

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

**H.B. 786**  
**Apr 10, 2013**  
**HOUSE PRINCIPAL CLERK**

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HOUSE DRH80262-MDxf-47 (02/15)

Short Title: RECLAIM NC Act.

(Public)

Sponsors: Representatives Warren, Jordan, B. Brown, and Collins (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED  
AN ACT TO ENACT THE REASONABLE ENACTMENT OF COMPREHENSIVE  
LEGISLATION ADDRESSING IMMIGRATION MATTERS IN NORTH CAROLINA  
(RECLAIM NC) ACT.

Whereas, the North Carolina General Assembly recognizes that the issue of  
immigration is the responsibility of the federal government; and

Whereas, the federal government has failed to address the need for enforcement of  
existing immigration laws or to act decisively to correct, amend, and reform existing  
immigration procedures and policies; and

Whereas, federal courts have consistently upheld the authority of the federal  
government to restrict the efforts of states to uphold and enforce federal immigration laws in  
order to protect their citizens and their economies; and

Whereas, the federal government has endowed illegally present aliens with certain  
entitlements to be provided by the various states via unfunded mandates; and

Whereas, those unfunded mandates and the failure to address illegal immigration  
places an unwarranted strain on our State's law enforcement agencies, educational institutions,  
and social safety nets and undermines our trust in the rule of law; and

Whereas, the General Assembly of North Carolina recognizes its responsibility to  
protect and defend the citizens and the economy of the State of North Carolina; and

Whereas, North Carolina recognizes that the greatness of this State is the result of  
appreciating, incorporating, and welcoming the vast diversity of immigrants who lawfully  
assimilate into the culture and fabric that is North Carolina; and

Whereas, we do now encourage the North Carolina congressional delegation to  
exert the strongest effort possible to enact appropriate federal legislation to secure our nation's  
borders, uphold existing immigration laws, and reform the procedures and policies regarding  
the immigration process in order to facilitate an even and orderly process for those wishing to  
immigrate to our country; and

Whereas, we encourage the President to work in a dedicated and cooperative  
fashion with Congress to restore dignity and transparency to the immigration process; and

Whereas, the wealth, beauty, and strength of North Carolina rests not only with her  
natural attributes of mountains, beaches, and abundant resources but in the character of her  
people and their ability to address problems and challenges before them with an objective  
resolve tempered with a sense of fairness and consideration for all people; Now, therefore,  
The General Assembly of North Carolina enacts:

PART I. SHORT TITLE



\* D R H 8 0 2 6 2 - M D X F - 4 7 \*

1           **SECTION 1.** This act shall be known and may be cited as "The Reasonable  
2 Enactment of Comprehensive Legislation Addressing Immigration Matters in North Carolina  
3 Act" or as "The RECLAIM NC Act."  
4

5 **PART II. INCREASE PENALTIES FOR POSSESSION, MANUFACTURE, OR SALE**  
6 **OF FALSE IDENTIFICATION DOCUMENTS**

7           **SECTION 2.(a)** G.S. 14-100.1 reads as rewritten:

8 "**§ 14-100.1. Possession or manufacture Possession, manufacture, or sale of certain**  
9 **fraudulent forms of identification.**

10       (a) Except as otherwise made unlawful by G.S. 20-30, it shall be unlawful for any  
11 person to knowingly ~~possess or manufacture~~ possess, manufacture, or sell a false or fraudulent  
12 form of identification as defined in this section for the purpose of deception, fraud, or other  
13 criminal conduct.

14       (b) Except as otherwise made unlawful by G.S. 20-30, it shall be unlawful for any  
15 person to knowingly obtain a form of identification by the use of false, fictitious, or fraudulent  
16 information.

17       (c) Possession of a form of identification obtained in violation of subsection (b) of this  
18 section shall constitute a violation of subsection (a) of this section.

19       (d) For purposes of this section, a "form of identification" means any of the following  
20 or any replica thereof:

21           (1) An identification card containing a picture, issued by any department,  
22 agency, or subdivision of the State of North Carolina, the federal  
23 government, or any other state.

24           (2) A military identification card containing a picture.

25           (3) A passport.

26           (4) An alien registration card containing a picture.

27       (e) A violation of this section shall be punished as a ~~Class 1 misdemeanor~~ Class I  
28 felony, except that the following violations of this section shall be published as a Class 1  
29 misdemeanor:

30           (1) A violation based on the mere possession of a false or fraudulent form of  
31 identification, rather than the manufacture or sale of a false or fraudulent  
32 form of identification.

33           (2) A violation by a person under the age of 21 for the purpose of the underage  
34 purchase of alcohol.

35           (3) A violation by a person under the age of 18 for the purpose of the underage  
36 purchase of tobacco products or cigarette wrapping papers."

37           **SECTION 2.(b)** G.S. 20-30 reads as rewritten:

38 "**§ 20-30. Violations of license, learner's permit, restricted drivers permit, or special**  
39 **identification card provisions.**

40       (a) Unlawful Acts. – It shall be unlawful for any person to commit any of the following  
41 acts:

42           (1) To display or cause to be displayed or to have in possession a driver's  
43 license, learner's permit, restricted drivers permit, or special identification  
44 card, knowing the same to be fictitious or to have been canceled, revoked,  
45 suspended or altered.

46           (2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not  
47 entitled thereto, a driver's license, learner's permit, restricted drivers permit,  
48 or special identification card.

49           (3) To display or to represent as one's own a drivers license, learner's permit,  
50 restricted drivers permit, or special identification card not issued to the  
51 person so displaying same.

- (4) To fail or refuse to surrender to the Division upon demand any driver's license, learner's permit, restricted drivers permit, or special identification card that has been suspended, canceled or revoked as provided by law.
- (5) To use a false or fictitious name or give a false or fictitious address in any application for a driver's license, learner's permit, restricted drivers permit, or special identification card, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application, or for any person to procure, or knowingly permit or allow another to commit any of the foregoing acts. Any license, learner's permit, restricted drivers permit, or special identification card procured as aforesaid shall be void from the issuance thereof, and any moneys paid therefor shall be forfeited to the State. ~~Any person violating the provisions of this subdivision shall be guilty of a Class 1 misdemeanor.~~
- (6) To make a color photocopy or otherwise make a color reproduction of a drivers license, learner's permit, restricted drivers permit, or special identification card which has been color-photocopied or otherwise reproduced in color, unless such color photocopy or other color reproduction was authorized by the Commissioner. It shall be lawful to make a black and white photocopy of a drivers license, learner's permit, restricted drivers permit, or special identification card or otherwise make a black and white reproduction of a drivers license, learner's permit, restricted drivers permit, or special identification card.
- (7) To sell or offer for sale any reproduction or facsimile or simulation of a driver's license, learner's permit, restricted drivers permit, or special identification card. The provisions of this subdivision shall not apply to agents or employees of the Division while acting in the course and scope of their employment. ~~Any~~ Notwithstanding subsection (c) of this section, a person, firm or corporation violating the provisions of this ~~subsection~~ subdivision shall be guilty of a ~~Class I~~ Class H felony.
- (8) To possess more than one commercial drivers license or to possess a commercial drivers license and a regular drivers ~~license~~ license or restricted drivers permit. Any commercial drivers license other than the one most recently issued is subject to immediate seizure by any law enforcement officer or judicial official. Any regular drivers license possessed at the same time as a commercial drivers license is subject to immediate seizure by any law enforcement officer or judicial official.
- (9) To present, display, or use a drivers license, learner's permit, restricted drivers permit, or special identification card that contains a false or fictitious name in the commission or attempted commission of a felony. ~~Any person violating the provisions of this subdivision shall be guilty of a Class I felony.~~
- (b) General Penalty. – Except as otherwise provided in subsections (a) and (c) of this section, a violation of this section shall be punished as a Class I felony.
- (c) Penalty in Certain Cases. – A violation of this section by a person under the age of 21 for the purpose of the underage purchase of alcohol shall be punished as a Class 1 misdemeanor. A violation of this section by a person under the age of 18 for the purpose of the underage purchase of tobacco products or cigarette wrapping papers shall be punished as a Class 2 misdemeanor."

**SECTION 2.(c)** G.S. 143-341(8)i.5. reads as rewritten:

- "5. Upon proper requisition, proper showing of need for use on State business only, and proper showing of proof that all

persons who will be driving the motor vehicle have valid drivers' licenses, to assign economically suitable transportation, either on a temporary or permanent basis, to any State employee or agency. An agency assigned a motor vehicle may not allow a person to operate that motor vehicle unless that person displays to the agency and allows the agency to copy that person's valid driver's license. Notwithstanding ~~G.S. 20-30(6)~~, G.S. 20-30(a)(6), persons or agencies requesting assignment of motor vehicles may photostat or otherwise reproduce drivers' licenses for purposes of complying with this subpart.

As used in this subpart, "economically suitable transportation" means the most cost-effective standard vehicle in the State motor fleet, unless special towing provisions are required by the agency. The Department may not assign any employee or agency a motor vehicle that is not economically suitable. The Department shall not approve requests for vehicle assignment or reassignment when the purpose of that assignment or reassignment is to provide any employee with a newer or lower mileage vehicle because of his or her rank, management authority, or length of service or because of any non-job-related reason. The Department shall not assign "special use" vehicles, such as four-wheel drive vehicles or law enforcement vehicles, to any agency or individual except upon written justification, verified by historical data, and accepted by the Secretary. The Department may provide law enforcement vehicles only to those agencies which have statutory pursuit authority."

### **PART III. CREATION OF REBUTTABLE PRESUMPTION AGAINST THE PRETRIAL RELEASE OF CERTAIN UNDOCUMENTED ALIENS**

#### **SECTION 3. G.S. 15A-533 reads as rewritten:**

#### **"§ 15A-533. Right to pretrial release in capital and noncapital cases.**

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in his discretion whether a defendant charged with a capital offense may be released before trial. If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

- (1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;
- (2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and
- (3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

(e) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds the following:

- (1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal street gang, as defined in G.S. 14-50.16;
- (2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense; and
- (3) The person has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

(f) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if the person is unlawfully present in the United States and a judicial official finds either of the following:

- (1) There is reasonable cause to believe that the person committed one or more of the following offenses:
- a. A sex offense. As used in this sub-subdivision, a "sex offense" is any offense upon conviction of which the offense becomes a reportable conviction, as that term is defined in G.S. 14-208.6(4).
- b. A violent felony, as that term is defined in G.S. 14-7.7(b), or any other criminal offense that includes assault as an essential element of the offense or as an aggravating factor in sentencing.
- c. A driving offense. As used in this sub-subdivision, the term "driving offense" means a moving violation contained in Chapter 20 of the General Statutes.
- d. A drug offense. As used in this sub-subdivision, the term "drug offense" means a violation of G.S. 90-95.
- e. A gang offense. As used in this sub-subdivision, the term "gang offense" means any violation of Article 13A of Chapter 14 of the General Statutes.
- (2) There is reasonable cause to believe that the person committed an offense not listed in subdivision (f)(1) of this section and United States Immigration and Customs Enforcement has guaranteed that, in all such cases in this State, it will issue a detainer for the initiation of removal proceedings and agree to reimburse the State for the cost of incarceration from the time of the issuance of the detainer.

Persons who are considered for bond under the provisions of ~~subsections (d) and (e)~~ subsection (d), (e), or (f) of this section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community."

**PART IV. REIMBURSEMENT OF COST OF INCARCERATING UNDOCUMENTED ALIENS**

**SECTION 4.(a)** Chapter 148 of the General Statutes is amended by adding a new section to read:

**"§ 148-2.1. Reimbursement of incarceration costs by prisoners who are unlawfully present in the United States.**

(a) Undocumented Alien Prisoner Defined. – For purposes of this section, the term "undocumented alien prisoner" means an inmate who is 18 years or older and who is unlawfully present in the United States.

(b) Reimbursement Required. – An undocumented alien prisoner who is in the custody of the Division of Adult Correction of the Department of Public Safety shall reimburse the State for the actual cost of the prisoner's incarceration, as determined by the Division. The reimbursement shall be collected by the Division and remitted to the General Fund.

(c) Outstanding Amounts. – If an undocumented alien prisoner has not made the full reimbursement required by this section upon the prisoner's release, the Division shall calculate the amount of reimbursement that is outstanding and give a verified statement of that amount to the prisoner. Any reimbursement that remains unpaid shall constitute a "debt" within the meaning of G.S. 105A-2, and may be set off against any North Carolina income tax refund due the prisoner in accordance with Chapter 105A of the General Statutes. The Department of Revenue shall pursue collection of the debt through setoff for at least 10 years from the time of the prisoner's release or termination or until the debt is satisfied.

(d) Inclusion in Judgment. – In sentencing an individual who will be subject to the requirements of subsection (b) of this section, a judge may include in the judge's order a requirement that the sentenced individual pay an amount estimated to be sufficient to cover the total actual cost of incarcerating the prisoner over the entirety of the prisoner's incarceration. The Department of Public Safety shall develop a system that enables judges to quickly and accurately estimate the appropriate amount. Any amount paid by a prisoner in satisfaction of a term in a court order imposed pursuant to this section shall be credited against the amount the prisoner owes under this section."

**SECTION 4.(b)** G.S. 148-33.1(f) reads as rewritten:

"(f) A prisoner who is convicted of a felony and who is granted work-release privileges shall give his work-release earnings, less standard payroll deductions required by law, to the Division of Adult Correction of the Department of Public Safety. A prisoner who is convicted of a misdemeanor, is committed to a local confinement facility, and is granted work-release privileges by order of the sentencing court shall give his work-release earnings, less standard payroll deductions required by law, to the custodian of the local confinement facility. Other misdemeanants granted work-release privileges shall give their work-release earnings, less standard payroll deductions required by law, to the Division of Adult Correction of the Department of Public Safety. The Division of Adult Correction of the Department of Public Safety or the sentencing court, as appropriate, shall determine the amount to be deducted from a prisoner's work-release earnings to pay for the cost of the prisoner's keep and to accumulate a reasonable sum to be paid the prisoner when he is paroled or discharged from prison. The Division or sentencing court shall also determine the amount to be disbursed by the Division or clerk of court, as appropriate, for each of the following:

- (1) To pay travel and other expenses of the prisoner made necessary by his employment;
- (2) To provide a reasonable allowance to the prisoner for his incidental personal expenses;
- (3) To make payments for the support of the prisoner's dependents in accordance with an order of a court of competent jurisdiction, or in the absence of a court order, in accordance with a determination of dependency

status and need made by the local department of social services in the county of North Carolina in which such dependents reside;

(3a) To make restitution or reparation as provided in G.S. 148-33.2.

(4) To comply with an order from any court of competent jurisdiction regarding the payment of an obligation of the prisoner in connection with any judgment rendered by the court.

(5) To comply with a written request by the prisoner to withhold an amount, when the request has been granted by the Division or the sentencing court, as appropriate.

(6) To reimburse the State for the actual cost of the prisoner pursuant to G.S. 148-2.1.

Any balance of his earnings remaining at the time the prisoner is released from prison shall be paid to him. The Social Services Commission is authorized to promulgate uniform rules and regulations governing the duties of county social services departments under this section."

## **PART V. AUTHORIZE IMMIGRATION STATUS CHECKS FOR CERTAIN PERSONS WHO ARE LAWFULLY STOPPED, DETAINED, OR ARRESTED**

**SECTION 5.** Article 23 of Chapter 15A of the General Statutes is amended by adding a new section to read:

### **"§ 15A-506. Immigration status checks of persons lawfully stopped, detained, or arrested.**

(a) Definitions. – The following definitions apply in this section:

(1) Law enforcement officer or agency. – A law enforcement officer or law enforcement agency of this State, of a county, of a municipality, or of any other political subdivision of this State.

(2) Any other law. – An ordinance of a county or municipality of this State or a State law other than this section.

(b) Verification of Status Authorized. – For any lawful stop, detention, or arrest made by a law enforcement officer or agency in the enforcement of any other law, where reasonable suspicion exists that the person stopped, detained, or arrested is an alien who is unlawfully present in the United States, the law enforcement officer or agency may make a reasonable attempt to verify the immigration status of the person with the federal government pursuant to subsection (c) of this section.

(c) Verification Procedure. – Verification of a person's immigration status under this section shall be made as promptly as possible and within 24 hours of the stop, detention, or arrest, in accordance with G.S. 64-9.

(d) Exceptions. – This section shall not apply, and verification of a person's immigration status shall not be sought, if any of the following conditions are satisfied:

(1) It is not practicable to verify the person's immigration status.

(2) Verifying the person's immigration status may hinder or obstruct an investigation.

(3) The person provides the law enforcement officer or agency with any of the following:

a. A valid North Carolina drivers license.

b. A valid North Carolina identification card.

c. A valid North Carolina restricted drivers permit.

d. A valid North Carolina restricted identification card.

e. A valid tribal enrollment card or other form of tribal identification.

f. Any valid United States federal, State, or local government issued identification, if the issuing entity requires proof of lawful presence in the United States before issuance.

- (4) The person contacted the law enforcement officer or agency in good faith for any of the following reasons:
- a. To act as a witness to a crime.
  - b. To report criminal activity.
  - c. To seek assistance as a victim of a crime.
- (e) Consistency with Federal Law. – This section shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens.
- (f) Conduct Not Authorized by Section. – This section shall not be construed to authorize any of the following:
- (1) Extending the period that a person is detained or held in custody. A person shall not be detained solely because the person's immigration status has not yet been verified in accordance with this section.
  - (2) Sole consideration of race, color, or national origin in the enforcement of this section, except to the extent permitted by the United States or North Carolina Constitutions."

## PART VI. MISCELLANEOUS PROVISIONS

**SECTION 6.** Article 1 of Chapter 64 of the General Statutes is amended by adding the following new sections to read:

**"§ 64-9. Permissible methods of verifying immigration status.**

Verification of a person's immigration status pursuant to this Chapter or any other provision of State law shall be made consistently with federal law and may be made by any of the following methods, as applicable:

- (1) Pursuant to 8 U.S.C. §§ 1373(c) and 1644 or any other provision of federal law.
- (2) By a law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.
- (3) In any other manner authorized by the federal government.

**"§ 64-10. Admissibility of immigration status records in courts of this State.**

Any record that relates to the immigration status of a person is admissible in any court of this State without further foundation or testimony from a custodian of records if the record is certified as authentic by the federal government agency that is responsible for maintaining the record. A verification of an alien's immigration status received from the federal government pursuant to G.S. 64-9 shall constitute proof of that alien's status. A court of this State shall consider only a verification of immigration status made pursuant to G.S. 64-9 in determining whether an alien is lawfully present in the United States.

**"§ 64-11. Law enforcement transport of certain unlawfully present aliens.**

Notwithstanding any other provision of law, a State or local law enforcement agency may securely transport an alien who is in the agency's custody and whom the agency has verified is unlawfully present in the United States to a federal facility in this State or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency. A law enforcement agency shall obtain judicial or executive authorization from the Governor before securely transporting an alien who is unlawfully present in the United States to a point of transfer that is outside this State.

**"§ 64-12. Construction and severability.**

- (a) Construction. – This Chapter shall be construed in a manner consistent with federal law.
- (b) Severability. – The provisions of this Chapter are severable. If any part of this Chapter is declared invalid or unconstitutional, such declaration shall not affect the remainder. If any particular interpretation or application of the provisions of this Chapter is declared

invalid or unconstitutional, such declaration shall not affect other interpretations or applications."

**PART VII. PROHIBIT THE USE OF CERTAIN DOCUMENTS FOR IDENTIFICATION PURPOSES**

**SECTION 7.(a)** Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 18.

"Identification Documents.

**"§ 15A-306. Certain documents not acceptable as identification.**

(a) The following documents shall not be acceptable for use in determining a person's actual identity or residency by a justice, judge, clerk, magistrate, law enforcement officer, or other government official:

(1) A matricula consular or other similar document issued by a consulate or embassy of another country.

(2) An identity document issued or created by any person, organization, county, city, or other local authority, except where expressly authorized to be used for this purpose by the General Assembly.

(b) No local government or law enforcement agency may establish, by policy or ordinance, the acceptability of any of the documents described in subsection (a) of this section as a form of identification to be used to determine the identity or residency of any person. Any local government policy or ordinance that contradicts this section is hereby repealed."

**SECTION 7.(b)** G.S. 20-7(b4) reads as rewritten:

"(b4) Examples of documents that are reasonably reliable indicators of residency include, but are not limited to, any of the following:

(1) A pay stub with the payee's address.

(2) A utility bill showing the address of the applicant-payor.

(3) A contract for an apartment, house, modular unit, or manufactured home with a North Carolina address signed by the applicant.

(4) A receipt for personal property taxes paid.

(5) A receipt for real property taxes paid to a North Carolina locality.

(6) A current automobile insurance policy issued to the applicant and showing the applicant's address.

(7) A monthly or quarterly financial statement from a North Carolina regulated financial institution.

~~(8) A matricula consular or substantially similar document issued by the Mexican Consulate for North Carolina.~~

~~(9) A document similar to that described in subsection (8) of this section, issued by the consulate or embassy of another country. This subdivision only applies if the Division has consulted with the United State Department of State and is satisfied with the reliability of such document."~~

**SECTION 7.(c)** G.S. 58-2-164(c) reads as rewritten:

"(c) The insurer and its agent shall also take reasonable steps to verify that the information provided by an applicant regarding the applicant's address and the place the motor vehicle is garaged is correct. The insurer may take its own reasonable steps to verify residency or eligible risk status or may rely upon the agent verification of residency or eligible risk status to meet the insurer's verification obligations under this section. The agent shall retain copies of any items obtained under this section as required under the record retention rules adopted by the Commissioner and in accordance with G.S. 58-2-185. The agent may satisfy the requirements of this section by obtaining reliable proof of North Carolina residency from the

applicant or the applicant's status as an eligible risk. Reliable proof of residency or eligible risk includes but is not limited to:

- (1) A pay stub with the payee's address.
- (2) A utility bill showing the address of the applicant-payor.
- (3) A lease for an apartment, house, modular unit, or manufactured home with a North Carolina address signed by the applicant.
- (4) A receipt for personal property taxes paid.
- (5) A receipt for real property taxes paid to a North Carolina locality.
- (6) A monthly or quarterly financial statement from a North Carolina regulated financial institution.
- (7) A valid unexpired North Carolina driver's license.
- ~~(8) A matricula consular or substantially similar document issued by the Mexican Consulate for North Carolina.~~
- ~~(9) A document similar to that described in subdivision (8) of this section, issued by the consulate or embassy of another country that would be accepted by the North Carolina Division of Motor Vehicles as set forth in G.S. 20-7(b4)(9).~~
- (10) A valid North Carolina vehicle registration.
- (11) A valid military ID.
- (12) A valid student ID for a North Carolina school or university."

**SECTION 7.(d)** G.S. 108A-55.3(b) reads as rewritten:

"(b) An applicant may meet the requirements of subsection (a) of this section by providing at least two of the following documents:

- (1) A valid North Carolina drivers license or other identification card issued by the North Carolina Division of Motor Vehicles.
- (2) A current North Carolina rent or mortgage payment receipt, or current utility bill in the name of the applicant or the applicant's legal spouse showing a North Carolina address.
- (3) A valid North Carolina motor vehicle registration in the applicant's name and showing the applicant's current address.
- (4) A document showing that the applicant is employed in this State.
- (5) One or more documents proving that the applicant's domicile in the applicant's prior state of domicile has ended, such as closing of a bank account, termination of employment, or sale of a home.
- (6) The tax records of the applicant or the applicant's legal spouse, showing a current North Carolina address.
- (7) A document showing that the applicant has registered with a public or private employment service in this State.
- (8) A document showing that the applicant has enrolled the applicant's children in a public or private school or child care facility located in this State.
- (9) A document showing that the applicant is receiving public assistance or other services requiring proof of domicile, other than medical assistance, in this State.
- (10) Records from a health department or other health care provider located in this State showing the applicant's current North Carolina address.
- (11) A written declaration made under penalty of perjury from a person who has a social, family, or economic relationship with the applicant and who has personal knowledge of the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment.
- (12) Current North Carolina voter registration card.

- (13) A document from the U.S. Department of Veterans Affairs, U.S. Department of Defense, or the U.S. Department of Homeland Security verifying the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment.
- (14) Official North Carolina school records, signed by school officials, or diplomas issued by North Carolina schools, including secondary schools, community colleges, colleges, and universities verifying the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment.
- (15) ~~A document issued by the Mexican consular or other foreign consulate verifying the applicant's intent to live in North Carolina permanently or for an indefinite period of time or that the applicant is residing in North Carolina to seek employment or with a job commitment."~~

## PART VIII. E-VERIFY CHANGES

**SECTION 8.(a)** G.S. 153A-449 reads as rewritten:

**"§ 153A-449. Contracts with private ~~entities~~; entities; contractors must use E-Verify.**

(a) Authority. – A county may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county is authorized by law to engage in.

(b) Contractors Must Use E-Verify. – No county may enter into a contract unless the contractor and the contractor's subcontractors register and participate in E-Verify to verify the work authorization of new employees."

**SECTION 8.(b)** G.S. 160A-20.1 reads as rewritten:

**"§ 160A-20.1. Contracts with private ~~entities~~; entities; contractors must use E-Verify.**

(a) Authority. – A city may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the city is authorized by law to engage in.

(b) Contractors Must Use E-Verify. – No city may enter into a contract unless the contractor and the contractor's subcontractors register and participate in E-Verify to verify the work authorization of new employees."

**SECTION 8.(c)** G.S. 143-129 is amended by adding a new subsection to read:

"(j) No contract subject to this section may be awarded by any board or governing body of the State, institution of State government, or any political subdivision of the State unless the contractor and the contractor's subcontractors register and participate in E-Verify to verify the work authorization of new employees."

**SECTION 8.(d)** Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

**"§ 143-48.5. Contractors must use E-Verify.**

No contract subject to the provisions of this Article may be entered into unless the contractor and the contractor's subcontractors register and participate in E-Verify to verify the work authorization of new employees."

**SECTION 8.(e)** G.S. 147-33.95 is amended by adding a new subsection to read:

"(g) No contract subject to the provisions of this Part may be entered into unless the contractor and the contractor's subcontractors register and participate in E-Verify to verify the work authorization of new employees."

**SECTION 8.(f)** G.S. 64-25(3) reads as rewritten:

**"§ 64-25. Definitions.**

The following definitions apply in this Article:

...  
(3) Employee. – Any individual who provides services or labor for an employer in this State for wages or other remuneration. The term shall not include an individual whose term of employment is customarily (i) affected by the seasonality of the industry in which the individual is employed or (ii) less than year round.

...."

**SECTION 8.(g)** G.S. 64-26(c) is repealed.

**SECTION 8.(h)** Article 2 of Chapter 64 of the General Statutes is amended by adding a new section to read:

**"§ 64-39. No employer penalties if employee holds restricted drivers permit or restricted identification card.**

The Commissioner shall not hold any hearing, issue any order, make any notification, or impose any penalty under this Article if a violation or alleged violation of G.S. 64-26 was with respect to an employee who possesses a valid restricted drivers permit or a valid restricted identification card."

**SECTION 8.(i)** Subsections (a) through (e) of this section become effective in accordance with the following schedule and apply to all bids submitted and all contracts entered into on or after that date:

- (1) October 1, 2013, for contractors that employ 500 or more employees as of that date, and their subcontractors.
- (2) January 1, 2014, for contractors that employ 100 or more employees but fewer than 500 employees as of that date, and their subcontractors.
- (3) July 1, 2014, for all other contractors and subcontractors.

**SECTION 8.(j)** Subsections (f) through (j) of this section are effective when they become law.

## **PART IX. REQUIRE UNDOCUMENTED ALIEN DRIVERS TO OBTAIN RESTRICTED DRIVERS PERMITS**

**SECTION 9.(a)** G.S. 20-4.01 is amended by adding a new subdivision to read:

**"(4c) Criminal History. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that includes the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes,**

and alcohol-related offenses, including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. The term shall include a final conviction in another state or in a federal jurisdiction of an offense which is substantially similar to any of the offenses listed in this subdivision."

**SECTION 9.(b)** G.S. 20-7(f)(3) reads as rewritten:

"(3) ~~Duration of license~~—license, permit, or identification card for certain other drivers, individuals. – The durations listed in subdivisions (1), (2) and (2a) of this subsection are valid unless one of the following conditions is satisfied:

a. ~~the~~ The Division determines that a license of shorter duration should be issued when the applicant holds valid documentation issued by, or under the authority of, the United States government that demonstrates the applicant's legal presence of limited duration in the United States. In no event shall a license of limited duration expire later than the expiration of the authorization for the applicant's legal presence in the United States.

b. The Division determines that a restricted drivers permit or a restricted identification card should be issued pursuant to subdivision (t) of this section. In no event shall a restricted drivers permit or a restricted identification card expire later than one year after the date of issuance.

**SECTION 9.(c)** G.S. 20-7(i) reads as rewritten:

"(i) Fees. – The fee for a regular drivers ~~license~~license, restricted drivers permit, or restricted identification card is the amount set in the following table multiplied by the number of years in the period for which the license is issued:

| <u>Class of Regular License</u> | <u>Fee for Each Year</u> |
|---------------------------------|--------------------------|
| Class A                         | \$4.00                   |
| Class B                         | \$4.00                   |
| Class C                         | \$4.00                   |

The fee for a motorcycle endorsement is one dollar and seventy-five cents (\$1.75) for each year of the period for which the endorsement is issued. The fee for an initial one-year restricted drivers permit or for an initial one-year restricted identification card shall be an amount set by the Secretary of Transportation that shall not be lower than the actual cost of processing the relevant application and furnishing the permit or card. The fee for a renewal of a restricted drivers permit or a restricted identification card shall be twenty-five dollars (\$25.00). The appropriate fee shall be paid before a person receives a regular drivers ~~license~~license, restricted identification card, restricted drivers permit, or an endorsement."

**SECTION 9.(d)** G.S. 20-7 is amended by adding the following new subsections to read:

"(t) Notwithstanding the requirements of subsection (b1) of this section that an applicant present a valid social security number, the Division shall issue a restricted drivers permit or a restricted identification card under subsection (f) of this section to an applicant present in the United States who meets all of the following requirements:

(1) The applicant is not lawfully present in the United States.

(2) The applicant agrees to a criminal history check and that check shows that the applicant does not have a criminal history. The criminal history check shall include the taking of the applicant's fingerprints.

(3) The applicant submits a valid birth certificate, passport from another country, or a copy of the federal W-2 or W-7 Internal Revenue Service form most recently submitted to the Internal Revenue Service by the applicant.

1                    G.S. 15A-306 shall not apply to documents presented pursuant to this  
2                    subdivision.

3                    (4)    The applicant demonstrates (i) that the applicant has been a resident of North  
4                    Carolina for at least one year and (ii) that the period of residency began prior  
5                    to April 1, 2013.

6                    (5)    The applicant meets all other requirements for a drivers license, including  
7                    proof of financial responsibility. This subdivision does not apply to  
8                    applications for a restricted identification card.

9                    (u)    Notwithstanding the requirements of subsection (n) of this section addressing  
10                  background colors and borders, and in addition to the other requirements of this section, a  
11                  restricted drivers permit or a restricted identification card issued under subsection (t) of this  
12                  section shall do all of the following:

13                  (1)    Be printed in a vertical format, that distinguishes them from the horizontal  
14                  format.

15                  (2)    Bear an identifying number for the license holder assigned by the Division,  
16                  the first character of which shall be a letter that is only assigned to restricted  
17                  drivers permit holders and restricted identification cards.

18                  (3)    Bear a distinguishing mark or other designation on the face of the permit or  
19                  identification card clearly denoting the limited duration of the permit or  
20                  identification card and clearly distinguishing it from other forms of licenses  
21                  of limited duration and identification cards of limited duration.

22                  (4)    Bear the permit or identification card holder's thumbprint in a manner that is  
23                  electronically readable by properly equipped law enforcement officers and  
24                  agencies.

25                  (5)    Bear a clearly legible statement that the permit or identification card (i) is  
26                  not valid as a means of demonstrating eligibility for voter registration or for  
27                  public benefits; (ii) does not legitimize the holder's presence in the United  
28                  States or the State of North Carolina; and (iii) is not valid for any other  
29                  purpose.

30                  (v)    Wherever the laws of this State refer to a "drivers license," the term shall also be  
31                  construed to refer to a restricted drivers permit, except when the law being construed confers a  
32                  benefit, privilege, or right for which lawful presence is a prerequisite."

33                  **SECTION 9.(e)** G.S. 20-15 reads as rewritten:

34                  **"§ 20-15. Authority of Division to cancel license or endorsement.**

35                  (a)    The Division shall have authority to cancel any driver's license upon determining  
36                  any of the following:

37                  (1)    The licensee was not entitled to the issuance of the license under this  
38                  Chapter.

39                  (2)    The licensee failed to give the required or correct information on the license  
40                  application or committed fraud in making the application.

41                  (3)    The licensee is no longer authorized under federal law to be legally present  
42                  in the United States.States, except that the Division shall not cancel a  
43                  restricted drivers permit pursuant to this subdivision.

44                  (a1)   The Division shall cancel and revoke the restricted drivers permit of a person who is  
45                  convicted of violating G.S. 20-313.

46                  (b)    Upon such cancellation, the licensee must surrender the license so cancelled to the  
47                  Division.

48                  (c)    Any person whose license is canceled under this section for failure to give the  
49                  required or correct information, or for committing fraud, in an application for a commercial  
50                  drivers license shall be prohibited from reapplying for a commercial drivers license for a period  
51                  of 60 days from the date of cancellation.

(d) The Division shall have authority to revoke an H endorsement of a commercial drivers license holder if the person with the endorsement is determined by the federal Transportation Security Administration to constitute a security threat, as specified in 49 C.F.R. § 1572.5(d)(4)."

**PART X. AUTHORIZE IMPOUNDMENT AND SALE OF VEHICLES FOR DRIVING WHILE LICENSE REVOKED, DRIVING WITHOUT A LICENSE, AND DRIVING WHILE FAILING TO MAINTAIN FINANCIAL RESPONSIBILITY**

**SECTION 10.** Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

**"§ 20-28.10. Seizure, impoundment, forfeiture of motor vehicles for certain other offenses under this Chapter.**

(a) Definitions. – The following definitions apply in this section:

(1) Acknowledgment. – A written document acknowledging all of the following:

a. That the motor vehicle in question was operated by a person charged with an underlying offense.

b. That a lack of knowledge or consent to the operation of the vehicle in question will not be a defense in the future, unless the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

(2) Fair market value. – The value of a seized motor vehicle, as determined in accordance with the schedule of values adopted by the Commissioner pursuant to G.S. 105-187.3.

(3) Innocent owner. – A motor vehicle owner:

a. Who did not know and had no reason to know that the defendant's conduct would constitute an underlying violation; or

b. Who knew that the defendant's conduct would constitute an underlying violation but the defendant drove the vehicle without the person's expressed or implied permission, and the owner files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle; or

c. Whose vehicle was reported stolen; or

d. Who is in the business of renting vehicles, and the vehicle was driven by a person who is not listed as an authorized driver on the rental contract; or

e. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure, and who has no actual knowledge of the revocation of the lessee's drivers license or failure to maintain financial responsibility, as applicable, at the time the lease is entered.

(4) Insurance company. – Any insurance company that has coverage on or is otherwise liable for repairs or damages to the motor vehicle at the time of the seizure.

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

- (6) Lienholder. – A person who holds a perfected security interest in a motor vehicle at the time of seizure.
- (7) Motor vehicle owner. – A person in whose name a registration card or certificate of title for a motor vehicle is issued at the time of seizure.
- (8) Order of forfeiture. – An order by the court which terminates the rights and ownership interest of a motor vehicle owner in a motor vehicle and any insurance proceeds or proceeds of sale in accordance with this section.
- (9) Underlying violation. – Any of the following:
- a. Driving while the defendant's drivers license was revoked pursuant to an impaired drivers license revocation, as that term is defined in G.S. 20-28.2(a).
  - b. A violation of G.S. 20-313.
  - c. Driving without a license under G.S. 20-35 or driving without a restricted drivers permit under G.S. 20-35.
- (b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture. – A judge may determine whether a vehicle driven at the time of the underlying offense becomes subject to an order of forfeiture. The determination may be made at any of the following times:
- (1) A sentencing hearing for the underlying offense.
  - (2) A separate hearing after conviction of the defendant.
  - (3) A forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense, and the defendant's order of arrest for failing to appear has not been set aside.
- The vehicle shall become subject to an order of forfeiture if the greater weight of the evidence shows that the defendant is guilty of an underlying violation, except that if any of the following conditions are satisfied, the vehicle shall not become subject to an order of forfeiture:
- (1) The underlying violation is a violation of G.S. 20-313 and the defendant tenders proof of financial responsibility that satisfies the requirements of G.S. 20-7(c1) to the judge.
  - (2) The underlying violation is driving without a license under G.S. 20-35 or driving without a restricted drivers permit under G.S. 20-35 and the defendant presents the judge with the defendant's valid drivers license or restricted drivers permit.
- (c) Duty of Prosecutor to Notify Possible Innocent Parties. – In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this section and the motor vehicle has not been permanently released to a nondefendant vehicle owner pursuant to subsection (p) of this section, or a lienholder pursuant to subsection (q) of this section, the prosecutor shall notify the defendant, each motor vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that the defendant, motor vehicle owner, or the lienholder may intervene to protect that person's interest. The notice may be served by any means reasonably likely to provide actual notice and shall be served at least 10 days before the hearing at which an order of forfeiture may be entered.
- (d) Motor Vehicles Involved in Accidents. – If a motor vehicle subject to forfeiture was damaged while the defendant operator was committing the underlying offense, or was damaged incident to the seizure of the motor vehicle, the Division shall determine the name of any insurance companies that are the insurers of record with the Division for the motor vehicle at the time of the seizure or that may otherwise be liable for repair to the motor vehicle. In any case where a seized motor vehicle was involved in an accident, the Division shall notify the insurance companies that the claim for insurance proceeds for damage to the seized motor vehicle shall be paid to the clerk of superior court of the county where the motor vehicle driver was charged to be held and disbursed pursuant to further orders of the court. Any insurance company that receives written or other actual notice of seizure pursuant to this section shall not

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

(e) Forfeiture Hearing. – Unless a motor vehicle that has been seized pursuant to this section has been permanently released to an innocent owner pursuant to subsection (p) of this section, or to a lienholder pursuant to subsection (q) of this section, the court shall conduct a hearing on the forfeiture of the motor vehicle. The hearing may be held at the sentencing hearing on the underlying offense, at a separate hearing after conviction of the defendant, or at a separate forfeiture hearing held not less than 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside. If at the sentencing hearing or at a forfeiture hearing, the judge determines that the motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited unless another motor vehicle owner establishes, by the greater weight of the evidence, that such motor vehicle owner is an innocent owner as defined in this section, in which case the trial judge shall order the motor vehicle released to the innocent owner pursuant to the provisions of subsection (p) of this section. In any case where the motor vehicle is ordered forfeited, the judge shall:

- (1) a. Authorize the sale of the motor vehicle at public sale or allow the county board of education to retain the motor vehicle for its own use pursuant to subsection (z) of this section; or
- b. Order the motor vehicle released to a lienholder pursuant to the provisions of subsection (g) of this section; and
- (2) a. Order any proceeds of sale or insurance proceeds held by the clerk of court to be disbursed to the county board of education; and
- b. Order any outstanding insurance claims be assigned to the county board of education in the event the motor vehicle has been damaged in an accident incident to the seizure of the motor vehicle.

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

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

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

- (1) The identity of the person as a motor vehicle owner;
- (2) The existence of financial responsibility to the extent required by Article 13 of this Chapter or by the laws of the state in which the vehicle is registered; and
- (3) The execution of an acknowledgment as defined in subdivision (a)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the

defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person was committing an underlying violation, unless the innocent owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (e) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals.

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

- (1) The lienholder's interest has been perfected and appears on the title to the forfeited vehicle;
- (2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or to the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant's or motor vehicle owner's behalf;
- (3) The forfeited motor vehicle had not previously been released to the lienholder;
- (4) The owner is in default under the terms of the security instrument evidencing the interest of the lienholder and as a consequence of the default the lienholder is entitled to possession of the motor vehicle; and
- (5) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 6 of Article 9 of Chapter 25 of the General Statutes. Upon the sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the vehicle was forfeited all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder.

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

(h) Payment of Towing and Storage Charges Required. – Any order issued pursuant to this section authorizing the release of a seized vehicle shall require the payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle. This requirement shall not be waived.

(i) Duty of Officer. – If the charging officer has probable cause to believe that a motor vehicle may be subject to forfeiture under this section because the driver is engaging in an underlying offense, the officer shall seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle driven by a person not listed as an authorized

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

10 (j) 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, to any lienholder of record, and to  
13 any motor vehicle owner who was not operating the motor vehicle at the time of the offense. A  
14 notice of seizure received outside of regular business hours shall be considered to have been  
15 received at the start of the next business day. The notification of impoundment shall be sent by  
16 first-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 records of  
18 the state where the motor vehicle is registered. This written notification shall provide notice  
19 that the motor vehicle has been seized, state the reason for the seizure, and the procedure for  
20 requesting release of the motor vehicle. Additionally, if the motor vehicle was damaged while  
21 the defendant operator was committing an underlying offense or incident to the seizure, the  
22 agency shall issue written notification of the seizure to the owner's insurance company of  
23 record and to any other insurance companies that may be insuring other motor vehicles  
24 involved in the accident. The Division shall prohibit title to a seized motor vehicle from being  
25 transferred by a motor vehicle owner unless authorized by court order.

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

39 (l) Review by Magistrate. – Upon determining that there is probable cause for seizing a  
40 motor vehicle, the seizing officer shall present to a magistrate within the county where the  
41 driver was charged an affidavit of impoundment setting forth the basis upon which the motor  
42 vehicle has been or will be seized for forfeiture. The magistrate shall review the affidavit of  
43 impoundment and if the magistrate determines the requirements of this section have been met,  
44 shall order the motor vehicle held. The magistrate may request additional information and may  
45 hear from the defendant if the defendant is present. If the magistrate determines the  
46 requirements of this section have not been met, the magistrate shall order the motor vehicle  
47 released to a motor vehicle owner upon payment of towing and storage fees. If the motor  
48 vehicle has not yet been seized, and the magistrate determines that seizure is appropriate, the  
49 magistrate shall issue an order of seizure of the motor vehicle. The magistrate shall provide a  
50 copy of the order of seizure to the clerk of court. The clerk shall provide copies of the order of  
51 seizure to the district attorney and the attorney for the county board of education.

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

8        (n) Custody of Motor Vehicle. – Unless the motor vehicle is towed pursuant to a  
9 statewide or regional contract, or a contract with the county board of education, the seized  
10 motor vehicle shall be towed by a commercial towing company designated by the law  
11 enforcement agency that seized the motor vehicle. Seized motor vehicles not towed pursuant to  
12 a statewide or regional contract or a contract with a county board of education shall be retrieved  
13 from the commercial towing company within a reasonable time, not to exceed 10 days, by the  
14 county board of education or its agent who must pay towing and storage fees to the commercial  
15 towing company when the motor vehicle is retrieved. If either a statewide or regional  
16 contractor or the county board of education chooses to contract for local towing services, all  
17 towing companies on the towing list for each law enforcement agency with jurisdiction within  
18 the county shall be given written notice and an opportunity to submit proposals prior to a  
19 contract for local towing services being awarded. The seized motor vehicle is under the  
20 constructive possession of the county board of education for the county in which the operator  
21 of the vehicle is charged at the time the vehicle is delivered to a location designated by the  
22 county board of education or delivered to its agent pending release or sale, or in the event a  
23 statewide or regional contract is in place, under the constructive possession of the Department  
24 of Public Instruction, on behalf of the State at the time the vehicle is delivered to a location  
25 designated by the Department of Public Instruction or delivered to its agent pending release or  
26 sale. Absent a statewide or regional contract that provides otherwise, each county board of  
27 education may elect to have seized motor vehicles stored on property owned or leased by the  
28 county board of education and charge a reasonable fee for storage, not to exceed ten dollars  
29 (\$10.00) per day. In the alternative, the county board of education may contract with a  
30 commercial towing and storage facility or other private entity for the towing, storage, and  
31 disposal of seized motor vehicles, and a storage fee of not more than ten dollars (\$10.00) per  
32 day may be charged. Except for gross negligence or intentional misconduct, the county board  
33 of education, or any of its employees, shall not be liable to the owner or lienholder for damage  
34 to or loss of the motor vehicle or its contents, or to the owner of personal property in a seized  
35 vehicle, during the time the motor vehicle is being towed or stored pursuant to this subsection.

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

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

43            (1) The motor vehicle has been seized for not less than 24 hours;

44            (2) A bond in an amount equal to the fair market value of the motor vehicle has  
45 been executed and is secured by a cash deposit in the full amount of the  
46 bond, by a recordable deed of trust to real property in the full amount of the  
47 bond, by a bail bond under G.S. 58-71-1(2), or by at least one solvent surety,  
48 payable to the county school fund and conditioned on return of the motor  
49 vehicle, in substantially the same condition as it was at the time of seizure  
50 and without any new or additional liens or encumbrances, on the day of any

hearing scheduled and noticed by the district attorney under subsection (c) of this section unless the motor vehicle has been permanently released;

(3) Execution of an acknowledgment;

(4) A check of the records of the Division indicates that the requesting motor vehicle owner has not previously executed an acknowledgment naming the operator of the seized motor vehicle; and

(5) A bond posted to secure the release of this motor vehicle under this subsection has not been previously ordered forfeited under subsection (z) of this section.

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

(p) Pretrial Release of Motor Vehicle to Innocent Owner. – A nondefendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the petitioner is an innocent owner. The clerk shall consider the petition and make a determination as soon as may be feasible. At any proceeding conducted pursuant to this subsection, the clerk is not required to determine the issue of forfeiture, only the issue of whether the petitioner is an innocent owner. If the clerk determines that the petitioner is an innocent owner, the clerk shall release the motor vehicle to the petitioner subject to the same conditions as if the petitioner were an innocent owner under subsection (f) of this section. The clerk shall send a copy of the order authorizing or denying release of the vehicle to the district attorney and the attorney for the county board of education. An order issued under this subsection finding that the petitioner failed to establish that the petitioner is an innocent owner may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to subsection (e) of this section.

(q) Pretrial Release of Motor Vehicle to Lienholder. –

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

a. Default on the obligation secured by the motor vehicle has occurred;

b. As a consequence of default, the lienholder is entitled to possession of the motor vehicle;

c. The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 6 of Article 9 of Chapter 25 of the General Statutes. Upon sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the driver was charged all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder;

d. The lienholder agrees not to sell, give, or otherwise transfer possession of the seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle after the forfeiture hearing, to the defendant or the motor vehicle owner; and

e. The seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle after the forfeiture hearing, had not previously been released to the lienholder as a result of a prior seizure involving the same defendant or motor vehicle owner.

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

a. The defendant;

b. The motor vehicle owner who owned the motor vehicle immediately prior to seizure pending the forfeiture hearing, or to forfeiture after the forfeiture hearing; or

c. Any person acting on the behalf of the defendant or the motor vehicle owner shall not be liable for damages arising out of such refusal. However, any subsequent violation of the conditions of release by the lienholder shall be punishable by civil or criminal contempt.

(r) Insurance Proceeds. – In the event a motor vehicle is damaged incident to the conduct of the defendant which gave rise to the seizure of a motor vehicle pursuant to this section, the county board of education, or its authorized designee, is authorized to negotiate the county board of education's interest with the insurance company and to compromise and accept settlement of any claim for damages. Property insurance proceeds accruing to the defendant, or other owner of the seized motor vehicle, shall be paid by the responsible insurance company directly to the clerk of superior court in the county where the motor vehicle driver was charged. If the motor vehicle is declared a total loss by the insurance company liable for the damages to the motor vehicle, the clerk of superior court, upon application of the county board of education, shall enter an order that the motor vehicle be released to the insurance company upon payment into the court of all insurance proceeds for damage to the motor vehicle after payment of towing and storage costs and all valid liens. The clerk of superior court shall provide the Division with a certified copy of the order entered pursuant to this subsection, and the Division shall transfer title to the insurance company or to such other person or entity as may be designated by the insurance company. Insurance proceeds paid to the clerk of court pursuant to this subsection shall be subject to forfeiture pursuant to subsection (z) of this section and shall be disbursed pursuant to further orders of the court. An affected motor vehicle owner or lienholder who objects to any agreed upon settlement under this subsection may file an independent claim with the insurance company for any additional monies believed owed. Notwithstanding any other provisions in this Chapter, nothing in this section shall require an insurance company to make payments in excess of those required pursuant to its policy of insurance on the seized motor vehicle.

(s) Expedited Sale of Seized Motor Vehicles in Certain Cases. – In order to avoid additional liability for towing and storage costs pending resolution of the proceedings of the defendant, the county board of education may, after expiration of 90 days from the date of seizure, sell any motor vehicle having a fair market value of one thousand five hundred dollars

1 (\$1,500) or less. The county board of education may also sell a motor vehicle, regardless of the  
2 fair market value, any time the outstanding towing and storage costs exceed eighty-five percent  
3 (85%) of the fair market value of the vehicle, or with the consent of all the motor vehicle  
4 owners. Any sale conducted pursuant to this subsection shall be conducted in accordance with  
5 the provisions of subdivision (z)(1) of this section, and the proceeds of the sale, after the  
6 payment of outstanding towing and storage costs or reimbursement of towing and storage costs  
7 paid by a person other than the defendant, shall be deposited with the clerk of superior court. If  
8 an order of forfeiture is entered by the court, the court shall order the proceeds held by the clerk  
9 to be disbursed as provided in subdivision (z)(2) of this section. If the court determines that the  
10 motor vehicle is not subject to forfeiture, the court shall order the proceeds held by the clerk to  
11 be disbursed first to pay the sale, towing, and storage costs, second to pay outstanding liens on  
12 the motor vehicle, and the balance to be paid to the motor vehicle owners.

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

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

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

42 (w) Trial Priority. – District court trials of underlying offenses involving forfeitures of  
43 motor vehicles pursuant to this section shall be scheduled on the seizing officer's next court  
44 date or within 30 days of the offense, whichever comes first. Once scheduled, the case shall not  
45 be continued unless all of the following conditions are met:

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

1        Upon a determination of guilt, the issue of vehicle forfeiture shall be heard by the judge  
2 immediately, or as soon thereafter as feasible, and the judge shall issue the appropriate orders  
3 pursuant to subsection (e) of this section.

4        Should a defendant appeal the conviction to superior court, any party who has not  
5 previously been heard on a petition for pretrial release under subsection (p) or (q) of this  
6 section may be heard on a petition for pretrial release pursuant to subsection (p) or (q) of this  
7 section. The provisions of subsection (o) of this section shall also apply to seized motor  
8 vehicles pending trial in superior court. Where a motor vehicle was released pursuant to  
9 subsection (o) of this section pending trial in district court, the release of the motor vehicle  
10 continues, and the terms and conditions of the original bond remain the same as those required  
11 for the initial release of the motor vehicle under subsection (o) of this section, pending the  
12 resolution of the underlying offense involving impaired driving in superior court.

13        (x) Release of Impounded Motor Vehicles by Judge; Release Upon Conclusion of Trial.  
14 – If the driver of a motor vehicle seized pursuant to this section (i) is subsequently not  
15 convicted of an underlying offense due to dismissal or a finding of not guilty or (ii) the vehicle  
16 has not previously been released to a lienholder pursuant to subsection (q) of this section, the  
17 seized motor vehicle or insurance proceeds held by the clerk of court pursuant to subsection (d)  
18 or (r) of this section shall be released to the motor vehicle owner conditioned upon payment of  
19 towing and storage costs. The court shall not waive the payment of towing and storage costs.  
20 The court shall include in its order notice to the owner of the seized motor vehicle still being  
21 held, that within 30 days of the date of the court's order, the owner must make payment of the  
22 outstanding towing and storage costs for the motor vehicle and retrieve the motor vehicle, or  
23 give notice to Division of Motor Vehicles requesting a judicial hearing on the validity of any  
24 mechanics' lien on the motor vehicle for towing and storage costs.

25        (y) Notwithstanding G.S. 44A-2(d), if the owner of the seized motor vehicle does not  
26 obtain release of the vehicle within 30 days from the date of the court's order, the possessor of  
27 the seized motor vehicle has a mechanics' lien on the seized motor vehicle for the full amount  
28 of the towing and storage charges incurred since the motor vehicle was seized and may dispose  
29 of the seized motor vehicle pursuant to Article 1 of Chapter 44A of the General Statutes. Notice  
30 of the right to a judicial hearing on the validity of the mechanics' lien given to the owner of the  
31 motor vehicle in open court in accordance with subsection (x) of this section or delivery to the  
32 owner of the vehicle of a copy of the court's order entered in accordance with subsection (x) of  
33 this section shall satisfy the notice requirement of G.S. 44A-4(b).

34        (z) Forfeiture of Impounded Motor Vehicle or Funds. –

35        (1) Sale. – A motor vehicle ordered forfeited and sold or a seized motor vehicle  
36 authorized to be sold pursuant to subsection (s) of this section, shall be sold  
37 at a public sale conducted in accordance with the provisions of Article 12 of  
38 Chapter 160A of the General Statutes, applicable to sales authorized  
39 pursuant to G.S. 160A-266(a)(2), (3), or (4), subject to the notice  
40 requirements of this subsection, and shall be conducted by the county board  
41 of education or a person acting on its behalf. Notice of sale, including the  
42 date, time, location, and manner of sale, shall be given by first-class mail to  
43 all motor vehicle owners of the vehicle to be sold at the address shown by  
44 the records of the Division. Written notice of sale shall also be given to all  
45 lienholders on file with the Division. Notice of sale shall be given to the  
46 Division in accordance with the procedures established by the Division.  
47 Notices required to be given under this subdivision shall be mailed at least  
48 10 days prior to the date of sale. A lienholder shall be permitted to purchase  
49 the motor vehicle at any such sale by bidding in the amount of its lien, if that  
50 should be the highest bid, without being required to tender any additional  
51 funds, other than the towing and storage fees. The county board of

education, or its agent, shall not sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant's or motor vehicle owner's behalf.

(2) Proceeds of sale. – Proceeds of any sale conducted under this section or subdivision (g)(5) of this section shall first be applied to the cost of sale and then to satisfy towing and storage costs. The balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of record that were properly recorded prior to the date of initial seizure of the vehicle. Any remaining balance shall be paid to the county school fund in the county in which the motor vehicle was ordered forfeited. If there is more than one school board in the county, then the net proceeds of sale, after reimbursement to the county board of education of reasonable administrative costs incurred in connection with the forfeiture and sale of the motor vehicle, shall be distributed in the same manner as fines and other forfeitures. The sale of a motor vehicle pursuant to this section shall be deemed to extinguish all existing liens on the motor vehicle and the motor vehicle shall be transferred free and clear of any liens.

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

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

## **PART XI. EFFECTIVE DATE**

**SECTION 11.** Sections 2, 3, 4, 5, and 10 of this act become effective December 1, 2013, and apply to offenses committed on or after that date. Sections 7 and 9 of this act become effective October 1, 2013. Except as otherwise provided, the remainder of this act is effective when it becomes law.