

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 451
PROPOSED COMMITTEE SUBSTITUTE H451-PCS30303-SA-27

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 – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of (i) a Class 1 misdemeanor~~misdemeanor~~misdemeanor for a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(1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and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



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- 1 (3) At the time of the offense the person had met the requirements of
2 G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the
3 person's drivers license privilege as provided therein.

4 In addition, a person punished under this subsection shall be treated for drivers license and
5 insurance rating purposes as if the person had been convicted of driving without a license under
6 G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be
7 so treated.

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

- 10 (1) The person operates a motor vehicle upon a highway while that person's
11 license is revoked for an impaired drivers license revocation after the
12 Division has sent notification in accordance with G.S. 20-48; or
13 (2) The person fails to appear for two years from the date of the charge after
14 being charged with an implied-consent offense.

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

20 ...

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

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

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

33 "**§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving**
34 **license ~~revocation~~ revocation; forfeiture for multiple driving while license**
35 **revoked convictions.**

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

- 38 (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
39 20-138.5; or
40 (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
41 the offense involves impaired driving; or
42 (3) The laws of another state and the offense for which the person's license is
43 revoked prohibits substantially similar conduct which if committed in this
44 State would result in a revocation listed in subdivisions (1) or (2).

45 (a1) Definitions. – As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, 20-28.7,
46 20-28.8, and 20-28.9, the following terms mean:

- 47 (1) Impaired Driving Acknowledgment. – A written document acknowledging
48 that:
49 a. The motor vehicle was operated by a person charged with an offense
50 involving impaired driving, and:

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

1 f. Who is in the business of leasing motor vehicles, who holds legal
2 title to the motor vehicle as a lessor at the time of seizure and who
3 has no actual knowledge of the revocation of the lessee's drivers
4 license at the time the lease is entered.

5 (2a) Insurance Company. – Any insurance company that has coverage on or is
6 otherwise liable for repairs or damages to the motor vehicle at the time of the
7 seizure.

8 (2b) Insurance Proceeds. – Proceeds paid under an insurance policy for damage
9 to a seized motor vehicle less any payments actually paid to valid lienholders
10 and for towing and storage costs incurred for the motor vehicle after the time
11 the motor vehicle became subject to seizure.

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

14 (3a) Motor Vehicle Owner. – A person in whose name a registration card or
15 certificate of title for a motor vehicle is issued at the time of seizure.

16 (4) Order of Forfeiture. – An order by the court which terminates the rights and
17 ownership interest of a motor vehicle owner in a motor vehicle and any
18 insurance proceeds or proceeds of sale in accordance with G.S. 20-28.2.

19 (5) Repealed by Session Laws 1998-182, s. 2.

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

22 (7) Repealed by Session Laws 1998-182, s. 2.

23 ...

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

28 (1) A sentencing hearing for the underlying driving while license revoked
29 offense.

30 (2) A separate hearing after conviction of the defendant.

31 (3) A forfeiture hearing held at least 60 days after the defendant failed to appear
32 at the scheduled trial for the underlying offense, and the defendant's order of
33 arrest for failing to appear has not been set aside.

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

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

48 (c1) Motor Vehicles Involved in Accidents. – If a motor vehicle subject to forfeiture was
49 damaged while the defendant operator was committing the underlying ~~offense involving~~
50 ~~impaired driving, offense resulting in seizure,~~ or was damaged incident to the seizure of the
51 motor vehicle, the Division shall determine the name of any insurance companies that are the

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

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

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

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

47 (e) Release of Vehicle to Innocent Motor Vehicle Owner. – At a forfeiture hearing, if a
48 nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the
49 motor vehicle was being driven by a person who was not the only motor vehicle owner or had
50 no ownership interest in the motor vehicle at the time of the underlying offense and (ii) the
51 petitioner is an "innocent owner", as defined by this section, a judge shall order the motor

1 vehicle released to that owner, conditioned upon payment of all towing and storage charges
2 incurred as a result of the seizure and impoundment of the motor vehicle.

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

- 4 (1) The identity of the person as a motor vehicle owner;
- 5 (2) The existence of financial responsibility to the extent required by Article 13
6 of this Chapter or by the laws of the state in which the vehicle is registered;
7 and
- 8 (3) Repealed by Session Laws 1998-182, s. 2, effective December 1, 1998.
- 9 (4) The execution of:

- 10 a. ~~an~~ An impaired driving acknowledgment as defined in subdivision
11 (a1)(1) of this ~~section~~ section if the seizure was for an offense
12 involving impaired driving; or
- 13 b. A revoked license acknowledgment as defined in subdivision
14 (a1)(1a) of this section if the seizure was for multiple violations of
15 G.S. 20-28(a).

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

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

31"

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

33 "**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving**
34 **impaired driving while license revoked or without license and**
35 **insurance, insurance, and for multiple driving while license revoked**
36 **convictions.**

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

- 40 (1) At the time of the violation, the drivers license of the person driving the
41 motor vehicle was revoked as a result of a prior impaired driving license
42 revocation as defined in G.S. 20-28.2(a); or
- 43 (2) At the time of the violation:
 - 44 a. The person was driving without a valid drivers license, and
 - 45 b. The driver was not covered by an automobile liability policy.

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

49 (a1) Motor Vehicles Subject to Seizure for Multiple Driving While License Revoked
50 Convictions. – A motor vehicle is subject to seizure if that vehicle is being driven by a person
51 who is charged with the offense of driving while license revoked pursuant to G.S. 20-28(a) and

1 the person has two or more prior convictions for driving while license revoked under
2 G.S. 20-28(a).

3 (b) Duty of Officer. – If the charging officer has probable cause to believe that a motor
4 vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall
5 seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the
6 motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to
7 this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle
8 driven by a person not listed as an authorized driver on the rental contract, the officer shall not
9 seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the
10 owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was
11 not listed as an authorized driver on the rental contract. Probable cause may be based on the
12 officer's personal knowledge, reliable information conveyed by another officer, records of the
13 Division, or other reliable ~~source~~sources. The seizing officer shall notify the ~~executive agency~~
14 ~~designated under subsection (b1) of this section~~Division as soon as practical but no later than
15 24 hours after seizure of the motor vehicle of the seizure in accordance with procedures
16 established by the ~~executive agency designated under subsection (b1) of this section~~Division.

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

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

48 ...

49 (e) Release of Motor Vehicle Pending Trial. – A motor vehicle owner, other than the
50 driver at the time of the underlying offense resulting in the seizure, may apply to the clerk of

1 superior court in the county where the charges are pending for pretrial release of the motor
2 vehicle.

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

- 6 (1) The motor vehicle has been seized for not less than 24 hours;
7 (2) Repealed by Session Laws 1998-182, s. 3, effective December 1, 1998.
8 (3) A bond in an amount equal to the fair market value of the motor vehicle as
9 defined by G.S. 20-28.2 has been executed and is secured by a cash deposit
10 in the full amount of the bond, by a recordable deed of trust to real property
11 in the full amount of the bond, by a bail bond under G.S. 58-71-1(2), or by at
12 least one solvent surety, payable to the county school fund and conditioned
13 on return of the motor vehicle, in substantially the same condition as it was
14 at the time of seizure and without any new or additional liens or
15 encumbrances, on the day of any hearing scheduled and noticed by the
16 district attorney under G.S. 20-28.2(c), unless the motor vehicle has been
17 permanently released;
18 (4) Execution of either:
19 a. ~~an~~ An impaired driving acknowledgment as described in
20 G.S. 20-28.2(a1);G.S. 20-28.2(a1)(1) if the seizure was for an
21 offense involving impaired driving; or
22 b. A revoked license acknowledgment as defined in
23 G.S. 20-28.2(a1)(1a) if the seizure was for multiple violations of
24 G.S. 20-28(a).
25 (5) A check of the records of the Division indicates that the requesting motor
26 vehicle owner has not previously executed an acknowledgment naming the
27 operator of the seized motor vehicle; and
28 (6) A bond posted to secure the release of this motor vehicle under this
29 subsection has not been previously ordered forfeited under G.S. 20-28.5.

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

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

50 (e2) Pretrial Release of Motor Vehicle to Defendant Owner. – ~~A~~ If the seizure was for an
51 offense involving impaired driving, a defendant motor vehicle owner may file a petition with

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

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

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

1 (2) The clerk of superior court may order a seized vehicle released to the
2 lienholder conditioned upon payment of all towing and storage costs
3 incurred as a result of the seizure and impoundment of the motor vehicle at
4 any time when all interested parties have, in writing, waived any rights that
5 they may have to notice and a hearing, and the lienholder has agreed to the
6 provision of subdivision ~~(1)(d)~~(1)d. above. A lienholder who refuses to sell,
7 give, or transfer possession of a seized motor vehicle while the motor
8 vehicle is subject to forfeiture, or a forfeited motor vehicle after the
9 forfeiture hearing, to:

- 10 a. The defendant;
11 b. The motor vehicle owner who owned the motor vehicle immediately
12 prior to seizure pending the forfeiture hearing, or to forfeiture after
13 the forfeiture hearing; or
14 c. Any person acting on the behalf of the defendant or the motor vehicle
15 owner,

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

19 ...

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

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

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

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

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

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

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

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

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

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

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

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

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

42 "**§ 20-28.8. Reports to the Division.**

43 In any case in which a vehicle has been seized pursuant to G.S. 20-28.3, in addition to any
44 other information that must be reported pursuant to this Chapter, the clerk of superior court
45 shall report to the Division by electronic means the execution of an impaired driving
46 acknowledgment as defined in G.S. 20-28.2(a1)(1), a revoked license acknowledgment as
47 defined in G.S. 20-28.2(a1)(1a), the entry of an order of forfeiture as defined in
48 G.S. 20-28.2(a1)(4), and the entry of an order of release as defined in G.S. 20-28.3 and
49 G.S. 20-28.4. Each report shall include any of the following information that has not previously
50 been reported to the Division in the case: the name, address, and drivers license number of the
51 defendant; the name, address, and drivers license number of the nondefendant motor vehicle

1 owner, if known; and the make, model, year, vehicle identification number, state of
2 registration, and vehicle registration plate number of the seized vehicle, if known."

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

4 "**§ 20-54.1. Forfeiture of right of registration.**

5 (a) Upon receipt of notice of conviction of a violation of an offense involving impaired
6 driving while the person's license is revoked as a result of a prior impaired driving license
7 revocation as defined in G.S. 20-28.2, the Division shall revoke the registration of all motor
8 vehicles registered in the convicted person's name and shall not register a motor vehicle in the
9 convicted person's name until the convicted person's license is restored, except in such cases to
10 abide by the ignition interlock installation requirements of G.S. 20-17.8. Upon receipt of notice
11 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 (a1) Upon receipt of notice of conviction of a third or subsequent conviction of driving
15 while license revoked pursuant to G.S. 20-28(a), the Division shall revoke the registration of all
16 motor vehicles registered in the convicted person's name and shall not register a motor vehicle
17 in the convicted person's name until the convicted person's license is restored. Upon receipt of
18 notice of revocation of registration from the Division, the convicted person shall surrender the
19 registration on all motor vehicles registered in the convicted person's name to the Division
20 within 10 days of the date of the notice.

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

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