

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1336*
Judiciary Committee Substitute Adopted 7/21/98

Short Title: 1998 Gov. DWI Amendments.

(Public)

Sponsors:

Referred to: Finance.

May 27, 1998

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

PART I. DWI FORFEITURE REVISIONS.

Section 1. G.S. 20-4.01(24a) reads as rewritten:

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

- a. Impaired driving under G.S. 20-138.1.
- b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.
- c. ~~Second~~ First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is

1 based upon impaired driving or a substantially equivalent offense
2 under previous law.

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

5 e. A repealed or superseded offense substantially equivalent to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

8 f. Impaired driving in a commercial motor vehicle under G.S. 20-
9 138.2, except that convictions of impaired driving under G.S. 20-
10 138.1 and G.S. 20-138.2 arising out of the same transaction shall
11 be considered a single conviction of an offense involving
12 impaired driving for any purpose under this Chapter.

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

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

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

17 "**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving**
18 **license revocation.**

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

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

24 (2) G.S. 20-16(a)(7), 20-17(a)(1), ~~or 20-17(a)(3),~~ 20-17(a)(9), or 20-
25 17(a)(11), if the offense involves impaired driving.

26 (a1) ~~[Definitions.]~~ Definitions. – As used in this section and in G.S. 20-28.3, 20-
27 28.4, 20-28.5, ~~and 20-28.6, 20-28.7, 20-28.8, and 20-28.9,~~ the following terms mean:

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

29 a. The motor vehicle was operated by a person charged with an
30 offense involving impaired driving while that person's drivers
31 license was revoked as a result of a prior impaired drivers license
32 revocation;

33 b. If the motor vehicle is again operated by this particular person, at
34 any time while that person's drivers license is revoked, and the
35 person is charged with an offense involving impaired driving, the
36 motor vehicle is subject to impoundment and forfeiture; and

37 c. A lack of knowledge or consent to the operation will not be a
38 defense in the future, unless the motor vehicle owner has taken
39 all reasonable precautions to prevent the use of the motor vehicle
40 by this particular person and immediately reports, upon
41 discovery, any unauthorized use to the appropriate law
42 enforcement agency.

- 1 (1a) Fair market value. – The value of the seized motor vehicle, as
2 determined in accordance with the schedule of values adopted by the
3 Commissioner pursuant to G.S. 105-187.3.
- 4 (2) ~~Innocent Party~~owner. – A motor vehicle owner who:
5 a. ~~Did not~~Who did not know and had no reason to know that the
6 defendant's drivers license was revoked;
7 b. ~~Knew~~Who knew that the defendant's drivers license was
8 revoked, but the defendant drove the vehicle without the person's
9 expressed or implied permission;
10 c. Whose vehicle was reported stolen;
11 d. Who files a police report for unauthorized use of the motor
12 vehicle and agrees to prosecute the unauthorized operator of the
13 motor vehicle;
14 e. Who is in the business of renting vehicles, the driver is not listed
15 as an authorized driver on the rental contract; or
16 f. Who is in the business of leasing motor vehicles, who holds legal
17 title to the motor vehicle as a lessor at the time of seizure and
18 who has no actual knowledge of the revocation of the lessee's
19 drivers license at the time the lease is entered.
- 20 (2a) Insurance company. – Any insurance company that has coverage on or
21 is otherwise liable for repairs or damages to the motor vehicle at the
22 time of the seizure.
- 23 (2b) Insurance proceeds. – Proceeds paid under an insurance policy for
24 damage to a seized motor vehicle less any payments actually paid to
25 valid lienholders and for towing and storage costs incurred for the motor
26 vehicle after the time the motor vehicle became subject to seizure.
- 27 (3) Lienholder. – A person who holds a perfected security interest in a
28 motor vehicle at the time of seizure.
- 29 (3a) Motor vehicle owner. – A person in whose name a registration card or
30 certificate of title for a motor vehicle is issued at the time of seizure.
- 31 (4) Order of Forfeiture. – An order by the court which terminates the rights
32 and ownership interest of a motor vehicle owner in a motor vehicle and
33 any insurance proceeds or proceeds of sale in accordance with G.S. 20-
34 28.2.
- 35 (5) ~~Possessory Lien.~~ – ~~A lien for all costs and fees associated with the~~
36 ~~towing, storage, or sale of a vehicle pursuant to this section. This lien~~
37 ~~shall have priority over perfected and unperfected security interests.~~
38 ~~Storage fees subject to this lien shall not exceed five dollars (\$5.00) per~~
39 ~~day.~~
- 40 (6) Registered Owner. – A person in whose name a registration card for a
41 motor vehicle is ~~issued.~~issued at the time of seizure.
- 42 (7) ~~Vehicle Owner.~~ – ~~A person in whose name a registration card or~~
43 ~~certificate of title for a motor vehicle is issued.~~

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

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

25 (c1) Motor Vehicles Involved in Accidents. – If a motor vehicle subject to
26 forfeiture was damaged while the defendant operator was committing the underlying
27 offense involving impaired driving, or was damaged incident to the seizure of the motor
28 vehicle, the Division shall determine the name of any insurance companies that are the
29 insurers of record with the Division for the motor vehicle at the time of the seizure or that
30 may otherwise be liable for repair to the motor vehicle. In any case where a seized motor
31 vehicle was involved in an accident, the Division shall notify the insurance companies
32 that the claim for insurance proceeds for damage to the seized motor vehicle shall be paid
33 to the clerk of superior court of the county where the motor vehicle was seized to be held
34 and disbursed pursuant to further orders of the court. Any insurance company that
35 receives written or other actual notice of seizure pursuant to this section shall not be
36 relieved of any legal obligation under any contract of insurance unless the claim for
37 property damage to the seized motor vehicle minus the policy owner's deductible is paid
38 directly to the clerk of court. The insurance company paying insurance proceeds to the
39 clerk of court pursuant to this section shall be immune from suit by the motor vehicle
40 owner for any damages alleged to have occurred as a result of the motor vehicle seizure.
41 The proceeds shall be held by the clerk. The clerk shall disburse the insurance proceeds
42 pursuant to further orders of the court.

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

- 26 (1) a. ~~Authorize the school board to sell sale of the motor vehicle at public~~
27 ~~sale or allow the county board of education to retain the motor vehicle~~
28 ~~for its own use pursuant to G.S. 20-28.5; or~~
29 (2) ~~b. Release—Order the motor vehicle released to an intervening~~
30 ~~lienholder pursuant to the provisions of subsection (g)-(f) of this section.~~
31 ~~section; and~~
32 (2) a. ~~Order any proceeds of sale or insurance proceeds held by the clerk~~
33 ~~of court to be disbursed to the county board of education; and~~
34 b. ~~Order any outstanding insurance claims be assigned to the county~~
35 ~~board of education in the event the motor vehicle has been~~
36 ~~damaged in an accident incident to the seizure of the motor~~
37 ~~vehicle.~~

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

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

9 ~~This release~~ Release to an innocent owner shall only be ordered upon satisfactory
10 proof of:

- 11 (1) The identity of the person as a motor vehicle owner;
- 12 (2) The existence of financial responsibility to the extent required by
13 Article 13 of this Chapter; and
- 14 (3) ~~The payment of towing and storage fees; fees, except in the case of~~
15 ~~release to an innocent vehicle owner; and~~
- 16 (4) The execution of an acknowledgment as defined in subdivision (a1)(1)
17 of this section.

18 If the nondefendant owner is a lessor, the release shall also be conditioned upon the
19 lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor
20 vehicle to the defendant or any person acting on the defendant's behalf. A lessor who
21 refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or
22 any person acting on the behalf of the defendant shall not be liable for damages arising
23 out of the refusal.

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

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

- 39 (1) ~~The lienholder's interest is equal to or greater than the fair market value~~
40 ~~of the vehicle; has been perfected and appears on the title to the~~
41 forfeited vehicle;
- 42 (2) The lienholder agrees not to sell, give, or otherwise transfer possession
43 of the forfeited motor vehicle to the defendant or to the motor vehicle

1 owner who owned the motor vehicle immediately prior to forfeiture, or
2 any person acting on the defendant's or motor vehicle owner's behalf;

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

5 (4) ~~The lienholder pays, in full, any towing and storage costs incurred as a~~
6 ~~result of the seizure of the vehicle. The owner is in default under the~~
7 terms of the security instrument evidencing the interest of the lienholder
8 and as a consequence of the default the lienholder is entitled to
9 possession of the motor vehicle; and

10 (5) The lienholder agrees to sell the motor vehicle in accordance with the
11 terms of its agreement and pursuant to the provisions of Part 5 of Article
12 9 of Chapter 25 of the General Statutes. Upon the sale of the motor
13 vehicle, the lienholder will pay to the clerk of court of the county in
14 which the vehicle was forfeited all proceeds from the sale, less the
15 amount of the lien in favor of the lienholder, and any towing and storage
16 costs paid by the lienholder.

17 A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle
18 to the defendant, the vehicle owner who owned the motor vehicle immediately prior to
19 forfeiture, or any person acting on the behalf of the defendant or motor vehicle owner
20 shall not be liable for damages arising out of such refusal. The defendant, the motor
21 vehicle owner who owned the motor vehicle immediately prior to forfeiture, and any
22 person acting on the defendant's or motor vehicle owner's behalf are prohibited from
23 purchasing the motor vehicle at any sale conducted by the lienholder.

24 (g) ~~Possessory Lien. The entity that tows or stores the motor vehicle, other than~~
25 ~~the county school board, shall be entitled to a possessory lien as defined in G.S.~~
26 ~~28.2(a1)(5)."~~

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

28 "**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses**
29 **involving impaired driving while license revoked.**

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

35 (b) Duty of Officer. – If the charging officer has probable cause to believe that a
36 motor vehicle driven by the defendant may be subject to forfeiture under this section, the
37 officer shall seize the motor vehicle and have it impounded. If the officer determines
38 prior to seizure that the motor vehicle had been reported stolen or that the motor vehicle
39 was a rental vehicle driven by a person not listed as an authorized driver on the rental
40 contract, the officer shall not seize the motor vehicle pursuant to this section. Probable
41 cause may be based on the officer's personal knowledge, reliable information conveyed
42 by another officer, records of the Division, or other reliable source. ~~The officer shall~~
43 ~~cause to be issued written notification of impoundment to any vehicle owner who was not~~

1 ~~operating or present in the vehicle at the time of the offense. This notice shall be sent by~~
2 ~~first-class mail to the most recent address contained in the Division records. This written~~
3 ~~notification shall inform the vehicle owner(s) that the vehicle has been impounded, shall~~
4 ~~state the reason for the impoundment and the procedure for requesting release of the~~
5 ~~vehicle. The seizing officer shall notify the Division as soon as practical but no later than~~
6 ~~72 hours after seizure of the motor vehicle and the agency designated under subsection~~
7 ~~(b1) of this section of the seizure in accordance with procedures established by the~~
8 ~~Division. Division and the agency designated under subsection (b1) of this section.~~
9 ~~Within 72 hours of the seizure of the vehicle the officer shall also cause notice of the~~
10 ~~impoundment and intent to forfeit the vehicle to be given to any lienholder of record with~~
11 ~~the Division.~~

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

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

42 (c1) Effecting an Order of Seizure. – An order of seizure shall be valid anywhere in
43 the State. Any officer with territorial jurisdiction and who has subject matter jurisdiction

1 for violations of Chapter 20 of the General Statutes may use such force as may be
2 reasonable to seize the motor vehicle and to enter upon the property of the defendant to
3 accomplish the seizure. An officer who has probable cause to believe the motor vehicle
4 is concealed or stored on private property of a person other than the defendant may obtain
5 a search warrant to enter upon that property for the purpose of seizing the motor vehicle.

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

38 (e) Release of Motor Vehicle Pending Trial. — A motor vehicle owner, ~~or a~~
39 ~~lienholder of a vehicle,~~ other than the driver at the time of the underlying offense
40 resulting in the seizure, may apply to the clerk of superior court in the county where the
41 charges are pending for pretrial release of the motor vehicle.

42 The clerk shall release the motor vehicle to a ~~qualified nondefendant motor vehicle~~
43 ~~owner or a lienholder~~ conditioned upon payment of all towing and storage charges

1 incurred as a result of seizure and impoundment of the motor vehicle under the following
2 conditions:

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

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

34 (e1) Pretrial Release of Motor Vehicle to Innocent Owner. – A nondefendant motor
35 vehicle owner may file a petition with the clerk of court seeking a pretrial determination
36 that the petitioner is an innocent owner. The clerk shall schedule a hearing before a judge
37 to be held within 10 business days or as soon as thereafter may be feasible. Notice of the
38 hearing shall be given to the petitioner, the district attorney, and the attorney for the
39 county board of education. The clerk shall forward a copy of the petition to the district
40 attorney for the district attorney's review. If, based on available information, the district
41 attorney determines that the petitioner is an innocent owner and that the motor vehicle is
42 not subject to forfeiture, the district attorney may note the State's consent to the release of
43 the motor vehicle on the petition and return the petition to the clerk of court who shall

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

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

39 (e3) Pretrial Release of Motor Vehicle to Lienholder. – A lienholder may file a
40 petition with the clerk of court requesting the court to order pretrial release of a seized
41 motor vehicle. The lienholder shall serve a copy of the petition on all interested parties
42 which shall include the registered owner, the titled owner, the district attorney, and the
43 county board of education attorney. Upon 10 days' prior notice of the date, time, and

1 location of the hearing sent by the lienholder to all interested parties, a judge, after a
2 hearing, shall order a seized motor vehicle released to the lienholder conditioned upon
3 payment of all towing and storage costs incurred as a result of the seizure and
4 impoundment of the motor vehicle if the judge determines, by the greater weight of the
5 evidence, that:

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

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

- 27 (1) The defendant;
28 (2) The motor vehicle owner who owned the motor vehicle immediately
29 prior to forfeiture; or
30 (3) Any person acting on the behalf of the defendant or the motor vehicle
31 owner,

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

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

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

40 (h) Insurance Proceeds. — In the event a motor vehicle is damaged incident to the
41 conduct of the defendant which gave rise to the defendant's arrest and seizure of the
42 motor vehicle pursuant to this section, the county board of education, or its authorized
43 designee, is authorized to negotiate the county board of education's interest with the

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

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

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

41 (k) County Board of Education Right to Appear and Participate in Proceedings. –
42 The attorney for the county board of education shall be given notice of all proceedings
43 regarding offenses involving impaired driving related to a motor vehicle subject to

1 forfeiture. The attorney for the county board of education shall also have the right to
2 appear and to be heard on all issues relating to the seizure, possession, release, forfeiture,
3 sale, and other matters related to the seized vehicle under this section. With the prior
4 consent of the county board of education, the district attorney may delegate to the
5 attorney for the county board of education any or all of the duties of the district attorney
6 under this section. Clerks of superior court, law enforcement agencies, and all other
7 agencies with information relevant to the seizure, impoundment, release or forfeiture of
8 motor vehicles are authorized and directed to provide county boards of education with
9 access to that information and to do so by electronic means when existing technology
10 makes this type of transmission possible.

11 (l) Payment of Fees Upon Conviction. – If the driver of a motor vehicle seized
12 pursuant to this section is convicted of an offense involving impaired driving, the
13 defendant shall be ordered to pay as restitution to the county board of education, the
14 motor vehicle owner, or the lienholder the cost paid or owing for the towing, storage, and
15 sale of the motor vehicle to the extent the costs were not covered by the proceeds from
16 the forfeiture and sale of the motor vehicle. The order of payment of costs under this
17 subsection, in addition to being a part of the criminal judgment, shall also constitute a
18 civil judgment in favor of the party to whom the restitution is owed, shall be docketed by
19 the clerk of court as any other civil judgment, and may be collected as any other civil
20 judgment.

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

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

- 26 (1) A written motion for continuance is filed with notice given to the
27 opposing party prior to the motion being heard.
- 28 (2) The judge makes a finding of a 'compelling reason' for the continuance.
- 29 (3) The motion and finding are attached to the court case record.

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

33 Should a defendant appeal his conviction to superior court, the appeal shall be set
34 down for trial on the next available trial date and the limitations on continuances and
35 requirement for expedited hearing on the forfeiture of the vehicle, set forth above, shall
36 apply."

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

38 "**§ 20-28.4. Release of impounded motor vehicles by judge.**

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

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

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

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

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

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

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

19 ~~the seized motor vehicle or insurance proceeds held by the clerk of court pursuant to G.S.~~
20 ~~20-28.2(c1) or G.S. 20-28.3(h) shall be returned-released to the motor vehicle owner.~~
21 ~~owner conditioned upon payment of towing and storage costs. Notwithstanding G.S.~~
22 ~~44A-2(d), if the owner of the seized motor vehicle does not obtain release of the vehicle~~
23 ~~within 30 days from the date of the court's order, the possessor of the seized motor~~
24 ~~vehicle has a mechanics' lien on the seized motor vehicle for the full amount of the~~
25 ~~towing and storage charges incurred since the motor vehicle was seized and may dispose~~
26 ~~of the seized motor vehicle pursuant to Article 1 of Chapter 44A of the General Statutes.~~

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

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

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

35 "**§ 20-28.5. Forfeiture of impounded ~~vehicle.~~ motor vehicle or funds.**

36 (a) ~~Sale.~~ — ~~Unless a judge orders the vehicle returned to an innocent party or a~~
37 ~~lienholder pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered forfeited~~
38 ~~and sold or transferred to the school board in the county where the charges were filed.~~
39 ~~The sale of the vehicle shall be a judicial.~~ A motor vehicle ordered forfeited and sold shall
40 be sold at a public sale conducted in accordance with the provisions of Parts 1 and 2 of
41 Article 29A of Chapter 1—Article 12 of Chapter 160A of the General Statutes—Statutes,
42 applicable to sales authorized pursuant to G.S. 160A-266(a)(2), (3), or (4), subject to the
43 notice requirements of this subsection, and shall be conducted by the county school board

1 board of education or a person acting on its behalf. In addition to the notice requirements
2 of Part 2 of Article 29A of Chapter 1 of the General Statutes, notice of sale. Notice of
3 sale, including the date, time, location, and manner of sale, shall also be given by
4 certified mail, return receipt requested, first-class mail, to all motor vehicle owners at the
5 address shown by the Division's records of the Division and at any other address of the
6 motor vehicle owner as may be found in the criminal file in which the forfeiture was
7 ordered. Notice. Written notice of sale shall also be by certified mail, return receipt
8 requested, given to all lienholders on file with the Division. Notice of sale shall be given
9 to the Division in accordance with the procedures established by the Division. Notices
10 required to be given under this subsection shall be mailed at least 14 days prior to the
11 date of sale. A lienholder shall be permitted to purchase the motor vehicle at any such
12 sale by bidding in the amount of its lien, if that should be the highest bid, without being
13 required to tender any additional funds, other than the towing and storage fees. The
14 county board of education, or its agent, shall not sell, give, or otherwise transfer
15 possession of the forfeited motor vehicle to the defendant, the motor vehicle owner who
16 owned the motor vehicle immediately prior to forfeiture, and any person acting on the
17 defendant's or motor vehicle owner's behalf.

18 (b) Proceeds of Sale. – Proceeds of any sale conducted under this section-section,
19 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
20 then to satisfy towing and storage liens and the cost of sale. costs. The balance of the
21 proceeds of sale, if any, shall be used to satisfy any other existing liens of record that
22 were properly recorded with the Division prior to the date of initial seizure of the vehicle.
23 Any remaining balance shall be paid to the county school fund in the county in which the
24 motor vehicle was ordered forfeited. If there is more than one school board in the county,
25 then the net proceeds of sale, after reimbursement to the county board of education of
26 reasonable administrative costs incurred in connection with the forfeiture and sale of the
27 motor vehicle, shall be distributed in the same manner as fines and other forfeitures.
28 ~~Vehicles sold~~The sale of a motor vehicle pursuant to this section shall be deemed to
29 extinguish all existing liens on the motor vehicle and the motor vehicle shall be
30 transferred free and clear of any liens.

31 (c) Retention of Motor Vehicle. – The county board of education may, at its
32 option, retain any forfeited motor vehicle for its use. use upon payment of towing and
33 storage costs. If the motor vehicle is retained, any valid lien of record at the time of the
34 initial seizure of the motor vehicle shall be satisfied by the school board-county board of
35 education relieving the motor vehicle owner of all liability for the obligation secured by
36 the motor vehicle. If there is more than one school board in the county, and the motor
37 vehicle is retained by the county board of education, then the fair market value of the
38 motor vehicle, less the costs for towing, storage, reasonable administrative costs, and
39 liens paid, shall be used to determine and pay the share due each of the school boards in
40 the same manner as fines and other forfeitures.

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

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

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

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

8 **"§ 20-28.7. Responsibility of Division of Motor Vehicles.**

9 The Division shall establish procedures by rule to provide for the orderly seizure,
10 forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2,
11 20-28.3, 20-28.4, ~~20-28.5, and 20-28.6~~, and 20-28.5."

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

14 **"§ 20-28.8. Reports to the Division.**

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

26 **"§ 20-28.9. Authority for the Department of Public Instruction to administer a**
27 **statewide or regional towing, storage, and sales program for driving while**
28 **impaired vehicles forfeited.**

29 (a) The Department of Public Instruction is authorized to enter into a contract for a
30 statewide service or contracts for regional services to tow, store, process, maintain, and
31 sell motor vehicles seized pursuant to G.S. 20-28.3. All motor vehicles seized under G.S.
32 20-28.3 shall be subject to contracts entered into pursuant to this section. Contracts shall
33 be let by the Department of Public Instruction in accordance with the provisions of
34 Article 3 of Chapter 143 of the General Statutes. All contracts shall ensure the safety of
35 the motor vehicles while held and any funds arising from the sale of any seized motor
36 vehicle. The contract shall require the contractor to maintain and make available to the
37 agency a computerized up-to-date inventory of all motor vehicles held under the contract,
38 together with an accounting of all accrued charges, the status of the vehicle, and the
39 county school fund to which the proceeds of sale are to be paid. The contract shall
40 provide that the contractor shall pay the towing and storage charges owed on a seized
41 vehicle to a commercial towing company at the time the seized vehicle is obtained from
42 the commercial towing company, with the contractor being reimbursed this expense when
43 the vehicle is released or sold. The Department shall not enter into any contract under

1 this section under which the State will be obligated to pay a deficiency arising from the
2 sale of any forfeited motor vehicle.

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

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

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

13 **"§ 20-54. Authority for refusing registration or certificate of title.**

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

16 (1) The application contains a false or fraudulent statement, the applicant
17 has failed to furnish required information or reasonable additional
18 information requested by the Division, or the applicant is not entitled to
19 the issuance of a certificate of title or registration of the vehicle under
20 this Article.

21 (2) The vehicle is mechanically unfit or unsafe to be operated or moved
22 upon the highways.

23 (3) The Division has reasonable ground to believe that the vehicle is a
24 stolen or embezzled vehicle, or that the granting of registration or the
25 issuance of a certificate of title would constitute a fraud against the
26 rightful owner or another person who has a valid lien against the
27 vehicle.

28 (4) The registration of the vehicle stands suspended or revoked for any
29 reason as provided in the motor vehicle laws of this State.

30 (5) The required fee has not been paid.

31 (6) The vehicle is not in compliance with the emissions inspection
32 requirements of Part 2 of Article 3A of this Chapter or a civil penalty
33 assessed as a result of the failure of the vehicle to comply with that Part
34 has not been paid.

35 (7) The Division has been notified that the motor vehicle has been seized by
36 a law enforcement officer and is subject to forfeiture pursuant to G.S.
37 20-28.2, et seq., or any other statute."

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

40 **"§ 20-54.1. Forfeiture of right of registration.**

41 (a) Upon receipt of notice of conviction of a violation of an offense involving
42 impaired driving while the person's license is revoked as a result of a prior impaired
43 driving license revocation as defined in G.S. 20-28.2, the Division shall revoke the

1 registration of all motor vehicles registered in the convicted person's name and shall not
2 register a motor vehicle in the convicted person's name until the convicted person's
3 license is restored. Upon receipt of notice of revocation of registration from the Division,
4 the convicted person shall surrender the registration on all motor vehicles registered in
5 the convicted person's name to the Division within 10 days of the date of the notice.

6 (b) Upon receipt of a notice of conviction under subsection (a) of this section, the
7 Division shall revoke the registration of the motor vehicle seized and the owner shall not
8 be allowed to register the motor vehicle seized until the convicted operator's drivers
9 license has been restored. The Division shall not revoke the registration of the owner of
10 the seized motor vehicle if the owner is determined to be an innocent owner. The
11 Division shall revoke the owner's registration only after the owner is given an opportunity
12 for a hearing to demonstrate that the owner is an innocent owner as defined in G.S. 20-
13 28.2. Upon receipt of notice of revocation of registration from the Division, the owner
14 shall surrender the registration on the motor vehicle seized to the Division within 10 days
15 of the date of the notice."

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

17 "**§ 20-55. Examination of registration records and index of seized, stolen and**
18 **recovered vehicles.**

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

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

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

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

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

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

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

2 **"§ 1-339.4. Who may hold sale.**

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

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

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

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

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

31 "(b) Notice and Hearings. –

- 32 (1) If the property upon which the lien is claimed is a motor vehicle that is
33 required to be registered, the lienor following the expiration of the
34 relevant time period provided by subsection (a) shall give notice to the
35 Division of Motor Vehicles that a lien is asserted and sale is proposed
36 and shall remit to the Division a fee of ten dollars (\$10.00). The
37 Division of Motor Vehicles shall issue notice by registered or certified
38 mail, return receipt requested, ~~within 15 days of receipt of notice from~~
39 ~~the lienor~~, to the person having legal title to the property, if reasonably
40 ascertainable, to the person with whom the lienor dealt if different, and
41 to each secured party and other person claiming an interest in the
42 property who is actually known to the Division or who can be
43 reasonably ascertained. The notice shall state that a lien has been

1 asserted against specific property and shall identify the lienor, the date
2 that the lien arose, the general nature of the services performed and
3 materials used or sold for which the lien is asserted, the amount of the
4 lien, and that the lienor intends to sell the property in satisfaction of the
5 lien. The notice shall inform the recipient that the recipient has the right
6 to a judicial hearing at which time a determination will be made as to
7 the validity of the lien prior to a sale taking place. The notice shall
8 further state that the recipient has a period of 10 days from the date of
9 receipt in which to notify the Division by registered or certified mail,
10 return receipt requested, that a hearing is desired and that if the recipient
11 wishes to contest the sale of his property pursuant to such lien, the
12 recipient should notify the Division that a hearing is ~~desired~~ and the
13 ~~Division shall notify lienor.~~ desired. The notice shall state the required
14 information in simplified terms and shall contain a form whereby the
15 recipient may notify the Division that a hearing is desired by the return
16 of such form to the Division. The Division shall notify the lienor
17 whether such notice is timely received by the Division. In lieu of the
18 notice by the lienor to the Division and the notices issued by the
19 Division described above, the lienor may issue notice on a form
20 approved by the Division pursuant to the notice requirements above. If
21 notice is issued by the lienor, the recipient shall return the form
22 requesting a hearing to the lienor, and not the Division, within 10 days
23 from the date they receive the notice if a judicial hearing is requested.
24 Failure of the recipient to notify the Division or lienor, as specified in
25 the notice, within 10 days of the receipt of such notice that a hearing is
26 desired shall be deemed a waiver of the right to a hearing prior to the
27 sale of the property against which the lien is asserted, ~~the Division shall~~
28 ~~notify the lienor,~~ and the lienor may proceed to enforce the lien by
29 public or private sale as provided in this section and the Division shall
30 transfer title to the property pursuant to such sale. If the Division or
31 lienor, as specified in the notice, is notified within the 10-day period
32 provided above that a hearing is desired prior to sale, the lien may be
33 enforced by sale as provided in this section and the Division will
34 transfer title only pursuant to the order of a court of competent
35 jurisdiction.

36 If the ~~Division notifies the lienor that the~~ registered or certified mail
37 notice has been returned as undeliverable, or if ~~the Division cannot~~
38 ~~ascertain~~ the name of the person having legal title to the vehicle cannot
39 reasonably be ascertained and the fair market value of the vehicle is less
40 than eight hundred dollars (\$800.00), the lienor may institute a special
41 proceeding in the county where the vehicle is being held, for
42 authorization to sell that vehicle. Market value shall be determined by

1 the schedule of values adopted by the Commissioner under G.S. 105-
2 187.3.

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

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

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

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

27 **"§ 58-71-1. Definitions.**

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

- 29 (1) 'Accommodation bondsman' is a natural person who has reached the age
30 of 18 years and is a bona fide resident of this State and who, aside from
31 love and affection and release of the person concerned, receives no
32 consideration for action as surety and who endorses the bail bond after
33 providing satisfactory evidences of ownership, value and marketability
34 of real or personal property to the extent necessary to reasonably satisfy
35 the official taking bond that such real or personal property will in all
36 respects be sufficient to assure that the full principal sum of the bond
37 will be realized in the event of breach of the conditions thereof.
38 "Consideration" as used in this subdivision does not include the legal
39 rights of a surety against a principal by reason of breach of the
40 conditions of a bail bond nor does it include collateral furnished to and
41 securing the surety so long as the value of the surety's rights in the
42 collateral do not exceed the principal's liability to the surety by reason
43 of a breach in the conditions of said bail bond.

- 1 (2) 'Bail bond' shall mean an undertaking by the principal to appear in court
2 as required upon penalty of forfeiting bail to the State in a stated
3 amount; and may include an unsecured appearance bond, a premium-
4 secured appearance bond, an appearance bond secured by a cash deposit
5 of the full amount of the bond, an appearance bond secured by a
6 mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by
7 at least one surety. A bail bond may also include a bond securing the
8 return of a motor vehicle subject to forfeiture in accordance with G.S.
9 20-28.3(e).
- 10 (3) 'Bail bondsman' shall mean a surety bondsman, professional bondsman
11 or an accommodation bondsman as hereinafter defined.
- 12 (4) 'Commissioner' shall mean the Commissioner of Insurance.
- 13 (5) 'Insurer' shall mean any domestic, foreign, or alien surety company
14 which has qualified generally to transact surety business and specifically
15 to transact bail bond business in this State.
- 16 (6) 'Obligor' shall mean a principal or a surety on a bail bond.
- 17 (7) 'Principal' shall mean a defendant or witness obligated to appear in court
18 as required upon penalty of forfeiting bail under a bail ~~bond~~-bond or a
19 person obligated to return a motor vehicle subject to forfeiture in
20 accordance with G.S. 20-28.3(e).
- 21 (8) 'Professional bondsman' shall mean any person who is approved and
22 licensed by the Commissioner and who pledges cash or approved
23 securities with the Commissioner as security for bail bonds written in
24 connection with a judicial proceeding and receives or is promised
25 money or other things of value therefor.
- 26 (9) 'Runner' shall mean a person employed by a bail bondsman for the
27 purpose of assisting the bail bondsman in presenting the defendant in
28 court when required, or to assist in apprehension and surrender of
29 defendant to the court, or keeping defendant under necessary
30 surveillance, or to execute bonds on behalf of the licensed bondsman
31 when the power of attorney has been duly recorded. "Runner" does not
32 include, however, a duly licensed attorney-at-law or a law-enforcement
33 officer assisting a bondsman.
- 34 (10) 'Surety' shall mean one who, with the principal, is liable for the amount
35 of the bail bond upon forfeiture of bail.
- 36 (11) 'Surety bondsman' means any person who is licensed by the
37 Commissioner as a surety bondsman under this Article, is appointed by
38 an insurer by power of attorney to execute or countersign bail bonds for
39 the insurer in connection with judicial proceedings, and receives or is
40 promised consideration for doing so."

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

42 "(a) ~~The~~Except for bonds issued to secure the return of a motor vehicle subject to
43 forfeiture in accordance with G.S. 20-28.3(e), the procedure for forfeiture of bail shall be

1 that provided in Article 26 of Chapter 15A of the General Statutes and all provisions of
2 that Article shall continue in full force and effect."

3 PART II. ZERO TOLERANCE FOR COMMERCIAL DRIVERS.

4 Section 18. G.S. 20-16.2(a) reads as rewritten:

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

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

- 15 (1) The person has a right to refuse to be tested.
- 16 (2) Refusal to take any required test or tests will result in an immediate
17 revocation of the person's driving privilege for at least 30 days and an
18 additional 12-month revocation by the Division of Motor Vehicles.
- 19 (3) The test results, or the fact of the person's refusal, will be admissible in
20 evidence at trial on the offense charged.
- 21 (4) The person's driving privilege will be revoked immediately for at least
22 30 days if:
 - 23 a. The test reveals an alcohol concentration of 0.08 or more; or
 - 24 b. The person was driving a commercial motor vehicle and the test
25 reveals ~~an any alcohol concentration of 0.04 or more.~~
26 concentration.
- 27 (5) The person may choose a qualified person to administer a chemical test
28 or tests in addition to any test administered at the direction of the
29 charging officer.
- 30 (6) The person has the right to call an attorney and select a witness to view
31 for him or her the testing procedures, but the testing may not be delayed
32 for these purposes longer than 30 minutes from the time when the
33 person is notified of his or her rights.

34 If the charging officer or an arresting officer is authorized to administer a chemical
35 analysis of a person's breath, the charging officer or the arresting officer may give the
36 person charged the oral and written notice of rights required by this subsection. This
37 authority applies regardless of the type of chemical analysis designated."

38 Section 19. G.S. 20-16.5(b) reads as rewritten:

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

- 1 (1) A charging officer has reasonable grounds to believe that the person has
2 committed an offense subject to the implied-consent provisions of G.S.
3 20-16.2;
- 4 (2) The person is charged with that offense as provided in G.S. 20-16.2(a);
- 5 (3) The charging officer and the chemical analyst comply with the
6 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's
7 submission to or procuring a chemical analysis; and
- 8 (4) The person:
 - 9 a. Willfully refuses to submit to the chemical analysis;
 - 10 b. Has an alcohol concentration of 0.08 or more within a relevant
11 time after the driving; or
 - 12 c. Has ~~an any~~ alcohol concentration of ~~0.04 or more~~ at any relevant
13 time after the driving of a commercial vehicle."

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

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

- 18 (1) ~~He~~ The person requests a precharge chemical analysis pursuant to G.S.
19 20-16.2(i); and
- 20 (2) ~~He~~ The person has:
 - 21 a. An alcohol concentration of 0.08 or more at any relevant time
22 after driving; or
 - 23 b. ~~An~~ Any alcohol concentration of ~~0.04 or more~~ at any relevant
24 time after driving a commercial motor vehicle; and
- 25 (3) ~~He~~ The person is charged with an implied-consent offense."

26 Section 21. G.S. 20-17(a) reads as rewritten:

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

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

- 1 (6) Conviction upon two charges of reckless driving committed within a
2 period of 12 months.
- 3 (7) Conviction upon one charge of reckless driving while engaged in the
4 illegal transportation of intoxicants for the purpose of sale.
- 5 (8) Conviction of using a false or fictitious name or giving a false or
6 fictitious address in any application for a drivers license, or learner's
7 permit, or any renewal or duplicate thereof, or knowingly making a false
8 statement or knowingly concealing a material fact or otherwise
9 committing a fraud in any such application or procuring or knowingly
10 permitting or allowing another to commit any of the foregoing acts.
- 11 (9) Death by vehicle as defined in G.S. 20-141.4.
- 12 (10) Repealed by Session Laws 1997-443, s. 19.26(b).
- 13 (11) Conviction of assault with a motor vehicle.
- 14 (12) A second or subsequent conviction of transporting an open container of
15 alcoholic beverage under G.S. 20-138.7."

16 Section 22. G.S. 20-17.4 reads as rewritten:

17 **"§ 20-17.4. Disqualification to drive a commercial motor vehicle.**

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

- 20 (1) A first conviction of G.S. 20-138.1, driving while impaired, that
21 occurred while the person was driving a motor vehicle not a commercial
22 motor vehicle.
- 23 (2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle
24 while impaired.
- 25 (3) A first conviction of G.S. 20-166, hit and run, involving a commercial
26 motor vehicle driven by the person.
- 27 (4) A first conviction of a felony in the commission of which a commercial
28 motor vehicle was used.
- 29 (5) Refusal to submit to a chemical test when charged with an implied-
30 consent offense, as defined in G.S. 20-16.2, that occurred while the
31 person was driving a commercial motor vehicle.

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

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

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

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

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

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

17 Section 23. G.S. 20-36 reads as rewritten:

18 **"§ 20-36. Ten-year-old convictions not considered.**

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

26 Section 24. G.S. 20-138.2(a) reads as rewritten:

27 "(a) Offense. – A person commits the offense of impaired driving in a commercial
28 motor vehicle if ~~he~~ the person drives a commercial motor vehicle upon any highway, any
29 street, or any public vehicular area within the State:

30 (1) While under the influence of an impairing substance; or

31 (2) After having consumed sufficient alcohol that ~~he~~ the person has, at any
32 relevant time after the driving, ~~an any alcohol concentration of 0.04 or~~
33 ~~more concentration."~~

34 Section 24.1. G.S. 20-138.2(e) reads as rewritten:

35 ~~"(e) Punishment; Effect When Impaired Driving Offense Also Charged.—~~
36 Punishment.— The offense in this section is a Class 1 misdemeanor and any defendant
37 convicted under this section shall be sentenced under G.S. 20-179. This offense is not a
38 lesser included offense of impaired driving under G.S. 20-138.1, ~~but and~~ if a person is
39 convicted under this section and of an offense involving impaired driving under G.S. 20-
40 138.1 arising out of the same transaction, the aggregate punishment imposed by the Court
41 may not exceed the maximum punishment applicable to the offense involving impaired
42 driving under G.S. 20-138.1."

43 Section 24.2. G.S. 20-179.3(b) reads as rewritten:

1 "(b) Eligibility. –

2 (1) A person convicted of the offense of impaired driving under G.S. 20-
3 138.1 is eligible for a limited driving privilege if:

- 4 a. At the time of the offense ~~he~~the person held either a valid
5 ~~driver's~~drivers license or a license that had been expired for less
6 than one year;
- 7 b. At the time of the offense ~~he~~the person had not within the
8 preceding seven years been convicted of an offense involving
9 impaired driving;
- 10 c. Punishment Level Three, Four, or Five was imposed for the
11 offense of impaired driving;
- 12 d. Subsequent to the offense ~~he~~the person has not been convicted
13 of, or had an unresolved charge lodged against him for, an
14 offense involving impaired driving; and
- 15 e. The person has obtained and filed with the court a substance
16 abuse assessment of the type required by G.S. 20-17.6 for the
17 restoration of a drivers license.

18 A person whose North Carolina ~~driver's~~drivers license is revoked
19 because of a conviction in another jurisdiction substantially equivalent
20 to impaired driving under G.S. 20-138.1 is eligible for a limited driving
21 privilege if ~~he~~the person would be eligible for it had the conviction
22 occurred in North Carolina. Eligibility for a limited driving privilege
23 following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-
24 16.2(e1).

25 (1a) A person convicted of a first offense of impaired driving in a
26 commercial vehicle under G.S. 20-138.2 is eligible for a limited
27 commercial driving privilege if:

- 28 a. At the time of the offense the person held either a valid
29 commercial drivers license or a commercial drivers license that
30 had been expired for less than one year;
- 31 b. At the time of the offense the person had not within the
32 preceding seven years been convicted of an offense involving
33 impaired driving;
- 34 c. Punishment Level Three, Four, or Five was imposed for the
35 offense of impaired driving in a commercial vehicle;
- 36 d. Subsequent to the offense the person has not been convicted of,
37 or had an unresolved charge lodged against the person for, an
38 offense involving impaired driving; and
- 39 e. The person has obtained and filed with the court a substance
40 abuse assessment of the type required by G.S. 20-17.6 for the
41 restoration of a drivers license.

42 A person whose North Carolina commercial drivers license is revoked
43 because of a conviction in another jurisdiction substantially equivalent

1 to impaired driving under G.S. 20-138.2 is eligible for a limited driving
2 privilege if the person would be eligible for it had the conviction
3 occurred in North Carolina. Eligibility for a limited driving privilege
4 following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-
5 16.2(e1).

6 (2) Any person whose licensing privileges are forfeited pursuant to G.S.
7 15A-1331A is eligible for a limited driving privilege if the court finds
8 that at the time of the forfeiture, the person held either a valid drivers
9 license or a drivers license that had been expired for less than one year
10 and

11 a. The person is supporting existing dependents or must have a
12 drivers license to be gainfully employed; or

13 b. The person has an existing dependent who requires serious
14 medical treatment and the defendant is the only person able to
15 provide transportation to the dependent to the health care facility
16 where the dependent can receive the needed medical treatment.

17 The limited driving privilege granted under this subdivision must
18 restrict the person to essential driving related to the purposes listed
19 above, and any driving that is not related to those purposes is unlawful
20 even though done at times and upon routes that may be authorized by
21 the privilege."

22 PART III. ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS
23 OF CHILD CARE VEHICLES.

24 Section 25. G.S. 20-4.01(27) reads as rewritten:

25 "(27) Passenger Vehicles. –

26 a. Excursion passenger vehicles. – Vehicles transporting
27 persons on sight-seeing or travel tours.

28 b. For hire passenger vehicles. – Vehicles transporting
29 persons for compensation. This classification shall not
30 include vehicles operated as ambulances; vehicles
31 operated by the owner where the costs of operation are
32 shared by the passengers; vehicles operated pursuant to a
33 ridesharing arrangement as defined in G.S. 136-44.21;
34 vehicles transporting students for the public school system
35 under contract with the State Board of Education or
36 vehicles leased to the United States of America or any of
37 its agencies on a nonprofit basis; or vehicles used for
38 human service or volunteer transportation.

39 c. Common carriers of passengers. – Vehicles operated
40 under a certificate of authority issued by the Utilities
41 Commission for operation on the highways of this State
42 between fixed termini or over a regular route for the
43 transportation of persons for compensation.

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

- 1 e. U-drive-it passenger vehicles. – Vehicles rented or leased
2 to be operated by the lessee. This shall not include
3 vehicles of nine-passenger capacity or less which are
4 leased for a term of one year or more to the same person
5 or vehicles leased or rented to public school authorities for
6 driver-training instruction.
- 7 f. Ambulances. – Vehicles equipped for transporting
8 wounded, injured, or sick persons.
- 9 g. Private passenger vehicles. – All other passenger vehicles
10 not included in the above definitions."

11 Section 26. G.S. 20-16.2(a) reads as rewritten:

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

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

- 22 (1) The person has a right to refuse to be tested.
- 23 (2) Refusal to take any required test or tests will result in an immediate
24 revocation of the person's driving privilege for at least 30 days and an
25 additional 12-month revocation by the Division of Motor Vehicles.
- 26 (3) The test results, or the fact of the person's refusal, will be admissible in
27 evidence at trial on the offense charged.
- 28 (4) The person's driving privilege will be revoked immediately for at least
29 30 days if any of the following occur:
- 30 a. The test reveals an alcohol concentration of 0.08 or ~~more~~; ~~or~~
31 more.
- 32 b. The person was driving a commercial motor vehicle and the test
33 reveals an alcohol concentration of 0.04 or more.
- 34 c. The person was driving a school bus, a school activity bus, or a
35 child care vehicle while transporting children and the test reveals
36 any alcohol concentration.
- 37 (5) The person may choose a qualified person to administer a chemical test
38 or tests in addition to any test administered at the direction of the
39 charging officer.
- 40 (6) The person has the right to call an attorney and select a witness to view
41 for him or her the testing procedures, but the testing may not be delayed
42 for these purposes longer than 30 minutes from the time when the
43 person is notified of his or her rights.

1 If the charging officer or an arresting officer is authorized to administer a chemical
2 analysis of a person's breath, the charging officer or the arresting officer may give the
3 person charged the oral and written notice of rights required by this subsection. This
4 authority applies regardless of the type of chemical analysis designated."

5 Section 27. G.S. 20-16.5(b) reads as rewritten:

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

- 10 (1) A charging officer has reasonable grounds to believe that the person has
11 committed an offense subject to the implied-consent provisions of G.S.
12 20-16.2;
- 13 (2) The person is charged with that offense as provided in G.S. 20-16.2(a);
- 14 (3) The charging officer and the chemical analyst comply with the
15 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's
16 submission to or procuring a chemical analysis; and
- 17 (4) The person:
- 18 a. Willfully refuses to submit to the chemical analysis;
- 19 b. Has an alcohol concentration of 0.08 or more within a relevant
20 time after the driving; ~~or~~
- 21 c. Has an alcohol concentration of 0.04 or more at any relevant time
22 after the driving of a commercial ~~vehicle.~~ vehicle; or
- 23 d. Has any alcohol concentration at any relevant time after
24 transporting children in a school bus, a school activity bus, or a
25 child care vehicle."

26 Section 28. G.S. 20-16.5(b1) reads as rewritten:

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

- 30 (1) ~~He~~ The person requests a precharge chemical analysis pursuant to G.S.
31 20-16.2(i); and
- 32 (2) ~~He~~ The person has:
- 33 a. An alcohol concentration of 0.08 or more at any relevant time
34 after driving; ~~or~~
- 35 b. An alcohol concentration of 0.04 or more at any relevant time
36 after driving a commercial motor ~~vehicle; and~~ vehicle; or
- 37 c. Any alcohol concentration at any relevant time after transporting
38 children in a school bus, a school activity bus, or a child care
39 vehicle; and
- 40 (3) ~~He~~ The person is charged with an implied-consent offense."

41 Section 29. G.S. 20-138.1(a) reads as rewritten:

1 "(a) Offense. – A person commits the offense of impaired driving if ~~he~~the person
2 drives any vehicle upon any highway, any street, or any public vehicular area within this
3 State:

4 (1) While under the influence of an impairing substance; ~~or~~

5 (2) After having consumed sufficient alcohol that ~~he~~the person has, at any
6 relevant time after the driving, an alcohol concentration of 0.08 or ~~more~~
7 more; or

8 (3) At any relevant time after the driving of a school bus, a school activity
9 bus, or a child care vehicle transporting any children, any alcohol
10 concentration."

11 PART IV. IMMEDIATE CIVIL REVOCATION FOR DRIVERS UNDER 21 YEARS
12 OF AGE.

13 Section 30. G.S. 20-16.2(a) reads as rewritten:

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

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

24 (1) The person has a right to refuse to be tested.

25 (2) Refusal to take any required test or tests will result in an immediate
26 revocation of the person's driving privilege for at least 30 days and an
27 additional 12-month revocation by the Division of Motor Vehicles.

28 (3) The test results, or the fact of the person's refusal, will be admissible in
29 evidence at trial on the offense charged.

30 (4) The person's driving privilege will be revoked immediately for at least
31 30 days if:

32 a. The test reveals an alcohol concentration of 0.08 or more; ~~or~~

33 b. The person was driving a commercial motor vehicle and the test
34 reveals an alcohol concentration of 0.04 or ~~more~~more; or

35 c. The person is under 21 years of age and the test reveals any
36 alcohol concentration."

37 Section 31. G.S. 20-16.5(b) reads as rewritten:

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

- 1 (1) A charging officer has reasonable grounds to believe that the person has
2 committed an offense subject to the implied-consent provisions of G.S.
3 20-16.2;
- 4 (2) The person is charged with that offense as provided in G.S. 20-16.2(a);
- 5 (3) The charging officer and the chemical analyst comply with the
6 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's
7 submission to or procuring a chemical analysis; and
- 8 (4) The person:
- 9 a. Willfully refuses to submit to the chemical analysis;
- 10 b. Has an alcohol concentration of 0.08 or more within a relevant
11 time after the driving; ~~or~~
- 12 c. Has an alcohol concentration of 0.04 or more at any relevant time
13 after the driving of a commercial ~~vehicle-vehicle~~; or
- 14 d. Has any alcohol concentration at any relevant time after the
15 driving and the person is under 21 years of age."

16 Section 32. G.S. 20-16.5(b1) reads as rewritten:

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

- 20 (1) ~~He~~The person requests a precharge chemical analysis pursuant to G.S.
21 20-16.2(i); and
- 22 (2) ~~He~~The person has:
- 23 a. An alcohol concentration of 0.08 or more at any relevant time
24 after driving; ~~or~~
- 25 b. An alcohol concentration of 0.04 or more at any relevant time
26 after driving a commercial motor vehicle; ~~and-or~~
- 27 c. Any alcohol concentration at any relevant time after driving and
28 the person is under 21 years of age; and
- 29 (3) ~~He~~The person is charged with an implied-consent offense."

30 PART V. MISCELLANEOUS PROVISIONS.

31 Section 35. From funds appropriated to the Department of Public Instruction,
32 the Department shall be authorized to hire a part-time person to handle the administration
33 of a statewide contract, or regional contracts for services to tow, store, process, maintain,
34 and sell motor vehicles seized pursuant to G.S. 20-28.9.

35 PART VI. EFFECTIVE DATE.

36 Section 36. Parts I and V of this act become effective October 1, 1998, and
37 apply to offenses committed, contracts entered, and motor vehicles seized on or after that
38 date. Parts II, III, and IV of this act become effective December 1, 1998, and apply to
39 offenses committed on or after that date. The remainder of this act is effective when it
40 becomes law. The provisions of G.S. 20-28.3(e), (e1), (e2), (e3), (h), and (i) as set forth
41 in Section 3 of the act shall also apply to vehicles held on or after the effective date as a
42 result of seizure that occurred before, on, or after that date.