bus. – A vehicle whose primary purpose is to transport
 7 school students over an established route to and from school for
 8 the regularly scheduled school day, that is equipped with
 9 alternately flashing red lights on the front and rear and a
 10 mechanical stop signal, and that bears the words "School Bus"
 11 on the front and rear in letters at least 8 inches in height. The
 12 term includes a public, private, or parochial vehicle that meets
 13 this description.
 14 e. U-drive-it passenger vehicles. – Vehicles rented or leased to be
 15 operated by the lessee. This shall not include vehicles of nine-
 16 passenger capacity or less which are leased for a term of one
 17 year or more to the same person or vehicles leased or rented to
 18 public school authorities for driver-training instruction.
 19 f. Ambulances. – Vehicles equipped for transporting wounded,
 20 injured, or sick persons.
 21 g. Private passenger vehicles. – All other passenger vehicles not
 22 included in the above definitions."

23 Section 27. Article 3 of Chapter 20, is amended by adding a new section to
 24 read:

25 **"§ 138.2B. Operating a school bus, school activity bus, or child care vehicle after**
 26 **consuming alcohol.**

27 (a) Offense. – A person commits the offense of operating a school bus, school
 28 activity bus, or child care vehicle after consuming alcohol if the person drives a school
 29 bus, school activity bus, or child care vehicle upon any highway, any street, or any
 30 public vehicular area within the State after having consumed sufficient alcohol that the
 31 person has, at any relevant time after the driving, an alcohol concentration greater than
 32 0.00.

33 (b) Implied Consent Offense. – An offense under this section is an implied
 34 consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-
 35 139.1 shall apply to an offense committed under this section.

36 (c) Punishment. – Except as otherwise provided in this subsection, a violation of
 37 the offense described in subsection (a) is an infraction, punishable by a penalty of one
 38 hundred dollars (\$100.00). A second or subsequent violation of this section is a
 39 misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of
 40 impaired driving of a commercial vehicle under G.S 20-138.1.

41 (d) Second or Subsequent Conviction Defined. – A conviction for violating this
 42 offense is a second or subsequent conviction if at the time of the current offense the
 43 person has a previous conviction under this section, and the previous conviction

1 occurred in the seven years immediately preceding the date of the current offense. This
2 definition of second or subsequent conviction also applies to G.S. 20-19(c2)."

3 PART IV. IMMEDIATE CIVIL REVOCATION FOR DRIVERS UNDER 21 YEARS
4 OF AGE.

5 Section 28. G.S. 20-16.2(a) reads as rewritten:

6 "(a) Basis for Charging Officer to Require Chemical Analysis; Notification of
7 Rights. – Any person who drives a vehicle on a highway or public vehicular area
8 thereby gives consent to a chemical analysis if charged with an implied-consent offense.
9 The charging officer shall designate the type of chemical analysis to be administered,
10 and it may be administered when the officer has reasonable grounds to believe that the
11 person charged has committed the implied-consent offense.

12 Except as provided in this subsection or subsection (b), before any type of chemical
13 analysis is administered the person charged shall be taken before a chemical analyst
14 authorized to administer a test of a person's breath, who shall inform the person orally
15 and also give the person a notice in writing that:

- 16 (1) The person has a right to refuse to be tested.
- 17 (2) Refusal to take any required test or tests will result in an immediate
18 revocation of the person's driving privilege for at least 30 days and
19 an additional 12-month revocation by the Division of Motor
20 Vehicles.
- 21 (3) The test results, or the fact of the person's refusal, will be admissible
22 in evidence at trial on the offense charged.
- 23 (4) The person's driving privilege will be revoked immediately for at
24 least 30 days if:
 - 25 a. The test reveals an alcohol concentration of 0.08 or more; ~~or~~
 - 26 b. The person was driving a commercial motor vehicle and the test
27 reveals an alcohol concentration of 0.04 or ~~more~~ more; or
 - 28 c. The person is under 21 years of age and the test reveals any
29 alcohol concentration."

30 Section 29. G.S. 20-16.5(b) reads as rewritten:

31 "(b) Revocations for Persons Who Refuse Chemical Analyses or ~~Have Alcohol~~
32 ~~Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More After~~
33 ~~Driving a Commercial Vehicle Who Are Charged With Certain Implied Consent~~
34 Offenses. – A person's driver's license is subject to revocation under this section if:

- 35 (1) A charging officer has reasonable grounds to believe that the person
36 has committed an offense subject to the implied-consent provisions
37 of G.S. 20-16.2;
- 38 (2) The person is charged with that offense as provided in G.S. 20-
39 16.2(a);
- 40 (3) The charging officer and the chemical analyst comply with the
41 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the
42 person's submission to or procuring a chemical analysis; and
- 43 (4) The person:
 - 44 a. Willfully refuses to submit to the chemical analysis;

- 1 b. Has an alcohol concentration of 0.08 or more within a relevant
2 time after the driving; ~~or~~
- 3 c. Has an alcohol concentration of 0.04 or more at any relevant
4 time after the driving of a commercial ~~vehicle-vehicle~~; or
- 5 d. Has any alcohol concentration at any relevant time after the
6 driving and the person is under 21 years of age."

7 Section 30. G.S. 20-16.5(b1) reads as rewritten:

8 "(b1) Precharge Test Results as Basis for Revocation. – Notwithstanding the
9 provisions of subsection (b), a person's driver's license is subject to revocation under
10 this section if:

- 11 (1) ~~He~~The person requests a precharge chemical analysis pursuant to
12 G.S. 20-16.2(i); and
- 13 (2) ~~He~~The person has:
- 14 a. An alcohol concentration of 0.08 or more at any relevant time
15 after driving; ~~or~~
- 16 b. An alcohol concentration of 0.04 or more at any relevant time
17 after driving a commercial motor vehicle; ~~and or~~
- 18 c. Any alcohol concentration at any relevant time after driving
19 and the person is under 21 years of age; and
- 20 (3) ~~He~~The person is charged with an implied-consent offense."

21 PART V. MISCELLANEOUS PROVISIONS.

22 Section 31. From funds appropriated to the Department of Public Instruction,
23 the Department shall be authorized to hire a part-time person to handle the
24 administration of a statewide contract, or regional contracts for services to tow, store,
25 process, maintain, and sell motor vehicles seized pursuant to G.S. 20-28.9.

26 Section 32. The Joint Legislative Education Oversight Committee shall study
27 the effect of the DWI forfeiture provisions as set forth in G.S. 20-28.2 through G.S. 20-
28 28.9 and the financial impact on county boards of education. The study shall include,
29 among other relevant information, a statistical analysis of the number of vehicles seized,
30 the length of time vehicles are held until disposition by the court, the percentage of
31 seized vehicles forfeited, the sale price of seized vehicles sold, the average towing and
32 storage costs, and county school administrative costs associated with the seizure and
33 forfeiture of the vehicles. The Committee shall recommend ways to make the procedure
34 and process for managing seized and forfeited vehicles more efficient and effective. The
35 Committee may report to the 1999 Session of the 1999 General Assembly and the 2000
36 Session of the 1999 General Assembly.

37 PART VI. EFFECTIVE DATE.

38 Section 33. Parts I and V of this act become effective October 1, 1998, and
39 apply to offenses committed, contracts entered, and motor vehicles seized on or after
40 that date. Parts II, III, and IV of this act become effective December 1, 1998, and apply
41 to offenses committed on or after that date. The remainder of this act is effective when
42 it becomes law. The provisions of G.S. 20-28.3(e), (e1), (e2), (e3), (h), and (i) as set
43 forth in Section 3 of this act shall also apply to vehicles held on or after the effective
44 date as a result of seizure that occurred before, on, or after that date.