

GENERAL ASSEMBLY OF NORTH CAROLINA

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SENATE BILL 1336*

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Short Title: 1998 Gov. DWI Amendments.

(Public)

Sponsors:

Referred to:

May 27, 1998

A BILL TO BE ENTITLED

1 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S
2 DWI TASK FORCE AND THE JOINT CORRECTIONS AND CRIME CONTROL
3 OVERSIGHT COMMITTEE TO REVISE THE DWI FORFEITURE LAWS AND
4 OTHER RELATED LAWS; TO PROVIDE FOR "ZERO-TOLERANCE" FOR
5 COMMERCIAL DRIVERS, DRIVERS OF SCHOOL BUSES, SCHOOL
6 ACTIVITY BUSES, AND CHILD CARE VEHICLES; AND TO PROVIDE FOR
7 IMMEDIATE ADMINISTRATIVE LICENSE REVOCATIONS FOR ALL
8 PERSONS UNDER TWENTY-ONE YEARS OF AGE; AND TO INCREASE THE
9 FINES FOR DWI OFFENSES AND TO MAKE CONFORMING CHANGES.
10

11 The General Assembly of North Carolina enacts:

12 PART I. DWI FORFEITURE REVISIONS.

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

14 "(1b) Alcohol Concentration. – The concentration of alcohol in a person,
15 expressed either as:

1 a. Grams of alcohol per 100 milliliters of blood; or

2 b. Grams of alcohol per 210 liters of breath.

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

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

8 "(24a) Offense Involving Impaired Driving. – Any of the following offenses:

9 a. Impaired driving under G.S. 20-138.1.

10 b. Death by vehicle under G.S. 20-141.4 when conviction is based
11 upon impaired driving or a substantially equivalent offense under
12 previous law.

13 c. ~~Second~~ First or second degree murder under G.S. 14-17 or
14 involuntary manslaughter under G.S. 14-18 when conviction is
15 based upon impaired driving or a substantially equivalent offense
16 under previous law.

17 d. An offense committed in another jurisdiction substantially
18 equivalent to the offenses in subparagraphs a through c.

19 e. A repealed or superseded offense substantially equivalent to
20 impaired driving, including offenses under former G.S. 20-138 or
21 G.S. 20-139.

22 f. Impaired driving in a commercial motor vehicle under G.S. 20-
23 138.2, except that convictions of impaired driving under G.S. 20-
24 138.1 and G.S. 20-138.2 arising out of the same transaction shall
25 be considered a single conviction of an offense involving
26 impaired driving for any purpose under this Chapter.

27 g. Habitual impaired driving under G.S. 20-138.5.

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

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

31 **"§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving**
32 **license revocation.**

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

36 (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12),
37 ~~or 20-17.2; 20-17.2, or 20-138.5; or~~

38 (2) G.S. 20-16(a)(7), 20-17(a)(1), ~~or 20-17(a)(3),~~ 20-17(a)(9), or 20-
39 17(a)(11), if the offense involves impaired driving.

40 (a1) ~~[Definitions.]~~ Definitions. – As used in this section and in G.S. 20-28.3, 20-28.4,
41 20-28.5, ~~and 20-28.6, 20-28.7, 20-28.8, and 20-28.9,~~ the following terms mean:

42 (1) Acknowledgment. – A written document acknowledging that:

- 1 a. The motor vehicle was operated by a person charged with an
2 offense involving impaired driving while that person's drivers
3 license was revoked as a result of a prior impaired drivers license
4 revocation;
- 5 b. If the motor vehicle is again operated by this particular person, at
6 any time while that person's drivers license is revoked, and the
7 person is charged with an offense involving impaired driving, the
8 motor vehicle is subject to impoundment and forfeiture; and
- 9 c. A lack of knowledge or consent to the operation will not be a
10 defense in the future, unless the motor vehicle owner has taken
11 all reasonable precautions to prevent the use of the motor vehicle
12 by this particular person and immediately reports, upon
13 discovery, any unauthorized use to the appropriate law
14 enforcement agency.

15 (1a) Fair Market Value. – The value of the seized motor vehicle, as
16 determined in accordance with the schedule of values adopted by the
17 Commissioner pursuant to G.S. 105-187.3.

18 (2) Innocent Party Owner. – A motor vehicle owner who:

- 19 a. ~~Did not~~ Who did not know and had no reason to know that the
20 defendant's drivers license was revoked;
- 21 b. ~~Knew~~ Who knew that the defendant's drivers license was
22 revoked, but the defendant drove the vehicle without the person's
23 expressed or implied permission;
- 24 c. Whose vehicle was reported stolen;
- 25 d. Who files a police report for unauthorized use of the motor
26 vehicle and agrees to prosecute the unauthorized operator of the
27 motor vehicle;
- 28 e. Who is in the business of renting vehicles, the driver is not listed
29 as an authorized driver on the rental contract; or
- 30 f. Who is in the business of leasing motor vehicles, who holds legal
31 title to the motor vehicle as a lessor at the time of seizure and
32 who has no actual knowledge of the revocation of the lessee's
33 drivers license at the time the lease is entered.

34 (2a) Insurance Company. – Any insurance company that has coverage on or
35 is otherwise liable for repairs or damages to the motor vehicle at the
36 time of the seizure.

37 (2b) Insurance Proceeds. – Proceeds paid under an insurance policy for
38 damage to a seized motor vehicle less any payments actually paid to
39 valid lienholders and for towing and storage costs incurred for the motor
40 vehicle after the time the motor vehicle became subject to seizure.

41 (3) Lienholder. – A person who holds a perfected security interest in a
42 motor vehicle at the time of seizure.

- 1 (3a) Motor Vehicle Owner. – A person in whose name a registration card or
2 certificate of title for a motor vehicle is issued at the time of seizure.
- 3 (4) Order of Forfeiture. – An order by the court which terminates the rights
4 and ownership interest of a motor vehicle owner in a motor vehicle and
5 any insurance proceeds or proceeds of sale in accordance with G.S. 20-
6 28.2.
- 7 (5) ~~Possessory Lien.~~ – ~~A lien for all costs and fees associated with the~~
8 ~~towing, storage, or sale of a vehicle pursuant to this section. This lien~~
9 ~~shall have priority over perfected and unperfected security interests.~~
10 ~~Storage fees subject to this lien shall not exceed five dollars (\$5.00) per~~
11 ~~day.~~
- 12 (6) Registered Owner. – A person in whose name a registration card for a
13 motor vehicle is ~~issued.~~ issued at the time of seizure.
- 14 (7) ~~Vehicle Owner.~~ – ~~A person in whose name a registration card or~~
15 ~~certificate of title for a motor vehicle is issued.~~
- 16 (b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture. – If at
17 a sentencing hearing ~~conducted pursuant to G.S. 20-179 or 20-138.5 the judge determines~~
18 ~~that the grossly aggravating factor described in G.S. 20-179(c)(2) applies, for the~~
19 ~~underlying offense involving impaired driving, at a separate hearing after conviction of~~
20 ~~the defendant, or at a forfeiture hearing held at least 60 days after the defendant failed to~~
21 ~~appear at the scheduled trial for the underlying offense and the defendant's order of arrest~~
22 ~~for failing to appear has not been set aside, the judge determines by the greater weight of~~
23 ~~the evidence that the defendant is guilty of an offense involving impaired driving and that~~
24 ~~the defendant's license was revoked pursuant to an impaired driving license revocation as~~
25 ~~defined in subsection (a) of this section, the motor vehicle that was driven by the~~
26 ~~defendant at the time the defendant committed the offense of impaired driving becomes~~
27 ~~property subject to an order of forfeiture.~~
- 28 (c) Duty of Prosecutor to Notify Possible Innocent Parties. – In any case in which
29 a prosecutor determines that a motor vehicle driven by a defendant may be subject to
30 forfeiture under this ~~section,~~ section and the motor vehicle has not been permanently
31 released to a nondefendant vehicle owner pursuant to G.S. 20-28.3(e1), a defendant
32 owner pursuant to G.S. 20-28.3(e2), or a lienholder, pursuant to G.S. 20-28.3(e3), the
33 prosecutor shall determine the identity of every vehicle owner. The prosecutor shall also
34 determine if there are any lienholders noted on the vehicle's certificate of title. The State shall
35 notify the defendant, each motor vehicle owner, and each lienholder that the motor
36 vehicle may be subject to forfeiture and that the defendant, motor vehicle owner, or the
37 lienholder may intervene to protect that person's interest. The notice may be served by
38 any means reasonably likely to provide actual notice, and shall be served at least fourteen
39 10 days before the hearing at which an order of forfeiture may be entered.
- 40 (c1) Motor Vehicles Involved in Accidents. – If a motor vehicle subject to
41 forfeiture was damaged while the defendant operator was committing the underlying
42 offense involving impaired driving, or was damaged incident to the seizure of the motor
43 vehicle, the Division shall determine the name of any insurance companies that are the

1 insurers of record with the Division for the motor vehicle at the time of the seizure or that
2 may otherwise be liable for repair to the motor vehicle. In any case where a seized motor
3 vehicle was involved in an accident, the Division shall notify the insurance companies
4 that the claim for insurance proceeds for damage to the seized motor vehicle shall be paid
5 to the clerk of superior court of the county where the motor vehicle driver was charged to
6 be held and disbursed pursuant to further orders of the court. Any insurance company
7 that receives written or other actual notice of seizure pursuant to this section shall not be
8 relieved of any legal obligation under any contract of insurance unless the claim for
9 property damage to the seized motor vehicle minus the policy owner's deductible is paid
10 directly to the clerk of court. The insurance company paying insurance proceeds to the
11 clerk of court pursuant to this section shall be immune from suit by the motor vehicle
12 owner for any damages alleged to have occurred as a result of the motor vehicle seizure.
13 The proceeds shall be held by the clerk. The clerk shall disburse the insurance proceeds
14 pursuant to further orders of the court.

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

- 39 (1) a. Authorize the school board to sell sale of the motor vehicle at public
40 sale or allow the county board of education to retain the motor vehicle
41 for its own use pursuant to G.S. 20-28.5; or

1 ~~(2)~~ ~~b. Release—Order the motor vehicle released to an intervening a~~
2 ~~lienholder pursuant to the provisions of subsection (g)-(f) of this section.~~
3 ~~section; and~~

4 (2) a. Order any proceeds of sale or insurance proceeds held by the clerk
5 of court to be disbursed to the county board of education; and

6 b. Order any outstanding insurance claims be assigned to the county
7 board of education in the event the motor vehicle has been
8 damaged in an accident incident to the seizure of the motor
9 vehicle.

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

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

23 ~~This release—Release to an innocent owner~~ shall only be ordered upon satisfactory
24 proof of:

25 (1) The identity of the person as a motor vehicle owner;

26 (2) The existence of financial responsibility to the extent required by
27 Article 13 of this Chapter; and

28 ~~(3) The payment of towing and storage fees; fees, except in the case of~~
29 ~~release to an innocent vehicle owner; and~~

30 (4) The execution of an acknowledgment as defined in subdivision (a1)(1)
31 of this section.

32 If the nondefendant owner is a lessor, the release shall also be conditioned upon the
33 ~~lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor~~
34 ~~vehicle to the defendant or any person acting on the defendant's behalf. A lessor who~~
35 ~~refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or~~
36 ~~any person acting on the behalf of the defendant shall not be liable for damages arising~~
37 ~~out of the refusal.~~

38 No motor vehicle subject to forfeiture under this section shall be released to a
39 ~~nondefendant motor vehicle~~ owner if the records of the Division indicate the motor
40 vehicle owner had previously signed an acknowledgment, as required by this section, and
41 the same person was operating the motor vehicle while that person's license was revoked
42 unless the innocent ~~vehicle~~-owner shows by the greater weight of the evidence that the
43 motor vehicle owner has taken all reasonable precautions to prevent the use of the motor

1 vehicle by this particular person and immediately reports, upon discovery, any
2 unauthorized use to the appropriate law enforcement agency. A determination by the
3 court at the forfeiture hearing held pursuant to subsection (d) of this section that the
4 petitioner is not an innocent owner is a final judgment and is immediately appealable to
5 the Court of Appeals.

6 (f) Release to Lienholder. ~~The~~ At a forfeiture hearing, the trial judge shall order
7 a forfeited motor vehicle released to the lienholder upon payment of all towing and
8 storage charges incurred as a result of the seizure of the motor vehicle if the judge
9 determines, by the greater weight of the evidence, that:

10 (1) The lienholder's interest is equal to or greater than the fair market value of
11 the vehicle; has been perfected and appears on the title to the forfeited
12 vehicle;

13 (2) The lienholder agrees not to sell, give, or otherwise transfer possession
14 of the forfeited motor vehicle to the defendant or to the motor vehicle
15 owner who owned the motor vehicle immediately prior to forfeiture, or
16 any person acting on the defendant's or motor vehicle owner's behalf;

17 (3) The forfeited motor vehicle had not previously been released to the
18 lienholder; and lienholder;

19 (4) The lienholder pays, in full, any towing and storage costs incurred as a result
20 of the seizure of the vehicle. The owner is in default under the terms of
21 the security instrument evidencing the interest of the lienholder and as a
22 consequence of the default the lienholder is entitled to possession of the
23 motor vehicle; and

24 (5) The lienholder agrees to sell the motor vehicle in accordance with the
25 terms of its agreement and pursuant to the provisions of Part 5 of Article
26 9 of Chapter 25 of the General Statutes. Upon the sale of the motor
27 vehicle, the lienholder will pay to the clerk of court of the county in
28 which the vehicle was forfeited all proceeds from the sale, less the
29 amount of the lien in favor of the lienholder, and any towing and storage
30 costs paid by the lienholder.

31 A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle
32 to the defendant, the vehicle owner who owned the motor vehicle immediately prior to
33 forfeiture, or any person acting on the behalf of the defendant or motor vehicle owner
34 shall not be liable for damages arising out of such refusal. The defendant, the motor
35 vehicle owner who owned the motor vehicle immediately prior to forfeiture, and any
36 person acting on the defendant's or motor vehicle owner's behalf are prohibited from
37 purchasing the motor vehicle at any sale conducted by the lienholder.

38 (g) Possessory Lien. ~~The entity that tows or stores the motor vehicle, other than~~
39 ~~the county school board, shall be entitled to a possessory lien as defined in G.S.~~
40 ~~28.2(a1)(5)."~~

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

42 "**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses**
43 **involving impaired driving while license revoked.**

1 (a) ~~[Vehicles Subject to Seizure.]~~ Motor Vehicles Subject to Seizure. – A motor
2 vehicle that is driven by a person in violation of G.S. 20-138.1 or G.S. 20-138.5 who is
3 charged with an offense involving impaired driving is subject to seizure if at the time of
4 the violation the drivers license of the person driving the motor vehicle was revoked as a
5 result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a).

6 (b) Duty of Officer. – If the charging officer has probable cause to believe that a
7 motor vehicle driven by the defendant may be subject to forfeiture under this section, the
8 officer shall seize the motor vehicle and have it impounded. If the officer determines
9 prior to seizure that the motor vehicle had been reported stolen, the officer shall not seize
10 the motor vehicle pursuant to this section. If the officer determines prior to seizure that
11 the motor vehicle was a rental vehicle driven by a person not listed as an authorized
12 driver on the rental contract, the officer shall not seize the motor vehicle pursuant to this
13 section, but shall make a reasonable effort to notify the owner of the rental vehicle that
14 the vehicle was stopped and that the driver of the vehicle was not listed as an authorized
15 driver on the rental contract. Probable cause may be based on the officer's personal
16 knowledge, reliable information conveyed by another officer, records of the Division, or
17 other reliable source. ~~The officer shall cause to be issued written notification of impoundment~~
18 ~~to any vehicle owner who was not operating or present in the vehicle at the time of the offense.~~
19 ~~This notice shall be sent by first class mail to the most recent address contained in the Division~~
20 ~~records. This written notification shall inform the vehicle owner(s) that the vehicle has been~~
21 ~~impounded, shall state the reason for the impoundment and the procedure for requesting release~~
22 ~~of the vehicle. The seizing officer shall notify the Division executive agency designated~~
23 ~~under subsection (b1) of this section as soon as practical but no later than 72 hours after~~
24 ~~seizure of the motor vehicle of the seizure in accordance with procedures established by~~
25 ~~the Division executive agency designated under subsection (b1) of this section. Within 72~~
26 ~~hours of the seizure of the vehicle the officer shall also cause notice of the impoundment and~~
27 ~~intent to forfeit the vehicle to be given to any lienholder of record with the Division.~~

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

1 (c) Review by Magistrate. – Upon ~~seizing~~ determining that there is probable cause
2 for seizing a motor vehicle, the seizing officer shall present to a magistrate within the
3 county where the ~~vehicle was seized~~ driver was charged an affidavit of impoundment
4 setting forth the basis upon which the motor vehicle has been or will be seized for
5 forfeiture. The magistrate shall review the affidavit of impoundment and if the magistrate
6 determines the requirements of this section have been met, shall order the motor vehicle
7 held. The magistrate may request additional information and may hear from the ~~operator~~
8 defendant if the ~~operator~~ defendant is present. If the magistrate determines the
9 requirements of this section have not been met, the magistrate shall order the motor
10 vehicle released to a motor vehicle owner upon payment of towing and storage fees. If
11 the motor vehicle has not yet been seized, and the magistrate determines that seizure is
12 appropriate, the magistrate shall issue an order of seizure of the motor vehicle. The
13 magistrate shall provide a copy of the order of seizure to the clerk of court. The clerk
14 shall provide copies of the order of seizure to the district attorney and the attorney for the
15 county board of education.

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

23 (d) Custody of Motor Vehicle. –~~The~~ Unless the motor vehicle is towed pursuant to
24 a statewide or regional contract, or a contract with the county board of education, the
25 seized motor vehicle shall be towed by a commercial towing company designated by the
26 law enforcement agency that seized the motor vehicle. ~~to a location designated by the~~
27 county school board for the county in which the operator of the vehicle is charged and
28 Seized motor vehicles not towed pursuant to a statewide or regional contract or a contract with a
29 county board of education shall be retrieved from the commercial towing company within
30 a reasonable time, not to exceed 10 days, by the county board of education or their agent
31 who must pay towing and storage fees to the commercial towing company when the
32 motor vehicle is retrieved. If either a statewide or regional contractor, or the county
33 board of education, chooses to contract for local towing services, all towing companies
34 on the towing list for each law enforcement agency with jurisdiction within the county
35 shall be given written notice and an opportunity to submit proposals prior to a contract
36 for local towing services being awarded. The seized motor vehicle is ~~placed~~ under the
37 constructive possession of the ~~school board~~ county board of education for the county in
38 which the operator of the vehicle is charged at the time the vehicle is delivered to a
39 location designated by the county board of education or delivered to its agent pending
40 release or sale. ~~sale, or in the event a statewide or regional contract is in place, under the~~
41 constructive possession of the Department of Public Instruction, on behalf of the State at
42 the time the vehicle is delivered to a location designated by the Department of Public
43 Instruction or delivered to its agent pending release or sale. ~~Each~~ Absent a statewide or

1 regional contract that provides otherwise, each county school board-board of education
2 may elect to have seized motor vehicles stored on property owned or leased by the school
3 county board of education and charge no a reasonable fee for storage-storage, not to
4 exceed ten dollars (\$10.00) per day. In the alternative, the county school board-board of
5 education may contract with a commercial towing and storage facility or other private
6 entity for the storage-towing, storage, and disposal of seized motor vehicles, and a storage
7 fee of not more than five-ten dollars (\$5.00)-(\$10.00) per day may be charged. Except for
8 gross negligence or intentional misconduct, the county board of education, or any of its
9 employees, shall not be liable to the owner or lienholder for damage to or loss of the
10 motor vehicle or its contents, or to the owner of personal property in a seized vehicle,
11 during the time the motor vehicle is being towed or stored pursuant to this subsection.

12 (e) Release of Motor Vehicle Pending Trial. – A motor vehicle owner, or a
13 lienholder of a vehicle, other than the driver at the time of the underlying offense resulting
14 in the seizure, may apply to the clerk of superior court in the county where the charges
15 are pending for pretrial release of the motor vehicle.

16 The clerk shall release the motor vehicle to a qualified-nondefendant motor vehicle
17 owner or a lienholder-conditioned upon payment of all towing and storage charges
18 incurred as a result of seizure and impoundment of the motor vehicle under the following
19 conditions:

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

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

9 (e1) Pretrial Release of Motor Vehicle to Innocent Owner. – A nondefendant motor
10 vehicle owner may file a petition with the clerk of court seeking a pretrial determination
11 that the petitioner is an innocent owner. The clerk shall schedule a hearing before a judge
12 to be held within 10 business days or as soon as thereafter may be feasible. Notice of the
13 hearing shall be given to the petitioner, the district attorney, and the attorney for the
14 county board of education. The clerk shall forward a copy of the petition to the district
15 attorney for the district attorney's review. If, based on available information, the district
16 attorney determines that the petitioner is an innocent owner and that the motor vehicle is
17 not subject to forfeiture, the district attorney may note the State's consent to the release of
18 the motor vehicle on the petition and return the petition to the clerk of court who shall
19 enter an order releasing the motor vehicle to the petitioner subject to the conditions of
20 release as set forth in G.S. 20-28.2(e) and no hearing shall be held. The clerk shall send a
21 copy of the order of release to the county board of education attorney. At any pretrial
22 hearing conducted pursuant to this subsection, the court is not required to determine the
23 issue of forfeiture, only the issue of whether the petitioner is an innocent owner.
24 Accordingly, the State shall not be required to prove the underlying offense of impaired
25 driving or the existence of a prior drivers license revocation. If the court determines that
26 the petitioner is an innocent owner, the court shall release the motor vehicle to the
27 petitioner subject to the same conditions as if the petitioner were an innocent owner under
28 G.S. 20-28.2(e). An order issued under this subsection finding that the petitioner failed to
29 establish that the petitioner is an innocent owner may be reconsidered by the court as part
30 of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

31 (e2) Pretrial Release of Motor Vehicle to Defendant Owner. – A defendant motor
32 vehicle owner may file a petition with the clerk of court seeking a pretrial determination
33 that the defendant's license was not revoked pursuant to an impaired driving license
34 revocation as defined in G.S. 20-28.2(a). The clerk shall schedule a hearing before a
35 judge of the division in which the underlying criminal charge is pending for a hearing to
36 be held within 10 business days or as soon thereafter as may be feasible. Notice of the
37 hearing shall be given to the defendant, the district attorney, and the attorney for the
38 county board of education. The clerk shall forward a copy of the petition to the district
39 attorney for the district attorney's review. If, based on available information, the district
40 attorney determines that the defendant's motor vehicle is not subject to forfeiture, the
41 district attorney may note the State's consent to the release of the motor vehicle on the
42 petition and return the petition to the clerk of court who shall enter an order releasing the
43 motor vehicle to the defendant upon payment of all towing and storage charges incurred

1 as a result of the seizure and impoundment of the motor vehicle, subject to the
2 satisfactory proof of the identity of the defendant as a motor vehicle owner and the
3 existence of financial responsibility to the extent required by Article 13 of this Chapter,
4 and no hearing shall be held. The clerk shall send a copy of the order of release to the
5 attorney for the county board of education. At any pretrial hearing conducted pursuant to
6 this subsection, the court is not required to determine the issue of the underlying offense
7 of impaired driving only the existence of a prior drivers license revocation as an impaired
8 driving license revocation. Accordingly, the State shall not be required to prove the
9 underlying offense of impaired driving. An order issued under this subsection finding
10 that the defendant failed to establish that the defendant's license was not revoked pursuant
11 to an impaired driving license revocation as defined in G.S. 20-28.2(a) may be
12 reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-
13 28.2(d).

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

- 24 (1) Default on the obligation secured by the motor vehicle has occurred;
25 (2) As a consequence of default, the lienholder is entitled to possession of
26 the motor vehicle;
27 (3) The lienholder agrees to sell the motor vehicle in accordance with the
28 terms of its agreement and pursuant to the provisions of Part 5 of Article
29 9 of Chapter 25 of the General Statutes. Upon sale of the motor vehicle,
30 the lienholder will pay to the clerk of court of the county in which the
31 driver was charged all proceeds from the sale, less the amount of the
32 lien in favor of the lienholder, and any towing and storage costs paid by
33 the lienholder;
34 (4) The lienholder agrees not to sell, give, or otherwise transfer possession
35 of the forfeited motor vehicle to the defendant or the motor vehicle
36 owner; and
37 (5) The forfeited motor vehicle had not previously been released to the
38 lienholder.

39 The clerk of superior court may order a seized vehicle released to the lienholder
40 conditioned upon payment of all towing and storage costs incurred as a result of the
41 seizure and impoundment of the motor vehicle at any time when all interested parties
42 have, in writing, waived any rights that they may have to notice and a hearing, and the

1 lienholder has agreed to the provision of subdivision (4) above. A lienholder who
2 refuses to sell, give, or transfer possession of a forfeited motor vehicle to:

3 (1) The defendant;

4 (2) The motor vehicle owner who owned the motor vehicle immediately
5 prior to forfeiture; or

6 (3) Any person acting on the behalf of the defendant or the motor vehicle
7 owner,

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

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

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

16 (h) Insurance Proceeds. — In the event a motor vehicle is damaged incident to the
17 conduct of the defendant which gave rise to the defendant's arrest and seizure of the
18 motor vehicle pursuant to this section, the county board of education, or its authorized
19 designee, is authorized to negotiate the county board of education's interest with the
20 insurance company and to compromise and accept settlement of any claim for damages.
21 Property insurance proceeds accruing to the defendant, or other owner of the seized
22 motor vehicle, shall be paid by the responsible insurance company directly to the clerk of
23 superior court in the county where the motor vehicle driver was charged. If the motor
24 vehicle is declared a total loss by the insurance company responsible for the motor
25 vehicle, the clerk of superior court, upon application of the county board of education,
26 shall enter an order that the motor vehicle be released to the insurance company upon
27 payment into the court of all insurance proceeds for damage to the motor vehicle after
28 payment of towing and storage costs and all valid liens. The clerk of superior court shall
29 provide the Division with a certified copy of the order entered pursuant to this subsection,
30 and the Division shall transfer title to the insurance company or to such other person or
31 entity as may be designated by the insurance company. Insurance proceeds paid to the
32 clerk of court pursuant to this subsection shall be subject to forfeiture pursuant to G.S.
33 20-28.5 and shall be disbursed pursuant to further orders of the court. An affected motor
34 vehicle owner or lienholder who objects to any agreed upon settlement under this
35 subsection may file an independent claim with the insurance company for any additional
36 monies believed owed. Notwithstanding any other provisions in this Chapter, nothing in
37 this section or G.S. 20-28.2 shall require an insurance company to make payments in
38 excess of those required pursuant to its policy of insurance on the seized motor vehicle.

39 (i) Expedited Sale of Seized Motor Vehicles in Certain Cases. — In order to avoid
40 additional liability for towing and storage costs pending resolution of the criminal
41 proceedings of the defendant, the county board of education may, after expiration of 90
42 days from the date of seizure, sell any motor vehicle having a fair market value of one
43 thousand five hundred dollars (\$1,500) or less. The county board of education may also

1 sell a motor vehicle, regardless of the fair market value, any time the towing and storage
2 costs exceed eighty-five percent (85%) of the fair market value of the vehicle, or with the
3 consent of all the motor vehicle owners. Any sale conducted pursuant to this subsection
4 shall take place upon not less than 10 days' prior notice to the motor vehicle owners and
5 lienholders, and the proceeds of the sale, after the payment of outstanding towing and
6 storage costs, shall be deposited with the clerk of superior court. If an order of forfeiture
7 is entered by the court, the court shall order the proceeds held by the clerk to be disbursed
8 as provided in G.S. 20-28.5(b). If the court determines that the motor vehicle is not
9 subject to forfeiture, the court shall order the proceeds held by the clerk to be disbursed
10 first to pay the sale, towing, and storage costs, second to pay outstanding liens on the
11 motor vehicle, and the balance to be paid to the motor vehicle owners.

12 (j) Retrieval of Certain Personal Property. – At reasonable times, the entity
13 charged with storing the motor vehicle may permit owners of personal property not
14 affixed to the motor vehicle to retrieve those items from the motor vehicle, provided
15 satisfactory proof of ownership of the motor vehicle or the items of personal property is
16 presented to the storing entity.

17 (k) County Board of Education Right to Appear and Participate in Proceedings. –
18 The attorney for the county board of education shall be given notice of all proceedings
19 regarding offenses involving impaired driving related to a motor vehicle subject to
20 forfeiture. The attorney for the county board of education shall also have the right to
21 appear and to be heard on all issues relating to the seizure, possession, release, forfeiture,
22 sale, and other matters related to the seized vehicle under this section. With the prior
23 consent of the county board of education, the district attorney may delegate to the
24 attorney for the county board of education any or all of the duties of the district attorney
25 under this section. Clerks of superior court, law enforcement agencies, and all other
26 agencies with information relevant to the seizure, impoundment, release, or forfeiture of
27 motor vehicles are authorized and directed to provide county boards of education with
28 access to that information and to do so by electronic means when existing technology
29 makes this type of transmission possible.

30 (l) Payment of Fees Upon Conviction. – If the driver of a motor vehicle seized
31 pursuant to this section is convicted of an offense involving impaired driving, the
32 defendant shall be ordered to pay as restitution to the county board of education, the
33 motor vehicle owner, or the lienholder the cost paid or owing for the towing, storage, and
34 sale of the motor vehicle to the extent the costs were not covered by the proceeds from
35 the forfeiture and sale of the motor vehicle. In addition, a civil judgment for the costs
36 under this section in favor of the party to whom the restitution is owed shall be docketed
37 by the clerk of superior court. If the defendant is sentenced to an active term of
38 imprisonment, the civil judgment shall become effective and be docketed when the
39 defendant's conviction becomes final. If the defendant is placed on probation, the civil
40 judgment in the amount found by a judge during the probation revocation or termination
41 hearing to be due shall become effective and be docketed by the clerk when the
42 defendant's probation is revoked or terminated.

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

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

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

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

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

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

13 Should a defendant appeal the conviction to superior court, any party may file a
14 motion for review to consider whether the motor vehicle may be released pursuant to
15 G.S. 20-28.2(e) or (f) or G.S. 20-28.3(e), (e1), or (e3)."

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

17 **"§ 20-28.4. Release of impounded motor vehicles by judge.**

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

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

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

27 ~~(d) Release Upon Conclusion of Trial. – If the driver of a motor vehicle seized~~
28 ~~pursuant to G.S. 20-28.3:~~

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

32 ~~(2) The judge at the sentencing hearing fails to find the grossly aggravating~~
33 ~~factor described in G.S. 20-179(e)(2), a forfeiture hearing conducted~~
34 ~~pursuant to G.S. 20-28.2(d) fails to find that the drivers license was~~
35 ~~revoked as a result of a prior impaired driving license revocation as~~
36 ~~defined in G.S. 20-28.2; and~~

37 (3) The vehicle has not previously been released to a lienholder pursuant to
38 G.S. 20-28.3(e3),

39 the seized motor vehicle or insurance proceeds held by the clerk of court pursuant to G.S.
40 20-28.2(c1) or G.S. 20-28.3(h) shall be returned-released to the motor vehicle owner.
41 owner conditioned upon payment of towing and storage costs. Notwithstanding G.S.
42 44A-2(d), if the owner of the seized motor vehicle does not obtain release of the vehicle
43 within 30 days from the date of the court's order, the possessor of the seized motor

1 vehicle has a mechanics' lien on the seized motor vehicle for the full amount of the
2 towing and storage charges incurred since the motor vehicle was seized and may dispose
3 of the seized motor vehicle pursuant to Article 1 of Chapter 44A of the General Statutes.

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

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

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

12 **"§ 20-28.5. Forfeiture of impounded ~~vehicle~~ motor vehicle or funds.**

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

38 (b) Proceeds of Sale. — ~~Proceeds of any sale conducted under this section~~ ~~section,~~
39 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
40 then to satisfy towing and storage liens and the cost of sale costs. ~~The balance of the~~
41 ~~proceeds of sale, if any, shall be used to satisfy any other existing liens of record that~~
42 ~~were properly recorded with the Division prior to the date of initial seizure of the vehicle.~~
43 ~~Any remaining balance shall be paid to the county school fund in the county in which the~~

1 motor vehicle was ordered forfeited. If there is more than one school board in the county,
2 then the net proceeds of sale, after reimbursement to the county board of education of
3 reasonable administrative costs incurred in connection with the forfeiture and sale of the
4 motor vehicle, shall be distributed in the same manner as fines and other forfeitures.
5 ~~Vehicles sold~~ The sale of a motor vehicle pursuant to this section shall be deemed to
6 extinguish all existing liens on the motor vehicle and the motor vehicle shall be
7 transferred free and clear of any liens.

8 (c) Retention of Motor Vehicle. ~~—The county~~ A board of education may, at its
9 option, retain any forfeited motor vehicle for its use. use upon payment of towing and
10 storage costs. If the motor vehicle is retained, any valid lien of record at the time of the
11 initial seizure of the motor vehicle shall be satisfied by the school board county board of
12 education relieving the motor vehicle owner of all liability for the obligation secured by
13 the motor vehicle. If there is more than one school board in the county, and the motor
14 vehicle is retained by a board of education, then the fair market value of the motor
15 vehicle, less the costs for towing, storage, reasonable administrative costs, and liens paid,
16 shall be used to determine and pay the share due each of the school boards in the same
17 manner as fines and other forfeitures.

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

21 (e) Order of Forfeiture; Appeals. — An order of forfeiture is stayed pending appeal
22 of a conviction for an offense that is the basis for the order. When the conviction of an
23 offense that is the basis for an order of forfeiture is appealed from district court, the issue
24 of forfeiture shall be heard in superior court de novo. Appeal from a final order of
25 forfeiture shall be to the Court of Appeals."

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

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

28 "**§ 20-28.7. Responsibility of Division of Motor Vehicles.**

29 The Division shall establish procedures by rule to provide for the orderly seizure,
30 forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2,
31 20-28.3, 20-28.4, ~~20-28.5, and 20-28.6.~~ and 20-28.5."

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

34 "**§ 20-28.8. Reports to the Division.**

35 In any case in which a vehicle has been seized pursuant to G.S. 20-28.3, in addition to
36 any other information that must be reported pursuant to this Chapter, the clerk of superior
37 court shall report to the Division by electronic means the execution of an
38 acknowledgment as defined in G.S. 20-28.2(a1)(1), the entry of an order of forfeiture as
39 defined in G.S. 20-28.2(a1)(4), and the entry of an order of release as defined in G.S. 20-
40 28.3 and G.S. 20-28.4. Each report shall include any of the following information that
41 has not previously been reported to the Division in the case: the name, address, and
42 drivers license number of the defendant; the name, address, and drivers license number of
43 the nondefendant motor vehicle owner, if known; and the make, model, year, vehicle

1 identification number, state of registration, and vehicle registration plate number of the
2 seized vehicle, if known.

3 **"§ 20-28.9. Authority for the Department of Public Instruction to administer a**
4 **statewide or regional towing, storage, and sales program for driving while**
5 **impaired vehicles forfeited.**

6 (a) The Department of Public Instruction is authorized to enter into a contract for a
7 statewide service or contracts for regional services to tow, store, process, maintain, and
8 sell motor vehicles seized pursuant to G.S. 20-28.3. All motor vehicles seized under G.S.
9 20-28.3 shall be subject to contracts entered into pursuant to this section. Contracts shall
10 be let by the Department of Public Instruction in accordance with the provisions of
11 Article 3 of Chapter 143 of the General Statutes. All contracts shall ensure the safety of
12 the motor vehicles while held and any funds arising from the sale of any seized motor
13 vehicle. The contract shall require the contractor to maintain and make available to the
14 agency a computerized up-to-date inventory of all motor vehicles held under the contract,
15 together with an accounting of all accrued charges, the status of the vehicle, and the
16 county school fund to which the proceeds of sale are to be paid. The contract shall
17 provide that the contractor shall pay the towing and storage charges owed on a seized
18 vehicle to a commercial towing company at the time the seized vehicle is obtained from
19 the commercial towing company, with the contractor being reimbursed this expense when
20 the vehicle is released or sold. The Department shall not enter into any contract under
21 this section under which the State will be obligated to pay a deficiency arising from the
22 sale of any forfeited motor vehicle.

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

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

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

33 **"§ 20-54. Authority for refusing registration or certificate of title.**

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

- 36 (1) The application contains a false or fraudulent statement, the applicant
37 has failed to furnish required information or reasonable additional
38 information requested by the Division, or the applicant is not entitled to
39 the issuance of a certificate of title or registration of the vehicle under
40 this Article.
41 (2) The vehicle is mechanically unfit or unsafe to be operated or moved
42 upon the highways.

- 1 (3) The Division has reasonable ground to believe that the vehicle is a
2 stolen or embezzled vehicle, or that the granting of registration or the
3 issuance of a certificate of title would constitute a fraud against the
4 rightful owner or another person who has a valid lien against the
5 vehicle.
- 6 (4) The registration of the vehicle stands suspended or revoked for any
7 reason as provided in the motor vehicle laws of this State.
- 8 (5) The required fee has not been paid.
- 9 (6) The vehicle is not in compliance with the emissions inspection
10 requirements of Part 2 of Article 3A of this Chapter or a civil penalty
11 assessed as a result of the failure of the vehicle to comply with that Part
12 has not been paid.
- 13 (7) The Division has been notified that the motor vehicle has been seized by
14 a law enforcement officer and is subject to forfeiture pursuant to G.S.
15 20-28.2, et seq., or any other statute. However, the Division shall not
16 prevent the renewal of existing registration prior to an order of
17 forfeiture."

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

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

21 (a) Upon receipt of notice of conviction of a violation of an offense involving
22 impaired driving while the person's license is revoked as a result of a prior impaired
23 driving license revocation as defined in G.S. 20-28.2, the Division shall revoke the
24 registration of all motor vehicles registered in the convicted person's name and shall not
25 register a motor vehicle in the convicted person's name until the convicted person's
26 license is restored. Upon receipt of notice of revocation of registration from the Division,
27 the convicted person shall surrender the registration on all motor vehicles registered in
28 the convicted person's name to the Division within 10 days of the date of the notice.

29 (b) Upon receipt of a notice of conviction under subsection (a) of this section, the
30 Division shall revoke the registration of the motor vehicle seized, and the owner shall not
31 be allowed to register the motor vehicle seized until the convicted operator's drivers
32 license has been restored. The Division shall not revoke the registration of the owner of
33 the seized motor vehicle if the owner is determined to be an innocent owner. The
34 Division shall revoke the owner's registration only after the owner is given an opportunity
35 for a hearing to demonstrate that the owner is an innocent owner as defined in G.S. 20-
36 28.2. Upon receipt of notice of revocation of registration from the Division, the owner
37 shall surrender the registration on the motor vehicle seized to the Division within 10 days
38 of the date of the notice."

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

40 **"§ 20-55. Examination of registration records and index of ~~stolen~~-seized, stolen, and**
41 **recovered vehicles.**

42 The Division, upon receiving application for any transfer of registration or for original
43 registration of a vehicle, other than a new vehicle sold by a North Carolina dealer, shall

1 first check the engine and serial numbers shown in the application with its record of
2 registered motor vehicles, and against the index of ~~stolen~~ seized, stolen, and recovered
3 motor vehicles required to be maintained by this Article."

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

5 "(c) It shall also be the duty of every ~~sheriff of every county of the State and of every~~
6 ~~police or peace officer of the State~~ law enforcement officer to make immediate report to the
7 Commissioner of all motor vehicles reported to ~~him~~ the officer as abandoned or that are
8 seized by ~~him~~ the officer for being used for illegal transportation of alcoholic beverages
9 or other unlawful purposes, or seized and are subject to forfeiture pursuant to G.S. 20-
10 28.2, et seq., or any other statute, and no motor vehicle shall be sold by any sheriff, police
11 or peace officer, or by any person, firm or corporation claiming a mechanic's or storage
12 lien, or under judicial proceedings, until notice on a form approved by the Commissioner
13 shall have been given the Commissioner at least 20 days before the date of such sale."

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

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

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

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

24 "**§ 1-339.4. Who may hold sale.**

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

- 26 (1) In any proceeding, a commissioner specially appointed therefor; ~~or~~
- 27 (2) In a proceeding to sell property of a decedent, the administrator,
28 executor or collector of such decedent's estate;
- 29 (3) In a proceeding to sell property of a minor, the guardian of such minor's
30 estate;
- 31 (4) In a proceeding to sell property of an incompetent, the guardian or
32 trustee of such incompetent's estate;
- 33 (5) In a proceeding to sell property of an absent or missing person, the
34 administrator, collector, conservator, or guardian of the estate of such
35 absent or missing person;
- 36 (6) In a proceeding to foreclose a deed of trust, the trustee named in the
37 deed of trust;
- 38 (7) In a receivership proceeding, the receiver;
- 39 (8) In a proceeding to sell property of a trust, the ~~trustee;~~ trustee.
- 40 (9) ~~In a motor vehicle forfeiture proceeding pursuant to G.S. 20-28.5, the~~
41 ~~county school board or a person acting on its behalf."~~

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

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

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

11 "(b) Notice and Hearings. –

12 (1) If the property upon which the lien is claimed is a motor vehicle that is
13 required to be registered, the lienor following the expiration of the
14 relevant time period provided by subsection (a) shall give notice to the
15 Division of Motor Vehicles that a lien is asserted and sale is proposed
16 and shall remit to the Division a fee of ten dollars (\$10.00). The
17 Division of Motor Vehicles shall issue notice by registered or certified
18 mail, return receipt requested, ~~within 15 days of receipt of notice from the~~
19 ~~lienor,~~ to the person having legal title to the property, if reasonably
20 ascertainable, to the person with whom the lienor dealt if different, and
21 to each secured party and other person claiming an interest in the
22 property who is actually known to the Division or who can be
23 reasonably ascertained. The notice shall state that a lien has been
24 asserted against specific property and shall identify the lienor, the date
25 that the lien arose, the general nature of the services performed and
26 materials used or sold for which the lien is asserted, the amount of the
27 lien, and that the lienor intends to sell the property in satisfaction of the
28 lien. The notice shall inform the recipient that the recipient has the right
29 to a judicial hearing at which time a determination will be made as to
30 the validity of the lien prior to a sale taking place. The notice shall
31 further state that the recipient has a period of 10 days from the date of
32 receipt in which to notify the Division by registered or certified mail,
33 return receipt requested, that a hearing is desired and that if the recipient
34 wishes to contest the sale of his property pursuant to such lien, the
35 recipient should notify the Division that a hearing is ~~desired and the~~
36 ~~Division shall notify lienor.~~ desired. The notice shall state the required
37 information in simplified terms and shall contain a form whereby the
38 recipient may notify the Division that a hearing is desired by the return
39 of such form to the Division. The Division shall notify the lienor
40 whether such notice is timely received by the Division. In lieu of the
41 notice by the lienor to the Division and the notices issued by the
42 Division described above, the lienor may issue notice on a form
43 approved by the Division pursuant to the notice requirements above. If

1 notice is issued by the lienor, the recipient shall return the form
2 requesting a hearing to the lienor, and not the Division, within 10 days
3 from the date the recipient receives the notice if a judicial hearing is
4 requested. Failure of the recipient to notify the Division or lienor, as
5 specified in the notice, within 10 days of the receipt of such notice that a
6 hearing is desired shall be deemed a waiver of the right to a hearing
7 prior to the sale of the property against which the lien is asserted, ~~the~~
8 ~~Division shall notify the lienor,~~ and the lienor may proceed to enforce the
9 lien by public or private sale as provided in this section and the Division
10 shall transfer title to the property pursuant to such sale. If the Division
11 or lienor, as specified in the notice, is notified within the 10-day period
12 provided above that a hearing is desired prior to sale, the lien may be
13 enforced by sale as provided in this section and the Division will
14 transfer title only pursuant to the order of a court of competent
15 jurisdiction.

16 If the ~~Division notifies the lienor that the~~ registered or certified mail
17 notice has been returned as undeliverable, or if ~~the Division cannot~~
18 ~~ascertain~~ the name of the person having legal title to the vehicle cannot
19 reasonably be ascertained and the fair market value of the vehicle is less
20 than eight hundred dollars (\$800.00), the lienor may institute a special
21 proceeding in the county where the vehicle is being held, for
22 authorization to sell that vehicle. Market value shall be determined by
23 the schedule of values adopted by the Commissioner under G.S. 105-
24 187.3.

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

32 The application to the clerk in such a special proceeding shall
33 contain the notice of sale information set out in subsection (f) hereof. If
34 the application is in proper form the clerk shall enter an order
35 authorizing the sale on a date not less than 14 days therefrom, and the
36 lienor shall cause the application and order to be sent immediately by
37 first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom
38 ~~the Division has mailed~~ notice was mailed pursuant to this subsection.
39 Following the authorized sale the lienor shall file with the clerk a report
40 in the form of an affidavit, stating that the lienor has complied with the
41 public or private sale provisions of G.S. 44A-4, the name, address, and
42 bid of the high bidder or person buying at a private sale, and a statement

1 of the disposition of the sale proceeds. The clerk then shall enter an
2 order directing the Division to transfer title accordingly.

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

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

7 **"§ 58-71-1. Definitions.**

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

9 (1) 'Accommodation bondsman' is a natural person who has reached the age
10 of 18 years and is a bona fide resident of this State and who, aside from
11 love and affection and release of the person concerned, receives no
12 consideration for action as surety and who endorses the bail bond after
13 providing satisfactory evidences of ownership, value and marketability
14 of real or personal property to the extent necessary to reasonably satisfy
15 the official taking bond that such real or personal property will in all
16 respects be sufficient to assure that the full principal sum of the bond
17 will be realized in the event of breach of the conditions thereof.
18 'Consideration' as used in this subdivision does not include the legal
19 rights of a surety against a principal by reason of breach of the
20 conditions of a bail bond nor does it include collateral furnished to and
21 securing the surety so long as the value of the surety's rights in the
22 collateral do not exceed the principal's liability to the surety by reason
23 of a breach in the conditions of said bail bond.

24 (2) 'Bail bond' shall mean an undertaking by the principal to appear in court
25 as required upon penalty of forfeiting bail to the State in a stated
26 amount; and may include an unsecured appearance bond, a premium-
27 secured appearance bond, an appearance bond secured by a cash deposit
28 of the full amount of the bond, an appearance bond secured by a
29 mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by
30 at least one surety. A bail bond may also include a bond securing the
31 return of a motor vehicle subject to forfeiture in accordance with G.S.
32 20-28.3(e).

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

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

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

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

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

- 1 (8) 'Professional bondsman' shall mean any person who is approved and
2 licensed by the Commissioner and who pledges cash or approved
3 securities with the Commissioner as security for bail bonds written in
4 connection with a judicial proceeding and receives or is promised
5 money or other things of value therefor.
- 6 (9) 'Runner' shall mean a person employed by a bail bondsman for the
7 purpose of assisting the bail bondsman in presenting the defendant in
8 court when required, or to assist in apprehension and surrender of
9 defendant to the court, or keeping defendant under necessary
10 surveillance, or to execute bonds on behalf of the licensed bondsman
11 when the power of attorney has been duly recorded. 'Runner' does not
12 include, however, a duly licensed attorney-at-law or a law-enforcement
13 officer assisting a bondsman.
- 14 (10) 'Surety' shall mean one who, with the principal, is liable for the amount
15 of the bail bond upon forfeiture of bail.
- 16 (11) 'Surety bondsman' means any person who is licensed by the
17 Commissioner as a surety bondsman under this Article, is appointed by
18 an insurer by power of attorney to execute or countersign bail bonds for
19 the insurer in connection with judicial proceedings, and receives or is
20 promised consideration for doing so."

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

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

26 PART II. ZERO TOLERANCE FOR COMMERCIAL DRIVERS.

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

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

- 30 (1) Manslaughter (or negligent homicide) resulting from the operation of a
31 motor vehicle.
- 32 (2) Either of the following impaired driving offenses:
33 a. Impaired driving under G.S. 20-138.1.
34 b. Impaired driving under G.S. ~~20-138.2~~ when the person convicted
35 did not take a chemical test at the time of the offense or the
36 person took a chemical test at the time of the offense and the test
37 revealed that the person had an alcohol concentration at any
38 relevant time after driving of less than 0.04 or of 0.08 or more.
39 20-138.2.
- 40 (3) Any felony in the commission of which a motor vehicle is used.
- 41 (4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).

- 1 (5) Perjury or the making of a false affidavit or statement under oath to the
2 Division under this Article or under any other law relating to the
3 ownership of motor vehicles.
- 4 (6) Conviction upon two charges of reckless driving committed within a
5 period of 12 months.
- 6 (7) Conviction upon one charge of reckless driving while engaged in the
7 illegal transportation of intoxicants for the purpose of sale.
- 8 (8) Conviction of using a false or fictitious name or giving a false or
9 fictitious address in any application for a drivers license, or learner's
10 permit, or any renewal or duplicate thereof, or knowingly making a false
11 statement or knowingly concealing a material fact or otherwise
12 committing a fraud in any such application or procuring or knowingly
13 permitting or allowing another to commit any of the foregoing acts.
- 14 (9) Death by vehicle as defined in G.S. 20-141.4.
- 15 (10) Repealed by Session Laws 1997-443, s. 19.26(b).
- 16 (11) Conviction of assault with a motor vehicle.
- 17 (12) A second or subsequent conviction of transporting an open container of
18 alcoholic beverage under G.S. 20-138.7."
- 19 (13) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of
20 driving a commercial motor vehicle after consuming alcohol under G.S.
21 20-138.2A.
- 22 (14) A conviction of driving a school bus, school activity bus, or child care
23 vehicle after consuming alcohol under G.S. 20-138.2B."

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

25 **"§ 20-17.4. Disqualification to drive a commercial motor vehicle.**

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

- 28 (1) A first conviction of G.S. 20-138.1, driving while impaired, that
29 occurred while the person was driving a motor vehicle not a commercial
30 motor vehicle.
- 31 (2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle
32 while impaired.
- 33 (3) A first conviction of G.S. 20-166, hit and run, involving a commercial
34 motor vehicle driven by the person.
- 35 (4) A first conviction of a felony in the commission of which a commercial
36 motor vehicle was used.
- 37 (5) Refusal to submit to a chemical test when charged with an implied-
38 consent offense, as defined in G.S. 20-16.2, that occurred while the
39 person was driving a commercial motor vehicle.
- 40 (6) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of
41 driving a commercial motor vehicle after consuming alcohol under G.S.
42 20-138.2A.

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

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

10 (b1) Life Without Reduction. – A person is disqualified from driving a commercial
11 motor vehicle for life, without the possibility of reinstatement after 10 years, if that
12 person is convicted of a third or subsequent violation of G.S. 20-138.2, a fourth or
13 subsequent violation of G.S. 20-138.2A, or if the person refuses to submit to a chemical
14 test a third time when charged with an implied-consent offense, as defined in G.S. 20-
15 16.2, that occurred while the person was driving a commercial motor vehicle.

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

20 (d) Less Than a Year. – A person is disqualified from driving a commercial motor
21 vehicle for 60 days if that person is convicted of two serious traffic violations, or 120
22 days if convicted of three or more serious traffic violations, committed in a commercial
23 motor vehicle arising from separate incidents occurring within a three-year period.

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

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

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

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

35 (1) G.S. 20-138.1, driving while impaired (DWI).

36 (2) G.S. 20-138.2, commercial ~~DWI, if the person's license was revoked~~
37 ~~under G.S. 20-17(2)DWI.~~

38 (3) G.S. 20-138.3, driving while less than 21 years old after consuming
39 alcohol or drugs.

40 (4) G.S. 20-138.2A, driving a commercial motor vehicle with an alcohol
41 concentration of greater than 0.00 and less than 0.04, if the person's
42 drivers license was revoked under G.S. 20-17(a)(13).

1 (5) G.S. 20-138.2B, driving a school bus, a school activity bus, or a child
2 care vehicle with an alcohol concentration of greater than 0.00, if the
3 person's drivers license was revoked under G.S. 20-17(a)(14)."

4 Section 21. G.S. 20-19 is amended by adding a new subsection to read:

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

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

9 "**§ 20-36. Ten-year-old convictions not considered.**

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

18 Section 23. Article 3 of Chapter 20 of the General Statutes is amended by
19 adding a new section to read:

20 "**§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

21 (a) Offense. – A person commits the offense of operating a commercial motor
22 vehicle after consuming alcohol if the person drives a commercial motor vehicle, as
23 defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public
24 vehicular area within the State after having consumed sufficient alcohol that the person
25 has, at any relevant time after the driving, an alcohol concentration greater than 0.00 and
26 less than 0.04.

27 (b) Implied-Consent Offense. – An offense under this section is an implied-
28 consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-
29 139.1 shall apply to an offense committed under this section.

30 (c) Punishment. – Except as otherwise provided in this subsection, a violation of
31 the offense described in subsection (a) of this section is a Class 3 misdemeanor and,
32 notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars
33 (\$100.00). A second or subsequent violation of this section is a misdemeanor punishable
34 under G.S. 20-179. This offense is a lesser included offense of impaired driving of a
35 commercial vehicle under G.S. 20-138.2.

36 (d) Second or Subsequent Conviction Defined. – A conviction for violating this
37 offense is a second or subsequent conviction if at the time of the current offense the
38 person has a previous conviction under this section, and the previous conviction occurred
39 in the seven years immediately preceding the date of the current offense. This definition
40 of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-
41 17.4(a)(6)."

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

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

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

10 "(a) Sentencing Hearing Required. – After a conviction for impaired driving under
11 ~~G.S. 20-138.1, G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under~~
12 G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, the judge
13 must hold a sentencing hearing to determine whether there are aggravating or mitigating
14 factors that affect the sentence to be imposed. Before the hearing the prosecutor must
15 make all feasible efforts to secure the defendant's full record of traffic convictions, and
16 must present to the judge that record for consideration in the hearing. Upon request of the
17 defendant, the prosecutor must furnish the defendant or his attorney a copy of the
18 defendant's record of traffic convictions at a reasonable time prior to the introduction of
19 the record into evidence. In addition, the prosecutor must present all other appropriate
20 grossly aggravating and aggravating factors of which he is aware, and the defendant or
21 his attorney may present all appropriate mitigating factors. In every instance in which a
22 valid chemical analysis is made of the defendant, the prosecutor must present evidence of
23 the resulting alcohol concentration."

24 PART III. ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS
25 OF CHILD CARE VEHICLES.

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

27 "(27) Passenger Vehicles. –

- 28 a. Excursion passenger vehicles. – Vehicles transporting persons on
29 sight-seeing or travel tours.
- 30 b. For hire passenger vehicles. – Vehicles transporting persons for
31 compensation. This classification shall not include vehicles
32 operated as ambulances; vehicles operated by the owner where
33 the costs of operation are shared by the passengers; vehicles
34 operated pursuant to a ridesharing arrangement as defined in G.S.
35 136-44.21; vehicles transporting students for the public school
36 system under contract with the State Board of Education or
37 vehicles leased to the United States of America or any of its
38 agencies on a nonprofit basis; or vehicles used for human service
39 or volunteer transportation.
- 40 c. Common carriers of passengers. – Vehicles operated under a
41 certificate of authority issued by the Utilities Commission for
42 operation on the highways of this State between fixed termini or

- 1 over a regular route for the transportation of persons for
2 compensation.
- 3 c1. Child care vehicles. – Vehicles under the direction and control of
4 a child care facility, as defined in G.S. 110-86(3), and driven by
5 an owner, employee, or agent of the child care facility for the
6 primary purpose of transporting children to and from the child
7 care facility, or to and from a place for participation in an event
8 or activity in connection with the child care facility.
- 9 d. Motorcycles. – Vehicles having a saddle for the use of the rider
10 and designed to travel on not more than three wheels in contact
11 with the ground, including motor scooters and motor-driven
12 bicycles, but excluding tractors and utility vehicles equipped with
13 an additional form of device designed to transport property,
14 three-wheeled vehicles while being used by law-enforcement
15 agencies and mopeds as defined in subdivision d1 of this
16 subsection.
- 17 d1. Moped. – A vehicle that has two or three wheels, no external
18 shifting device, and a motor that does not exceed 50 cubic
19 centimeters piston displacement and cannot propel the vehicle at
20 a speed greater than 20 miles per hour on a level surface.
- 21 d2. Motor home or house car. – A vehicular unit, designed to provide
22 temporary living quarters, built into as an integral part, or
23 permanently attached to, a self-propelled motor vehicle chassis or
24 van. The vehicle must provide at least four of the following
25 facilities: cooking, refrigeration or icebox, self-contained toilet,
26 heating or air conditioning, a portable water supply system
27 including a faucet and sink, separate 110-125 volt electrical
28 power supply, or an LP gas supply.
- 29 d3. School activity bus. – A vehicle, generally painted a different
30 color from a school bus, whose primary purpose is to transport
31 school students and others to or from a place for participation in
32 an event other than regular classroom work. The term includes a
33 public, private, or parochial vehicle that meets this description.
- 34 d4. School bus. – A vehicle whose primary purpose is to transport
35 school students over an established route to and from school for
36 the regularly scheduled school day, that is equipped with
37 alternately flashing red lights on the front and rear and a
38 mechanical stop signal, and that bears the words "School Bus" on
39 the front and rear in letters at least 8 inches in height. The term
40 includes a public, private, or parochial vehicle that meets this
41 description.
- 42 e. U-drive-it passenger vehicles. – Vehicles rented or leased to be
43 operated by the lessee. This shall not include vehicles of nine-

1 passenger capacity or less which are leased for a term of one year
2 or more to the same person or vehicles leased or rented to public
3 school authorities for driver-training instruction.

4 f. Ambulances. – Vehicles equipped for transporting wounded,
5 injured, or sick persons.

6 g. Private passenger vehicles. – All other passenger vehicles not
7 included in the above definitions."

8 Section 27. Article 3 of Chapter 20 of the General Statutes is amended by
9 adding a new section to read:

10 **"§ 20-138.2B. Operating a school bus, school activity bus, or child care vehicle after**
11 **consuming alcohol.**

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

17 (b) Implied-Consent Offense. – An offense under this section is an implied-
18 consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-
19 139.1 shall apply to an offense committed under this section.

20 (c) Punishment. – Except as otherwise provided in this subsection, a violation of
21 the offense described in subsection (a) of this section is a Class 3 misdemeanor and,
22 notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars
23 (\$100.00). A second or subsequent violation of this section is a misdemeanor punishable
24 under G.S. 20-179. This offense is a lesser included offense of impaired driving of a
25 commercial vehicle under G.S. 20-138.1.

26 (d) Second or Subsequent Conviction Defined. – A conviction for violating this
27 offense is a second or subsequent conviction if at the time of the current offense the
28 person has a previous conviction under this section, and the previous conviction occurred
29 in the seven years immediately preceding the date of the current offense. This definition
30 of second or subsequent conviction also applies to G.S. 20-19(c2)."

31 PART IV. IMMEDIATE CIVIL REVOCATION FOR DRIVERS UNDER 21 YEARS
32 OF AGE.

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

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

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

- 1 (1) The person has a right to refuse to be tested.
2 (2) Refusal to take any required test or tests will result in an immediate
3 revocation of the person's driving privilege for at least 30 days and an
4 additional 12-month revocation by the Division of Motor Vehicles.
5 (3) The test results, or the fact of the person's refusal, will be admissible in
6 evidence at trial on the offense charged.
7 (4) The person's driving privilege will be revoked immediately for at least
8 30 days if:
9 a. The test reveals an alcohol concentration of 0.08 or more; ~~or~~
10 b. The person was driving a commercial motor vehicle and the test
11 reveals an alcohol concentration of 0.04 or ~~more~~ more; or
12 c. The person is under 21 years of age and the test reveals any
13 alcohol concentration."

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

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

- 19 (1) A charging officer has reasonable grounds to believe that the person has
20 committed an offense subject to the implied-consent provisions of G.S.
21 20-16.2;
22 (2) The person is charged with that offense as provided in G.S. 20-16.2(a);
23 (3) The charging officer and the chemical analyst comply with the
24 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's
25 submission to or procuring a chemical analysis; and
26 (4) The person:
27 a. Willfully refuses to submit to the chemical analysis;
28 b. Has an alcohol concentration of 0.08 or more within a relevant
29 time after the driving; ~~or~~
30 c. Has an alcohol concentration of 0.04 or more at any relevant time
31 after the driving of a commercial ~~vehicle~~ vehicle; or
32 d. Has any alcohol concentration at any relevant time after the
33 driving and the person is under 21 years of age."

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

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

- 38 (1) ~~He~~ The person requests a precharge chemical analysis pursuant to G.S.
39 20-16.2(i); and
40 (2) ~~He~~ The person has:
41 a. An alcohol concentration of 0.08 or more at any relevant time
42 after driving; ~~or~~

1 b. An alcohol concentration of 0.04 or more at any relevant time
2 after driving a commercial motor vehicle; ~~and or~~

3 c. Any alcohol concentration at any relevant time after driving and
4 the person is under 21 years of age; and

5 (3) ~~He~~The person is charged with an implied-consent offense."

6 PART V. INCREASE FINES FOR DWI OFFENSES.

7 Section 31. G.S. 20-179(g) reads as rewritten:

8 "(g) Level One Punishment. – A defendant subject to Level One punishment may
9 be fined up to ~~two thousand dollars (\$2,000)~~ four thousand dollars (\$4,000) and shall be
10 sentenced to a term of imprisonment that includes a minimum term of not less than 30
11 days and a maximum term of not more than 24 months. The term of imprisonment may
12 be suspended only if a condition of special probation is imposed to require the defendant
13 to serve a term of imprisonment of at least 30 days. If the defendant is placed on
14 probation, the judge shall impose a requirement that the defendant obtain a substance
15 abuse assessment and the education or treatment required by G.S. 20-17.6 for the
16 restoration of a drivers license and as a condition of probation. The judge may impose
17 any other lawful condition of probation."

18 Section 32. G.S. 20-179(h) reads as rewritten:

19 "(h) Level Two Punishment. – A defendant subject to Level Two punishment may
20 be fined up to ~~one thousand dollars (\$1,000)~~ two thousand dollars (\$2,000) and shall be
21 sentenced to a term of imprisonment that includes a minimum term of not less than seven
22 days and a maximum term of not more than 12 months. The term of imprisonment may
23 be suspended only if a condition of special probation is imposed to require the defendant
24 to serve a term of imprisonment of at least seven days. If the defendant is placed on
25 probation, the judge shall impose a requirement that the defendant obtain a substance
26 abuse assessment and the education or treatment required by G.S. 20-17.6 for the
27 restoration of a drivers license and as a condition of probation. The judge may impose
28 any other lawful condition of probation."

29 Section 33. G.S. 20-179(i) reads as rewritten:

30 "(i) Level Three Punishment. – A defendant subject to Level Three punishment
31 may be fined up to ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) and shall
32 be sentenced to a term of imprisonment that includes a minimum term of not less than 72
33 hours and a maximum term of not more than six months. The term of imprisonment may
34 be suspended. However, the suspended sentence shall include the condition that the
35 defendant:

36 (1) Be imprisoned for a term of at least 72 hours as a condition of special
37 probation; or

38 (2) Perform community service for a term of at least 72 hours; or

39 (3) Not operate a motor vehicle for a term of at least 90 days; or

40 (4) Any combination of these conditions.

41 If the defendant is placed on probation, the judge shall impose a requirement that the
42 defendant obtain a substance abuse assessment and the education or treatment required by

1 G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The
2 judge may impose any other lawful condition of probation."

3 Section 34. G.S. 20-179(j) reads as rewritten:

4 "(j) Level Four Punishment. – A defendant subject to Level Four punishment may
5 be fined up to ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) and shall
6 be sentenced to a term of imprisonment that includes a minimum term of not less than 48
7 hours and a maximum term of not more than 120 days. The term of imprisonment may be
8 suspended. However, the suspended sentence shall include the condition that the
9 defendant:

- 10 (1) Be imprisoned for a term of 48 hours as a condition of special
11 probation; or
- 12 (2) Perform community service for a term of 48 hours; or
- 13 (3) Not operate a motor vehicle for a term of 60 days; or
- 14 (4) Any combination of these conditions.

15 If the defendant is placed on probation, the judge shall impose a requirement that the
16 defendant obtain a substance abuse assessment and the education or treatment required by
17 G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The
18 judge may impose any other lawful condition of probation."

19 Section 35. G.S. 20-179(k) reads as rewritten:

20 "(k) Level Five Punishment. – A defendant subject to Level Five punishment may
21 be fined up to ~~one hundred dollars (\$100.00)~~ two hundred dollars (\$200.00) and shall be
22 sentenced to a term of imprisonment that includes a minimum term of not less than 24
23 hours and a maximum term of not more than 60 days. The term of imprisonment may be
24 suspended. However, the suspended sentence shall include the condition that the
25 defendant:

- 26 (1) Be imprisoned for a term of 24 hours as a condition of special
27 probation; or
- 28 (2) Perform community service for a term of 24 hours; or
- 29 (3) Not operate a motor vehicle for a term of 30 days; or
- 30 (4) Any combination of these conditions.

31 If the defendant is placed on probation, the judge shall impose a requirement that the
32 defendant obtain a substance abuse assessment and the education or treatment required by
33 G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The
34 judge may impose any other lawful condition of probation."

35 PART VI. MISCELLANEOUS PROVISIONS.

36 Section 36. From funds appropriated to the Department of Public Instruction,
37 the Department shall be authorized to hire a person to handle the administration of a
38 statewide contract, or regional contracts for services to tow, store, process, maintain, and
39 sell motor vehicles seized pursuant to G.S. 20-28.9.

40 Section 37. The Joint Legislative Education Oversight Committee shall study
41 the effect of the DWI forfeiture provisions as set forth in G.S. 20-28.2 through G.S. 20-
42 28.9 and the financial impact on county boards of education. The study shall include,
43 among other relevant information, a statistical analysis of the number of vehicles seized,

1 the length of time vehicles are held until disposition by the court, the percentage of seized
2 vehicles forfeited, the sale price of seized vehicles sold, the average towing and storage
3 costs, and county school administrative costs associated with the seizure and forfeiture of
4 the vehicles. The Committee shall recommend ways to make the procedure and process
5 for managing seized and forfeited vehicles more efficient and effective. The Committee
6 may report to the 1999 General Assembly.

7 Section 38. G.S. 115C-276 is amended by adding a new subsection to read:

8 "(s) Report on DWI Vehicle Forfeiture. – The superintendent, or the superintendent's
9 designee, of each county school system shall report by October 1 of each year to the
10 Department of Public Instruction the receipts received by the county school from the sale
11 of seized vehicles and all costs to the county board of education for administering the
12 DWI motor vehicle forfeiture law. The Department of Public Instruction shall report to
13 the Joint Legislative Education Oversight Committee annually by December 1 the results
14 of these reports filed by the county school superintendents under this section."

15 PART VII. EFFECTIVE DATE.

16 Section 39. Parts I and VI of this act become effective October 1, 1998, and
17 apply to offenses committed, contracts entered, and motor vehicles seized on or after that
18 date. Parts II, III, IV, and V of this act become effective December 1, 1998, and apply to
19 offenses committed on or after that date. The remainder of this act is effective when it
20 becomes law. The provisions of G.S. 20-28.3(e), (e1), (e2), (e3), (h), and (i) as set forth
21 in Section 3 of this act shall also apply to vehicles held on or after the effective date as a
22 result of seizure that occurred before, on, or after that date. Where the expedited sales
23 provisions of G.S. 20-28.3(i) are applied to motor vehicles seized on or after December 1,
24 1997, and before December 1, 1998, the county board of education shall refund any
25 towing or storage costs received as a result of the expedited sale, if the court finds that the
26 motor vehicle owner is not obligated to pay towing and storage costs.