

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 451
Committee Substitute Favorable 4/28/11

Short Title: DWLR Penalties Increased/Vehicle Seizures.

(Public)

Sponsors:

Referred to:

March 24, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTIES FOR DRIVING WHILE LICENSE REVOKED BY SETTING MINIMUM FINES FOR THE INITIAL AND SUBSEQUENT CONVICTIONS AND BY REQUIRING THE VEHICLE BEING OPERATED BY A DRIVER WHOSE LICENSE OR DRIVING PRIVILEGES ARE REVOKED AFTER TWO PRIOR CONVICTIONS FOR DRIVING WHILE LICENSE REVOKED TO BE SEIZED AND FORFEITED TO THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-28 reads as rewritten:

"§ 20-28. Unlawful to drive while license revoked, after notification, or while disqualified.

(a) Driving While License Revoked. – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of (i) a Class 1 misdemeanor or misdemeanor for a first or second offense or (ii) a Class A1 misdemeanor for a third or subsequent offense. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

The restorer of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for driving without a license.

(a1) Driving Without Reclaiming License. – A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

- (1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and
- (2) a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 45 days as provided under subdivision (3) of that subsection; or
b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or
- (3) At the time of the offense the person had met the requirements of G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the person's drivers license privilege as provided therein.

In addition, a person punished under this subsection shall be treated for drivers license and insurance rating purposes as if the person had been convicted of driving without a license under



1 G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be
2 so treated.

3 (a2) Driving After Notification or Failure to Appear. – A person shall be guilty of a
4 Class 1 misdemeanor if:

5 (1) The person operates a motor vehicle upon a highway while that person's
6 license is revoked for an impaired drivers license revocation after the
7 Division has sent notification in accordance with G.S. 20-48; or

8 (2) The person fails to appear for two years from the date of the charge after
9 being charged with an implied-consent offense.

10 Upon conviction, the person's drivers license shall be revoked for an additional period of
11 one year for the first offense, two years for the second offense, and permanently for a third or
12 subsequent offense. The restoree of a revoked drivers license who operates a motor vehicle
13 upon the highways of the State without maintaining financial responsibility as provided by law
14 shall be punished as for driving without a license.

15 ...

16 (e) Fines. – In addition to any period of revocation required by this section, any person
17 convicted for violation of subsection (a) of this section shall pay a fine of not less than two
18 hundred fifty dollars (\$250.00) for the first offense, one thousand dollars (\$1,000) for the
19 second offense, and two thousand five hundred dollars (\$2,500) for the third and subsequent
20 offenses.

21 (f) Vehicles Subject to Seizure. – In addition to any other fine or penalty required by
22 this section, if a person is convicted of a third or subsequent violation under subsection (a) of
23 this section, the motor vehicle that was driven by the defendant at the time the defendant
24 committed the most recent offense of driving while the person's license or driving privileges are
25 revoked becomes property subject to forfeiture in accordance with the provisions of
26 G.S. 20-28.2, 20-28.3, 20-28.4, and 20-28.5."

27 **SECTION 2.** G.S. 20-28.2 reads a rewritten:

28 "**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving**
29 **license revocation; forfeiture for multiple driving while license**
30 **revoked convictions.**

31 (a) Meaning of "Impaired Driving License Revocation". – The revocation of a person's
32 drivers license is an impaired driving license revocation if the revocation is pursuant to:

33 (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), or
34 20-138.5; or

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

37 (3) The laws of another state and the offense for which the person's license is
38 revoked prohibits substantially similar conduct which if committed in this
39 State would result in a revocation listed in subdivisions (1) or (2).

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

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

44 a. The motor vehicle was operated by a person charged with an offense
45 involving impaired driving, and:

46 1. That person's drivers license was revoked as a result of a prior
47 impaired drivers license revocation; or

48 2. That person did not have a valid drivers license, and did not
49 have liability insurance.

50 b. If the motor vehicle is again operated by this particular person, and
51 the person is charged with an offense involving impaired driving,

- 1 then the vehicle is subject to impoundment and forfeiture if (i) the
2 offense occurs while that person's drivers license is revoked, or (ii)
3 the offense occurs while the person has no valid drivers license, and
4 has no liability ~~insurance; and~~ insurance.
- 5 c. A lack of knowledge or consent to the operation will not be a defense
6 in the future, unless the motor vehicle owner has taken all reasonable
7 precautions to prevent the use of the motor vehicle by this particular
8 person and immediately reports, upon discovery, any unauthorized
9 use to the appropriate law enforcement agency.
- 10 (1a) Revoked License Acknowledgment. – A written document acknowledging
11 that:
- 12 a. The motor vehicle was operated by a person charged with driving
13 while license revoked pursuant to G.S. 20-28(a) and that person has
14 two or more prior convictions for driving while license revoked
15 under G.S. 20-28(a).
- 16 b. If the motor vehicle is again operated by this particular person and
17 the person is charged with driving while license revoked pursuant to
18 G.S. 20-28(a), then the vehicle is subject to impoundment and
19 forfeiture if the offense occurs while that person's drivers license is
20 revoked.
- 21 c. A lack of knowledge or consent to the operation will not be a defense
22 in the future unless the motor vehicle owner has taken all reasonable
23 precautions to prevent the use of the motor vehicle by this particular
24 person and immediately reports upon discovery any unauthorized use
25 to the appropriate law enforcement agency.
- 26 (1b) Fair Market Value. – The value of the seized motor vehicle, as determined in
27 accordance with the schedule of values adopted by the Commissioner
28 pursuant to G.S. 105-187.3.
- 29 (2) Innocent Owner. – A motor vehicle owner:
- 30 a. Who did not know and had no reason to know that (i) the defendant's
31 drivers license was revoked, or (ii) that the defendant did not have a
32 valid drivers license, and that the defendant had no liability
33 insurance; or
- 34 b. Who knew that (i) the defendant's drivers license was revoked, or (ii)
35 that the defendant had no valid drivers license, and that the defendant
36 had no liability insurance, but the defendant drove the vehicle
37 without the person's expressed or implied permission, and the owner
38 files a police report for unauthorized use of the motor vehicle and
39 agrees to prosecute the unauthorized operator of the motor vehicle; or
- 40 c. Whose vehicle was reported stolen; or
- 41 d. Repealed by Session Laws 1999-406, s. 17.
- 42 e. Who is in the business of renting vehicles, and the vehicle was driven
43 by a person who is not listed as an authorized driver on the rental
44 contract; or
- 45 f. Who is in the business of leasing motor vehicles, who holds legal
46 title to the motor vehicle as a lessor at the time of seizure and who
47 has no actual knowledge of the revocation of the lessee's drivers
48 license at the time the lease is entered.
- 49 (2a) Insurance Company. – Any insurance company that has coverage on or is
50 otherwise liable for repairs or damages to the motor vehicle at the time of the
51 seizure.

- 1 (2b) Insurance Proceeds. – Proceeds paid under an insurance policy for damage
2 to a seized motor vehicle less any payments actually paid to valid lienholders
3 and for towing and storage costs incurred for the motor vehicle after the time
4 the motor vehicle became subject to seizure.
- 5 (3) Lienholder. – A person who holds a perfected security interest in a motor
6 vehicle at the time of seizure.
- 7 (3a) Motor Vehicle Owner. – A person in whose name a registration card or
8 certificate of title for a motor vehicle is issued at the time of seizure.
- 9 (4) Order of Forfeiture. – An order by the court which terminates the rights and
10 ownership interest of a motor vehicle owner in a motor vehicle and any
11 insurance proceeds or proceeds of sale in accordance with G.S. 20-28.2.
- 12 (5) Repealed by Session Laws 1998-182, s. 2.
- 13 (6) Registered Owner. – A person in whose name a registration card for a motor
14 vehicle is issued at the time of seizure.
- 15 (7) Repealed by Session Laws 1998-182, s. 2.

16 ...
17 (b2) When a Motor Vehicle Becomes Property Subject to Order of Forfeiture; Multiple
18 Driving While License Revoked. – A judge may determine whether the vehicle driven at the
19 time of the offense becomes subject to an order of forfeiture. The determination may be made
20 at any of the following times:

- 21 (1) A sentencing hearing for the underlying driving while license revoked
22 offense.
- 23 (2) A separate hearing after conviction of the defendant.
- 24 (3) A forfeiture hearing held at least 60 days after the defendant failed to appear
25 at the scheduled trial for the underlying offense, and the defendant's order of
26 arrest for failing to appear has not been set aside.

27 The vehicle shall become subject to an order of forfeiture if the greater weight of the evidence
28 shows that the defendant is guilty of driving while license revoked under G.S. 20-28(a) and the
29 defendant has two or more prior convictions for driving while license revoked under
30 G.S. 20-28(a).

31 (c) Duty of Prosecutor to Notify Possible Innocent Parties. – In any case in which a
32 prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture
33 under this section and the motor vehicle has not been permanently released to a nondefendant
34 vehicle owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or
35 a lienholder, pursuant to G.S. 20-28.3(e3), the prosecutor shall notify the defendant, each motor
36 vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that
37 the defendant, motor vehicle owner, or the lienholder may intervene to protect that person's
38 interest. The notice may be served by any means reasonably likely to provide actual notice, and
39 shall be served at least 10 days before the hearing at which an order of forfeiture may be
40 entered.

41 (c1) Motor Vehicles Involved in Accidents. – If a motor vehicle subject to forfeiture was
42 damaged while the defendant operator was committing the underlying ~~offense involving~~
43 ~~impaired driving, offense resulting in seizure,~~ or was damaged incident to the seizure of the
44 motor vehicle, the Division shall determine the name of any insurance companies that are the
45 insurers of record with the Division for the motor vehicle at the time of the seizure or that may
46 otherwise be liable for repair to the motor vehicle. In any case where a seized motor vehicle
47 was involved in an accident, the Division shall notify the insurance companies that the claim
48 for insurance proceeds for damage to the seized motor vehicle shall be paid to the clerk of
49 superior court of the county where the motor vehicle driver was charged to be held and
50 disbursed pursuant to further orders of the court. Any insurance company that receives written
51 or other actual notice of seizure pursuant to this section shall not be relieved of any legal

1 obligation under any contract of insurance unless the claim for property damage to the seized
2 motor vehicle minus the policy owner's deductible is paid directly to the clerk of court. The
3 insurance company paying insurance proceeds to the clerk of court pursuant to this section shall
4 be immune from suit by the motor vehicle owner for any damages alleged to have occurred as a
5 result of the motor vehicle seizure. The proceeds shall be held by the clerk. The clerk shall
6 disburse the insurance proceeds pursuant to further orders of the court.

7 (d) Forfeiture Hearing. – Unless a motor vehicle that has been seized pursuant to
8 G.S. 20-28.3 has been permanently released to an innocent owner pursuant to G.S. 20-28.3(e1),
9 a defendant owner pursuant to G.S. 20-28.3(e2), or to a lienholder pursuant to G.S. 20-28.3(e3),
10 the court shall conduct a hearing on the forfeiture of the motor vehicle. The hearing may be
11 held at the sentencing hearing on the underlying ~~offense involving impaired driving offense~~
12 resulting in seizure, at a separate hearing after conviction of the defendant, or at a separate
13 forfeiture hearing held not less than 60 days after the defendant failed to appear at the
14 scheduled trial for the underlying offense and the defendant's order of arrest for failing to
15 appear has not been set aside. If at the forfeiture hearing, the judge determines that the motor
16 vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been
17 given, the judge shall order the motor vehicle forfeited. If at the sentencing hearing or at a
18 forfeiture hearing, the judge determines that the motor vehicle is subject to forfeiture pursuant
19 to this section and proper notice of the hearing has been given, the judge shall order the motor
20 vehicle forfeited unless another motor vehicle owner establishes, by the greater weight of the
21 evidence, that such motor vehicle owner is an innocent owner as defined in this section, in
22 which case the trial judge shall order the motor vehicle released to the innocent owner pursuant
23 to the provisions of subsection (e) of this section. In any case where the motor vehicle is
24 ordered forfeited, the judge shall:

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

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

40 (e) Release of Vehicle to Innocent Motor Vehicle Owner. – At a forfeiture hearing, if a
41 nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the
42 motor vehicle was being driven by a person who was not the only motor vehicle owner or had
43 no ownership interest in the motor vehicle at the time of the underlying offense and (ii) the
44 petitioner is an "innocent owner", as defined by this section, a judge shall order the motor
45 vehicle released to that owner, conditioned upon payment of all towing and storage charges
46 incurred as a result of the seizure and impoundment of the motor vehicle.

47 Release to an innocent owner shall only be ordered upon satisfactory proof of:

- 48 (1) The identity of the person as a motor vehicle owner;
49 (2) The existence of financial responsibility to the extent required by Article 13
50 of this Chapter or by the laws of the state in which the vehicle is registered;
51 and

1 (3) Repealed by Session Laws 1998-182, s. 2, effective December 1, 1998.

2 (4) The execution of:

3 a. ~~an~~ An impaired driving acknowledgment as defined in subdivision
4 (a1)(1) of this ~~section~~ section if the seizure was for an offense
5 involving impaired driving; or

6 b. A revoked license acknowledgment as defined in subdivision
7 (a1)(1a) of this section if the seizure was for multiple violations of
8 G.S. 20-28(a).

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

14 No motor vehicle subject to forfeiture under this section shall be released to a nondefendant
15 motor vehicle owner if the records of the Division indicate the motor vehicle owner had
16 previously signed an impaired driving acknowledgment or a revoked license acknowledgment,
17 as required by this section, and the same person was operating the motor vehicle while that
18 person's license was revoked unless the innocent owner shows by the greater weight of the
19 evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of
20 the motor vehicle by this particular person and immediately reports, upon discovery, any
21 unauthorized use to the appropriate law enforcement agency. A determination by the court at
22 the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an
23 innocent owner is a final judgment and is immediately appealable to the Court of Appeals.

24"

25 **SECTION 3.** G.S. 20-28.3 reads as rewritten:

26 "**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving**
27 **impaired driving while license revoked or without license and**
28 **insurance, insurance, and for multiple driving while license revoked**
29 **convictions.**

30 (a) Motor Vehicles Subject to ~~Seizure~~ Seizure for Impaired Driving Offenses. – A
31 motor vehicle that is driven by a person who is charged with an offense involving impaired
32 driving is subject to seizure if:

33 (1) At the time of the violation, the drivers license of the person driving the
34 motor vehicle was revoked as a result of a prior impaired driving license
35 revocation as defined in G.S. 20-28.2(a); or

36 (2) At the time of the violation:

37 a. The person was driving without a valid drivers license, and

38 b. The driver was not covered by an automobile liability policy.

39 For the purposes of this subsection, a person who has a complete defense, pursuant to
40 G.S. 20-35, to a charge of driving without a drivers license, shall be considered to have had a
41 valid drivers license at the time of the violation.

42 (a1) Motor Vehicles Subject to Seizure for Multiple Driving While License Revoked
43 Convictions. – A motor vehicle is subject to seizure if that vehicle is being driven by a person
44 who is charged with the offense of driving while license revoked pursuant to G.S. 20-28(a) and
45 the person has two or more prior convictions for driving while license revoked under
46 G.S. 20-28(a).

47 (b) Duty of Officer. – If the charging officer has probable cause to believe that a motor
48 vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall
49 seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the
50 motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to
51 this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle

1 driven by a person not listed as an authorized driver on the rental contract, the officer shall not
2 seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the
3 owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was
4 not listed as an authorized driver on the rental contract. Probable cause may be based on the
5 officer's personal knowledge, reliable information conveyed by another officer, records of the
6 Division, or other reliable ~~source-sources~~. The seizing officer shall notify the ~~executive agency~~
7 ~~designated under subsection (b1) of this section~~ Division as soon as practical but no later than
8 24 hours after seizure of the motor vehicle of the seizure in accordance with procedures
9 established by the ~~executive agency designated under subsection (b1) of this section~~ Division.

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

28 (b2) Additional Notification to Lienholders. – In addition to providing written
29 notification pursuant to subsection (b1) of this section, within eight hours of receipt within
30 regular business hours of the notice of seizure, the ~~executive agency designated under~~
31 ~~subsection (b1) of this section~~ Division shall notify by facsimile any lienholder of record that
32 has provided the ~~executive agency~~ Division with a designated facsimile number for notification
33 of impoundment. The facsimile notification of impoundment shall state that the vehicle has
34 been seized, state the reason for the seizure, and notify the lienholder of the additional written
35 notification that will be provided pursuant to subsection (b1) of this section. The ~~executive~~
36 ~~agency~~ Division shall establish procedures to allow a lienholder to provide one designated
37 facsimile number for notification of impoundment for any vehicle for which the lienholder is a
38 lienholder of record and shall maintain a centralized database of the provided facsimile
39 numbers. The lienholder must provide a facsimile number at which the ~~executive~~
40 ~~agency~~ Division may give notification of impoundment at anytime.

41 ...

42 (e) Release of Motor Vehicle Pending Trial. – A motor vehicle owner, other than the
43 driver at the time of the underlying offense resulting in the seizure, may apply to the clerk of
44 superior court in the county where the charges are pending for pretrial release of the motor
45 vehicle.

46 The clerk shall release the motor vehicle to a nondefendant motor vehicle owner
47 conditioned upon payment of all towing and storage charges incurred as a result of seizure and
48 impoundment of the motor vehicle under the following conditions:

- 49 (1) The motor vehicle has been seized for not less than 24 hours;
- 50 (2) Repealed by Session Laws 1998-182, s. 3, effective December 1, 1998.

- 1 (3) A bond in an amount equal to the fair market value of the motor vehicle as
2 defined by G.S. 20-28.2 has been executed and is secured by a cash deposit
3 in the full amount of the bond, by a recordable deed of trust to real property
4 in the full amount of the bond, by a bail bond under G.S. 58-71-1(2), or by at
5 least one solvent surety, payable to the county school fund and conditioned
6 on return of the motor vehicle, in substantially the same condition as it was
7 at the time of seizure and without any new or additional liens or
8 encumbrances, on the day of any hearing scheduled and noticed by the
9 district attorney under G.S. 20-28.2(c), unless the motor vehicle has been
10 permanently released;
- 11 (4) Execution of either:
- 12 a. ~~an~~ An impaired driving acknowledgment as described in
13 G.S. 20-28.2(a1);G.S. 20-28.2(a1)(1) if the seizure was for an
14 offense involving impaired driving; or
- 15 b. A revoked license acknowledgment as defined in
16 G.S. 20-28.2(a1)(1a) if the seizure was for multiple violations of
17 G.S. 20-28(a).
- 18 (5) A check of the records of the Division indicates that the requesting motor
19 vehicle owner has not previously executed an acknowledgment naming the
20 operator of the seized motor vehicle; and
- 21 (6) A bond posted to secure the release of this motor vehicle under this
22 subsection has not been previously ordered forfeited under G.S. 20-28.5.

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

30 (e1) Pretrial Release of Motor Vehicle to Innocent Owner. – A nondefendant motor
31 vehicle owner may file a petition with the clerk of court seeking a pretrial determination that
32 the petitioner is an innocent owner. The clerk shall consider the petition and make a
33 determination as soon as may be feasible. At any proceeding conducted pursuant to this
34 subsection, the clerk is not required to determine the issue of forfeiture, only the issue of
35 whether the petitioner is an innocent owner. If the clerk determines that the petitioner is an
36 innocent owner, the clerk shall release the motor vehicle to the petitioner subject to the same
37 conditions as if the petitioner were an innocent owner under G.S. 20-28.2(e). The clerk shall
38 send a copy of the order authorizing or denying release of the vehicle to the district attorney
39 and the attorney for the county board of education. An order issued under this subsection
40 finding that the petitioner failed to establish that the petitioner is an innocent owner may be
41 reconsidered by the court as part of the forfeiture hearing conducted pursuant to
42 G.S. 20-28.2(d).

43 (e2) Pretrial Release of Motor Vehicle to Defendant Owner. – A If the seizure was for an
44 offense involving impaired driving, a defendant motor vehicle owner may file a petition with
45 the clerk of court seeking a pretrial determination that the defendant's license was not revoked
46 pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a). The clerk shall
47 schedule a hearing before a judge of the division in which the underlying criminal charge is
48 pending for a hearing to be held within 10 business days or as soon thereafter as may be
49 feasible. Notice of the hearing shall be given to the defendant, the district attorney, and the
50 attorney for the county board of education. The clerk shall forward a copy of the petition to the
51 district attorney for the district attorney's review. If, based on available information, the district

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

16 (e3) Pretrial Release of Motor Vehicle to Lienholder. –

- 17 (1) A lienholder may file a petition with the clerk of court requesting the court
18 to order pretrial release of a seized motor vehicle. The lienholder shall serve
19 a copy of the petition on all interested parties which shall include the
20 registered owner, the titled owner, the district attorney, and the county board
21 of education attorney. Upon 10 days' prior notice of the date, time, and
22 location of the hearing sent by the lienholder to all interested parties, a
23 judge, after a hearing, shall order a seized motor vehicle released to the
24 lienholder conditioned upon payment of all towing and storage costs
25 incurred as a result of the seizure and impoundment of the motor vehicle if
26 the judge determines, by the greater weight of the evidence, that:
- 27 a. Default on the obligation secured by the motor vehicle has occurred;
 - 28 b. As a consequence of default, the lienholder is entitled to possession
29 of the motor vehicle;
 - 30 c. The lienholder agrees to sell the motor vehicle in accordance with the
31 terms of its agreement and pursuant to the provisions of Part 6 of
32 Article 9 of Chapter 25 of the General Statutes. Upon sale of the
33 motor vehicle, the lienholder will pay to the clerk of court of the
34 county in which the driver was charged all proceeds from the sale,
35 less the amount of the lien in favor of the lienholder, and any towing
36 and storage costs paid by the lienholder;
 - 37 d. The lienholder agrees not to sell, give, or otherwise transfer
38 possession of the seized motor vehicle while the motor vehicle is
39 subject to forfeiture, or the forfeited motor vehicle after the forfeiture
40 hearing, to the defendant or the motor vehicle owner; and
 - 41 e. The seized motor vehicle while the motor vehicle is subject to
42 forfeiture, or the forfeited motor vehicle after the forfeiture hearing,
43 had not previously been released to the lienholder as a result of a
44 prior seizure involving the same defendant or motor vehicle owner.
- 45 (2) The clerk of superior court may order a seized vehicle released to the
46 lienholder conditioned upon payment of all towing and storage costs
47 incurred as a result of the seizure and impoundment of the motor vehicle at
48 any time when all interested parties have, in writing, waived any rights that
49 they may have to notice and a hearing, and the lienholder has agreed to the
50 provision of subdivision ~~(1)(d)~~(1)d. above. A lienholder who refuses to sell,
51 give, or transfer possession of a seized motor vehicle while the motor

1 vehicle is subject to forfeiture, or a forfeited motor vehicle after the
2 forfeiture hearing, to:

- 3 a. The defendant;
- 4 b. The motor vehicle owner who owned the motor vehicle immediately
5 prior to seizure pending the forfeiture hearing, or to forfeiture after
6 the forfeiture hearing; or
- 7 c. Any person acting on the behalf of the defendant or the motor vehicle
8 owner,

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

12 ...

13 (k) County Board of Education Right to Appear and Participate in Proceedings. – The
14 attorney for the county board of education shall be given notice of all proceedings regarding
15 offenses ~~involving impaired driving~~ related to a motor vehicle subject to ~~forfeiture~~ forfeiture
16 under this section. However, the notice requirement under this subsection does not apply to
17 proceedings conducted under G.S. 20-28.3(e1). The attorney for the county board of education
18 shall also have the right to appear and to be heard on all issues relating to the seizure,
19 possession, release, forfeiture, sale, and other matters related to the seized vehicle under this
20 section. With the prior consent of the county board of education, the district attorney may
21 delegate to the attorney for the county board of education any or all of the duties of the district
22 attorney under this section. Clerks of superior court, law enforcement agencies, and all other
23 agencies with information relevant to the seizure, impoundment, release, or forfeiture of motor
24 vehicles are authorized and directed to provide county boards of education with access to that
25 information and to do so by electronic means when existing technology makes this type of
26 transmission possible.

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

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

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

- 45 (1) A written motion for continuance is filed with notice given to the opposing
46 party prior to the motion being heard.
- 47 (2) The judge makes a finding of a "compelling reason" for the continuance.
- 48 (3) The motion and finding are attached to the court case record.

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

1 Should a defendant appeal the conviction to superior court, any party who has not
2 previously been heard on a petition for pretrial release under subsection (e1) or (e3) of this
3 section or any party whose motor vehicle has not been the subject of a forfeiture hearing held
4 pursuant to G.S. 20-28.2(d) may be heard on a petition for pretrial release pursuant to
5 subsection (e1) or (e3) of this section. The provisions of subsection (e) of this section shall also
6 apply to seized motor vehicles pending trial in superior court. Where a motor vehicle was
7 released pursuant to subsection (e) of this section pending trial in district court, the release of
8 the motor vehicle continues, and the terms and conditions of the original bond remain the same
9 as those required for the initial release of the motor vehicle under subsection (e) of this section,
10 pending the resolution of the underlying offense involving impaired driving in superior court.

11 (n) Any order issued pursuant to this section authorizing the release of a seized vehicle
12 shall require the payment of all towing and storage charges incurred as a result of the seizure
13 and impoundment of the motor vehicle. This requirement shall not be waived."

14 **SECTION 4.** G.S. 20-28.4(a) reads as rewritten:

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

- 17 (1) Is subsequently not convicted of ~~an offense involving impaired driving~~the
18 underlying offense resulting in seizure due to dismissal or a finding of not
19 guilty; or
- 20 (2) The judge at a forfeiture hearing conducted pursuant to G.S. 20-28.2(d) ~~fails~~
21 ~~to find that the drivers license was revoked as a result of a prior impaired~~
22 ~~driving license revocation as defined in G.S. 20-28.2;~~ finds that the criteria
23 for forfeiture have not otherwise been met; and
- 24 (3) The vehicle has not previously been released to a lienholder pursuant to
25 G.S. 20-28.3(e3),

26 the seized motor vehicle or insurance proceeds held by the clerk of court pursuant to
27 G.S. 20-28.2(c1) or G.S. 20-28.3(h) shall be released to the motor vehicle owner conditioned
28 upon payment of towing and storage costs. The court shall not waive the payment of towing
29 and storage costs. The court shall include in its order notice to the owner of the seized motor
30 vehicle still being held, that within 30 days of the date of the court's order, the owner must
31 make payment of the outstanding towing and storage costs for the motor vehicle and retrieve
32 the motor vehicle, or give notice to Division of Motor Vehicles requesting a judicial hearing on
33 the validity of any mechanics' lien on the motor vehicle for towing and storage costs."

34 **SECTION 5.** G.S. 20-28.8 reads as rewritten:

35 "**§ 20-28.8. Reports to the Division.**

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

47 **SECTION 6.** G.S. 20-54.1 reads as rewritten:

48 "**§ 20-54.1. Forfeiture of right of registration.**

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

1 vehicles registered in the convicted person's name and shall not register a motor vehicle in the
2 convicted person's name until the convicted person's license is restored, except in such cases to
3 abide by the ignition interlock installation requirements of G.S. 20-17.8. Upon receipt of notice
4 of revocation of registration from the Division, the convicted person shall surrender the
5 registration on all motor vehicles registered in the convicted person's name to the Division
6 within 10 days of the date of the notice.

7 (a1) Upon receipt of notice of conviction of a third or subsequent conviction of driving
8 while license revoked pursuant to G.S. 20-28(a), the Division shall revoke the registration of all
9 motor vehicles registered in the convicted person's name and shall not register a motor vehicle
10 in the convicted person's name until the convicted person's license is restored. Upon receipt of
11 notice of revocation of registration from the Division, the convicted person shall surrender the
12 registration on all motor vehicles registered in the convicted person's name to the Division
13 within 10 days of the date of the notice.

14 (b) Upon receipt of a notice of conviction under subsection (a) or (a1) of this section,
15 the Division shall revoke the registration of the motor vehicle seized, and the owner shall not
16 be allowed to register the motor vehicle seized until the convicted operator's drivers license has
17 been restored. The Division shall not revoke the registration of the owner of the seized motor
18 vehicle if the owner is determined to be an innocent owner. The Division shall revoke the
19 owner's registration only after the owner is given an opportunity for a hearing to demonstrate
20 that the owner is an innocent owner as defined in G.S. 20-28.2. Upon receipt of notice of
21 revocation of registration from the Division, the owner shall surrender the registration on the
22 motor vehicle seized to the Division within 10 days of the date of the notice."

23 **SECTION 7.** This act becomes effective December 1, 2011, and applies to
24 offenses committed on or after that date.