

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 318

Short Title: Strengthen DWI Forfeiture Law.

(Public)

Sponsors: Senator Simpson.

Referred to: Judiciary I.

March 1, 1989

A BILL TO BE ENTITLED

AN ACT TO CREATE AN AFFIRMATIVE DUTY FOR AN INNOCENT PARTY TO VIEW A VALID DRIVER'S LICENSE PRIOR TO LENDING USE OF OR PURCHASE MONEY FOR A VEHICLE AND TO ELIMINATE CONSIDERATION OF BUSINESS OR SCHOOL USE OF VEHICLE IN FORFEITURE PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-28.2 reads as rewritten:

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

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

- (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.4, 20-16.5, 20-17(2), or 20-17.2; or
(2) G.S. 20-16(a)(7), 20-17(1), or 20-17(9), if the offense involves impaired driving.

(b) When Motor Vehicle Becomes Property Subject to Forfeiture. – If at a sentencing hearing conducted pursuant to G.S. 20-179 the judge determines that the grossly aggravating factor described in G.S. 20-179(c)(2) applies, the motor vehicle that was driven by the defendant at the time he committed the offense of impaired driving becomes property subject to forfeiture.

(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

1 forfeiture under this section, the prosecutor must determine the identity of the vehicle
2 owner as shown on the certificate of title for the vehicle and he must also determine if
3 there are any security interests noted on the vehicle's certificate of title. The State must
4 notify the holder of each security interest that the vehicle may be subject to forfeiture
5 and that he may intervene to protect his interest. If the defendant is not the owner, a
6 similar notice must be served on the owner. The notice may be served by any means
7 reasonably likely to provide actual notice, and must be served at least fourteen days
8 before the forfeiture hearing.

9 (d) Duty of Judge. – The judge at sentencing must hold a hearing to determine if
10 the vehicle should be forfeited. At the hearing the judge may order the forfeiture if he
11 finds that:

12 (1) The vehicle is subject to forfeiture;

13 ~~(2) The vehicle is not primarily used by a member of the defendant's~~
14 ~~family or household for a business purpose or for driving to and from~~
15 ~~work or school;~~

16 ~~(2)-(3)~~ All potential innocent parties have been notified as
17 required in subsection (c); and

18 ~~(3)-(4)~~ No party has shown that he is an innocent party as described in
19 subsection (f).

20 If the owner or the holder of a security interest has not been notified, the judge may
21 continue the hearing to allow the State to serve the notice or he may decline to order
22 forfeiture. In any case in which a judge does not order the forfeiture of a vehicle subject
23 to forfeiture, he must enter into the record detailed, written reasons for his decision.

24 (e) Sale of Forfeited Vehicle Required. – If the judge orders forfeiture of the
25 vehicle pursuant to this section, he must order the sale of the vehicle. Proceeds of the
26 sale must be paid to the school fund of the county in which the property was seized.

27 (f) Innocent Party May Intervene. – At any time before the forfeiture is ordered,
28 the property owner or holder of a security interest, other than the defendant, may apply
29 to protect his interest in the motor vehicle. The application may be made to a judge
30 who has jurisdiction to try the impaired driving offense with which the motor vehicle is
31 associated. The judge must order the vehicle returned to the owner if he finds that
32 either the owner or the holder of a security interest is an innocent party. There is an
33 affirmative duty on the part of an innocent party to view a valid driver's license prior to
34 lending use of a vehicle on the part of an owner or at the time of the creation of the
35 security interest on the part of a potential security interest holder. An owner or holder
36 of a security interest is an innocent party if he:

37 (1) Did not know and had no reason to know that the defendant's driver's
38 license was revoked; or

39 (2) Knew that the defendant's driver's license was revoked, but the
40 defendant drove the vehicle without his ~~consent~~-consent, and he
41 reported either the unauthorized use by the driver or the car as stolen
42 as soon as he realized it was missing.

43 If an innocent party applies after the forfeited motor vehicle has been sold and the judge
44 finds no laches in the innocent party's delay, the judge may order a payment to the

1 innocent party from the net proceeds of the sale equal to his equity or security interest in
2 the vehicle."

3 Sec. 2. This act shall become effective October 1, 1989, and shall apply to
4 offenses occurring on or after that date.