

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1135  
Committee Substitute Favorable 4/22/99  
Third Edition Engrossed 4/26/99

Short Title: 1999 Governor's DWI Amendments.

(Public)

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Sponsors:

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Referred to:

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April 15, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S  
3 DWI TASK FORCE.  
4 The General Assembly of North Carolina enacts:  
5  
6 PART I. LOWER TOLERANCE FOR REPEAT OFFENDERS  
7 Section 1. G.S. 20-16.2 reads as rewritten:  
8 "**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in**  
9 **event of refusal; right of driver to request analysis.**  
10 (a) Basis for Charging Officer to Require Chemical Analysis; Notification of  
11 Rights. – Any person who drives a vehicle on a highway or public vehicular area thereby  
12 gives consent to a chemical analysis if charged with an implied-consent offense. The  
13 charging officer shall designate the type of chemical analysis to be administered, and it  
14 may be administered when the officer has reasonable grounds to believe that the person  
15 charged has committed the implied-consent offense.  
16 Except as provided in this subsection or subsection (b), before any type of chemical  
17 analysis is administered the person charged shall be taken before a chemical analyst

1 authorized to administer a test of a person's breath, who shall inform the person orally  
2 and also give the person a notice in writing that:

- 3 (1) The person has a right to refuse to be tested.
- 4 (2) Refusal to take any required test or tests will result in an immediate  
5 revocation of the person's driving privilege for at least 30 days and an  
6 additional 12-month revocation by the Division of Motor Vehicles.
- 7 (3) The test results, or the fact of the person's refusal, will be admissible in  
8 evidence at trial on the offense charged.
- 9 (4) The person's driving privilege will be revoked immediately for at least  
10 30 days if:
  - 11 a. The test reveals an alcohol concentration of 0.08 or more;
  - 12 b. The person was driving a commercial motor vehicle and the test  
13 reveals an alcohol concentration of 0.04 or more; or
  - 14 c. The person is under 21 years of age and the test reveals any  
15 alcohol concentration.
- 16 (5) The person may choose a qualified person to administer a chemical test  
17 or tests in addition to any test administered at the direction of the  
18 charging officer.
- 19 (6) The person has the right to call an attorney and select a witness to view  
20 for him or her the testing procedures, but the testing may not be delayed  
21 for these purposes longer than 30 minutes from the time when the  
22 person is notified of his or her rights.

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

27 (a1) Meaning of Terms. – Under this section, an "implied-consent offense" is an  
28 offense involving impaired driving or an alcohol-related offense made subject to the  
29 procedures of this section. A person is "charged" with an offense if the person is arrested  
30 for it or if criminal process for the offense has been issued. A "charging officer" is a law-  
31 enforcement officer who arrests the person charged, lodges the charge, or assists the  
32 officer who arrested the person or lodged the charge by assuming custody of the person  
33 to make the request required by subsection (c) and, if necessary, to present the person to a  
34 judicial official for an initial appearance.

35 (b) Unconscious Person May Be Tested. – If a charging officer has reasonable  
36 grounds to believe that a person has committed an implied-consent offense, and the  
37 person is unconscious or otherwise in a condition that makes the person incapable of  
38 refusal, the charging officer may direct the taking of a blood sample by a person qualified  
39 under G.S. 20-139.1 or may direct the administration of any other chemical analysis that  
40 may be effectively performed. In this instance the notification of rights set out in  
41 subsection (a) and the request required by subsection (c) are not necessary.

42 (c) Request to Submit to Chemical Analysis; ~~Procedure upon Refusal Analysis.~~ –  
43 The charging officer, in the presence of the chemical analyst who has notified the person

1 of his or her rights under subsection (a), must request the person charged to submit to the  
2 type of chemical analysis designated. If the person charged willfully refuses to submit to  
3 that chemical analysis, none may be given under the provisions of this section, but the  
4 refusal does not preclude testing under other applicable procedures of law. ~~If the person  
5 refuses to submit to the chemical analysis, the charging officer and the chemical analyst must  
6 without unnecessary delay go before an official authorized to administer oaths and execute an  
7 affidavit stating that the person charged, after being advised of his or her rights under subsection  
8 (a), willfully refused to submit to a chemical analysis at the request of the charging officer. The  
9 charging officer must immediately mail the affidavit to the Division. If the person's refusal to  
10 submit to a chemical analysis occurs in a case involving death or critical injury to another  
11 person, the charging officer must include that fact in the affidavit mailed to the Division. If the  
12 charging officer is also the chemical analyst who has notified the person of his or her rights  
13 under subsection (a), the charging officer may perform alone the duties of this subsection.~~

14 (c1) Procedure for Reporting Results and Refusal to Division. – Whenever a person  
15 refuses to submit to a chemical analysis or a person's drivers license has an alcohol  
16 concentration restriction and the results of the chemical analysis establish a violation of  
17 the restriction, the charging officer and the chemical analyst must without unnecessary  
18 delay go before an official authorized to administer oaths and execute an affidavit(s)  
19 stating that:

20 (1) The person was charged with an implied-consent offense or had an  
21 alcohol concentration restriction on the drivers license;

22 (2) The charging officer had reasonable grounds to believe that the person  
23 had committed an implied-consent offense or violated the alcohol  
24 concentration restriction on the drivers license;

25 (3) Whether the implied-consent offense charged involved death or critical  
26 injury to another person, if the person willfully refused to submit to  
27 chemical analysis;

28 (4) The person was notified of the rights in subsection (a); and

29 (5) The results of any tests given or that the person willfully refused to  
30 submit to a chemical analysis upon the request of the charging officer.

31 The charging officer must immediately mail the affidavit(s) to the Division. If the  
32 charging officer is also the chemical analyst who has notified the person of the rights  
33 under subsection (a), the charging officer may perform alone the duties of this subsection.  
34 The affidavit(s) under this subsection is not required if the Division is notified of the  
35 information specified in this subsection through approved electronic means.

36 (d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon  
37 receipt of a properly executed affidavit ~~required by subsection (e), affidavit(s) or  
38 information transmitted by electronic means as required in subsection (c1), the Division  
39 must expeditiously notify the person charged that the person's license to drive is revoked  
40 for 12 months, effective on the tenth calendar day after the mailing of the revocation  
41 order unless, before the effective date of the order, the person requests in writing a  
42 hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person  
43 shows to the satisfaction of the Division that his or her license was surrendered to the  
44 court, and remained in the court's possession, then the Division shall credit the amount of~~

1 time for which the license was in the possession of the court against the 12-month  
2 revocation period required by this subsection. If the person properly requests a hearing,  
3 the person retains his or her license, unless it is revoked under some other provision of  
4 law, until the hearing is held, the person withdraws the request, or the person fails to  
5 appear at a scheduled hearing. The hearing officer may subpoena any witnesses or  
6 documents that the hearing officer deems necessary. The person may request the hearing  
7 officer to subpoena the charging officer, the chemical analyst, or both to appear at the  
8 hearing if the person makes the request in writing at least three days before the hearing.  
9 The person may subpoena any other witness whom the person deems necessary, and the  
10 provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas  
11 issued under the authority of this section. The hearing officer is authorized to administer  
12 oaths to witnesses appearing at the hearing. The hearing must be conducted in the county  
13 where the charge was brought, and must be limited to consideration of whether:

- 14 (1) The person was charged with an implied-consent ~~offense~~; offense or the  
15 driver had an alcohol concentration restriction on the drivers license  
16 pursuant to G.S. 20-19;
- 17 (2) The charging officer had reasonable grounds to believe that the person  
18 had committed an implied-consent ~~offense~~; offense or violated the  
19 alcohol concentration restriction on the drivers license;
- 20 (3) The implied-consent offense charged involved death or critical injury to  
21 another person, if this allegation is in the affidavit;
- 22 (4) The person was notified of ~~his or her~~ the person's rights as required by  
23 subsection (a); and
- 24 (5) The person willfully refused to submit to a chemical analysis upon the  
25 request of the charging officer.

26 If the Division finds that the conditions specified in this subsection are met, it must order  
27 the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or  
28 (5) is not met, it must rescind the revocation. If it finds that condition (3) is alleged in the  
29 affidavit but is not met, it must order the revocation sustained if that is the only condition  
30 that is not met; in this instance subsection (d1) does not apply to that revocation. If the  
31 revocation is sustained, the person must surrender his or her license immediately upon  
32 notification by the Division.

33 (d1) Consequences of Refusal in Case Involving Death or Critical Injury. – If the  
34 refusal occurred in a case involving death or critical injury to another person, no limited  
35 driving privilege may be issued. The 12-month revocation begins only after all other  
36 periods of revocation have terminated unless the person's license is revoked under G.S.  
37 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the  
38 revocation under this subsection begins at the time and in the manner specified in  
39 subsection (d) for revocations under this section. However, the person's eligibility for a  
40 hearing to determine if the revocation under those sections should be rescinded is  
41 postponed for one year from the date on which the person would otherwise have been  
42 eligible for such a hearing. If the person's driver's license is again revoked while the 12-  
43 month revocation under this subsection is in effect, that revocation, whether imposed by a

1 court or by the Division, may only take effect after the period of revocation under this  
2 subsection has terminated.

3 (e) Right to Hearing in Superior Court. – If the revocation for a willful refusal is  
4 sustained after the hearing, the person whose license has been revoked has the right to file  
5 a petition in the superior court for a hearing de novo upon the issues listed in subsection  
6 (d), in the same manner and under the same conditions as provided in G.S. 20-25 except  
7 that the de novo hearing is conducted in the superior court district or set of districts as  
8 defined in G.S. 7A-41.1 where the charge was made.

9 (e1) Limited Driving Privilege after Six Months in Certain Instances. – A person  
10 whose driver's license has been revoked under this section may apply for and a judge  
11 authorized to do so by this subsection may issue a limited driving privilege if:

- 12 (1) At the time of the refusal the person held either a valid drivers license or  
13 a license that had been expired for less than one year;
- 14 (2) At the time of the refusal, the person had not within the preceding seven  
15 years been convicted of an offense involving impaired driving;
- 16 (3) At the time of the refusal, the person had not in the preceding seven  
17 years willfully refused to submit to a chemical analysis under this  
18 section;
- 19 (4) The implied-consent offense charged did not involve death or critical  
20 injury to another person;
- 21 (5) The underlying charge for which the defendant was requested to submit  
22 to a chemical analysis has been finally disposed of:
  - 23 a. Other than by conviction; or
  - 24 b. By a conviction of impaired driving under G.S. 20-138.1, at a  
25 punishment level authorizing issuance of a limited driving  
26 privilege under G.S. 20-179.3(b), and the defendant has complied  
27 with at least one of the mandatory conditions of probation listed  
28 for the punishment level under which the defendant was  
29 sentenced;
- 30 (6) Subsequent to the refusal the person has had no unresolved pending  
31 charges for or additional convictions of an offense involving impaired  
32 driving;
- 33 (7) The person's license has been revoked for at least six months for the  
34 refusal; and
- 35 (8) The person has obtained a substance abuse assessment from a mental  
36 health facility and successfully completed any recommended training or  
37 treatment program.

38 Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the  
39 procedure for application and conduct of the hearing and the restrictions required or  
40 authorized to be included in the limited driving privilege apply to applications under this  
41 subsection. If the case was finally disposed of in the district court, the hearing shall be  
42 conducted in the district court district as defined in G.S. 7A-133 in which the refusal  
43 occurred by a district court judge. If the case was finally disposed of in the superior court,

1 the hearing shall be conducted in the superior court district or set of districts as defined in  
2 G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving  
3 privilege issued under this section authorizes a person to drive if the person's license is  
4 revoked solely under this section or solely under this section and G.S. 20-17(2). If the  
5 person's license is revoked for any other reason, the limited driving privilege is invalid.

6 (f) Notice to Other States as to Nonresidents. – When it has been finally  
7 determined under the procedures of this section that a nonresident's privilege to drive a  
8 motor vehicle in this State has been revoked, the Division must give information in  
9 writing of the action taken to the motor vehicle administrator of the state of the person's  
10 residence and of any state in which the person has a license.

11 (g) Repealed by Session Laws 1973, c. 914.

12 (h) Repealed by Session Laws 1979, c. 423, s. 2.

13 (i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or  
14 questioned by a law-enforcement officer who is investigating whether the person may  
15 have committed an implied-consent offense may request the administration of a chemical  
16 analysis before any arrest or other charge is made for the offense. Upon this request, the  
17 officer shall afford the person the opportunity to have a chemical analysis of his or her  
18 breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The  
19 request constitutes the person's consent to be transported by the law-enforcement officer  
20 to the place where the chemical analysis is to be administered. Before the chemical  
21 analysis is made, the person shall confirm the request in writing and shall be notified:

22 (1) That the test results will be admissible in evidence and may be used  
23 against the person in any implied-consent offense that may arise;

24 (2) That the person's license will be revoked for at least 30 days if:

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

26 b. The person was driving a commercial motor vehicle and the test  
27 results reveal an alcohol concentration of 0.04 or more.

28 (3) That if the person fails to comply fully with the test procedures, the  
29 officer may charge the person with any offense for which the officer has  
30 probable cause, and if the person is charged with an implied-consent  
31 offense, the person's refusal to submit to the testing required as a result  
32 of that charge would result in revocation of the person's driver's license.  
33 The results of the chemical analysis are admissible in evidence in any  
34 proceeding in which they are relevant."

35 Section 2. G.S. 20-19 reads as rewritten:

36 "**§ 20-19. Period of suspension or ~~revocation~~-revocation; conditions of restoration.**

37 (a) When a license is suspended under subdivision (8) or (9) of G.S. 20-16(a), the  
38 period of suspension shall be in the discretion of the Division and for such time as it  
39 deems best for public safety but shall not exceed six months.

40 (b) When a license is suspended under subdivision (10) of G.S. 20-16(a), the  
41 period of suspension shall be in the discretion of the Division and for such time as it  
42 deems best for public safety but shall not exceed a period of 12 months.

1 (c) When a license is suspended under any other provision of this Article which  
2 does not specifically provide a period of suspension, the period of suspension shall be not  
3 more than one year.

4 (c1) When a license is revoked under subdivision (2) of G.S. 20-17, and the period  
5 of revocation is not determined by subsection (d) or (e) of this section, the period of  
6 revocation is one year.

7 (c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation  
8 for a first conviction shall be for 10 days. For a second or subsequent conviction as  
9 defined in G.S. 20-138.2B(d), the period of revocation shall be one year.

10 (c3) Restriction; Revocations. – When the Division restores a person's drivers  
11 license which was revoked pursuant to G.S. 20-13.2 (a), G.S. 20-23 when the offense  
12 involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1)  
13 or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in  
14 addition to any other restriction or condition, it shall place the applicable restriction on  
15 the person's drivers license as follows:

16 (1) For the first restoration of a drivers license for a person convicted of  
17 driving while impaired, G.S. 20-138.1, or a drivers license revoked  
18 pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the  
19 person's license was revoked prohibits substantially similar conduct  
20 which if committed in this State would result in a conviction of driving  
21 while impaired under G.S. 20-138.1, that the person not operate a  
22 vehicle with an alcohol concentration of 0.04 or more at any relevant  
23 time after the driving;

24 (2) For the second or subsequent restoration of a drivers license for a person  
25 convicted of driving while impaired, G.S. 20-138.1, or a drivers license  
26 revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for  
27 which the person's license was revoked prohibits substantially similar  
28 conduct which if committed in this State would result in a conviction of  
29 driving while impaired under G.S. 20-138.1, that the person not operate  
30 a vehicle with an alcohol concentration greater than 0.00 at any relevant  
31 time after the driving;

32 (3) For any restoration of a drivers license for a person convicted of driving  
33 while impaired in a commercial motor vehicle, G.S. 20-138.2, driving  
34 while less than 21 years old after consuming alcohol or drugs, G.S. 20-  
35 138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or  
36 negligent homicide resulting from the operation of a motor vehicle  
37 when the offense involved impaired driving, or a revocation under this  
38 subsection, that the person not operate a vehicle with an alcohol  
39 concentration of 0.00 or more at any relevant time after the driving;

40 (4) For any restoration of a drivers license revoked pursuant to G.S. 20-23  
41 or G.S. 20-23.2 when the offense for which the person's license was  
42 revoked prohibits substantially similar conduct which if committed in  
43 this State would result in a conviction of driving while impaired in a

1           commercial motor vehicle, G.S. 20-138.2, driving while less than 21  
2           years old after consuming alcohol or drugs, G.S. 20-138.3, felony death  
3           by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide  
4           resulting from the operation of a motor vehicle when the offense  
5           involved impaired driving, that the person not operate a vehicle with an  
6           alcohol concentration of 0.00 or more at any relevant time after the  
7           driving.

8           In addition, the person seeking restoration of a license must agree to submit to a  
9           chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement  
10          officer who has reasonable grounds to believe the person is operating a motor vehicle on  
11          a highway in violation of the restriction specified in this subsection. The person must  
12          also agree that, when requested by a law enforcement officer, the person will agree to be  
13          transported by the law enforcement officer to the place where chemical analysis is to be  
14          administered.

15          The restrictions placed on a license under this subsection shall be in effect (i) seven  
16          years from the date of restoration if the person's license was permanently revoked, (ii)  
17          until the person's twenty-first birthday if the revocation was for a conviction under G.S.  
18          20-138.3, and (iii) three years in all other cases.

19          On the basis of information reported pursuant to G.S. 20-16.2, the Division shall  
20          revoke the drivers license of any person who violates a condition of reinstatement  
21          imposed under this subsection. An alcohol concentration report from an ignition  
22          interlock system shall not be used as the basis for revocation under this subsection. A  
23          violation of a restriction imposed under this subsection or the willful refusal to submit to  
24          a chemical analysis shall result in a one-year revocation. If the period of revocation was  
25          imposed pursuant to subsection (d) or (e), any remaining period of the original  
26          revocation, prior to its reduction, shall be reinstated and the one-year revocation begins  
27          after all other periods of revocation have terminated.

28          (c4) Applicable Procedures. – When a person has violated a condition of restoration  
29          by refusing a chemical analysis, the notice and hearing procedures of G.S. 20-16.2 apply.  
30          When a person has submitted to a chemical analysis and the results show a violation of  
31          the alcohol concentration restriction, the notification and hearing procedures of this  
32          section apply.

33          (c5) Right to Hearing before Division: Issues. – Upon receipt of a properly  
34          executed affidavit required by G.S. 20-16.2(c1), the Division must expeditiously notify  
35          the person charged that the person's license to drive is revoked for the period of time  
36          specified in this section, effective on the tenth calendar day after the mailing of the  
37          revocation order unless, before the effective date of the order, the person requests in  
38          writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if  
39          the person shows to the satisfaction of the Division that the person's license was  
40          surrendered to the court and remained in the court's possession, then the Division shall  
41          credit the amount of time for which the license was in the possession of the court against  
42          the revocation period required by this section. If the person properly requests a hearing,  
43          the person retains the person's license, unless it is revoked under some other provision of



1 law, until the hearing is held, the person withdraws the request, or the person fails to  
2 appear at a scheduled hearing. The hearing officer may subpoena any witnesses or  
3 documents that the hearing officer deems necessary. The person may request the hearing  
4 officer to subpoena the charging officer, the chemical analyst, or both to appear at the  
5 hearing if the person makes the request in writing at least three days before the hearing.  
6 The person may subpoena any other witness whom the person deems necessary, and the  
7 provision of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued  
8 under the authority of this section. The hearing officer is authorized to administer oaths  
9 to witnesses appearing at the hearing. The hearing must be conducted in the county  
10 where the charge was brought, and must be limited to consideration of whether:

- 11 (1) The charging officer had reasonable grounds to believe that the person  
12 had violated the alcohol concentration restriction;  
13 (2) The person was notified of the person's rights as required by G.S. 20-  
14 16.2(a);  
15 (3) The drivers license of the person had an alcohol concentration  
16 restriction; and  
17 (4) The person submitted to a chemical analysis upon the request of the  
18 charging officer, and the analysis revealed an alcohol concentration in  
19 excess of the restriction on the person's drivers license.

20 If the Division finds that the conditions specified in this subsection are met, it must order  
21 the revocation sustained. If the Division finds that any of the conditions (1), (2), (3), or  
22 (4) is not met, it must rescind the revocation. If the revocation is sustained, the person  
23 must surrender the person's license immediately upon notification by the Division.

24 (c6) Appeal to Court. – There is no right to appeal the decision of the Division.  
25 However, if the person properly requested a hearing before the Division under subsection  
26 (c5) and the Division held such a hearing, the person may within 30 days of the date the  
27 Division's decision is mailed to the person, petition the Superior Court of the county in  
28 which the hearing took place for discretionary review on the record of the revocation.  
29 The Superior Court may stay the imposition of the revocation only if the Court finds that  
30 the person is likely to succeed on the merits of the case and will suffer irreparable harm if  
31 such a stay is not granted. The stay shall not exceed 30 days. The reviewing court shall  
32 review the record only and shall be limited to determining if the Division hearing officer  
33 followed proper procedures and if the hearing officer made sufficient findings of fact to  
34 support the revocation. There shall be no further appeal.

35 (d) When a person's license is revoked under subdivision (2) of G.S. 20-17 and  
36 the person has another offense involving impaired driving for which he has been  
37 convicted, which offense occurred within three years immediately preceding the date of  
38 the offense for which his license is being revoked, the period of revocation is four years,  
39 and this period may be reduced only as provided in this section. The Division may  
40 conditionally restore the person's license after it has been revoked for at least two years  
41 under this subsection if he provides the Division with satisfactory proof that:

- 42 (1) He has not in the period of revocation been convicted in North Carolina  
43 or any other state or federal jurisdiction of a motor vehicle offense, an

1 alcoholic beverage control law offense, a drug law offense, or any other  
2 criminal offense involving the possession or consumption of alcohol or  
3 drugs; and

4 (2) He is not currently an excessive user of alcohol or drugs.

5 If the Division restores the person's license, it may place reasonable conditions or  
6 restrictions on the person for the duration of the original revocation period.

7 (e) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the  
8 person has two or more previous offenses involving impaired driving for which he has  
9 been convicted, and the most recent offense occurred within the five years immediately  
10 preceding the date of the offense for which his license is being revoked, the revocation is  
11 permanent. The Division may, however, conditionally restore the person's license after it  
12 has been revoked for at least three years under this subsection if he provides the Division  
13 with satisfactory proof that:

14 (1) In the three years immediately preceding the person's application for a  
15 restored license, he has not been convicted in North Carolina or in any  
16 other state or federal court of a motor vehicle offense, an alcohol  
17 beverage control law offense, a drug law offense, or any criminal  
18 offense involving the consumption of alcohol or drugs; and

19 (2) He is not currently an excessive user of alcohol or drugs.

20 If the Division restores the person's license, it may place reasonable conditions or  
21 restrictions on the person for any period up to three years from the date of restoration.

22 (f) When a license is revoked under any other provision of this Article which does  
23 not specifically provide a period of revocation, the period of revocation shall be one year.

24 (g) When a license is suspended under subdivision (11) of G.S. 20-16(a), the  
25 period of suspension shall be for a period of time not in excess of the period of  
26 nonoperation imposed by the court as a condition of the suspended sentence; further, in  
27 such case, it shall not be necessary to comply with the Motor Vehicle Safety and  
28 Financial Responsibility Act in order to have such license returned at the expiration of the  
29 suspension period.

30 (g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of  
31 revocation is six months for conviction of a second offense and one year for conviction of  
32 a third or subsequent offense.

33 (h) Repealed by Session Laws 1983, c. 435, s. 17.

34 (i) When a person's license is revoked under subdivision (1) or (9) of G.S. 20-17  
35 and the offense is one involving impaired driving, the revocation is permanent. The  
36 Division may, however, conditionally restore the person's license after it has been  
37 revoked for at least three years in accordance with the procedure in subsection (e) of this  
38 section.

39 (j) The Division is authorized to issue amended revocation orders issued under  
40 subsections (d) and (e), if necessary because convictions do not respectively occur in the  
41 same order as offenses for which the license may be revoked under those subsections.

42 (k) Before the Division restores a driver's license that has been suspended or  
43 revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking

1 to have his driver's license restored shall submit to the Division proof that he has notified  
2 his insurance agent or company of his seeking the restoration and that he is financially  
3 responsible. Proof of financial responsibility shall be in one of the following forms:

- 4 (1) A written certificate or electronically-transmitted facsimile thereof from  
5 any insurance carrier duly authorized to do business in this State  
6 certifying that there is in effect a nonfleet private passenger motor  
7 vehicle liability policy for the benefit of the person required to furnish  
8 proof of financial responsibility. The certificate or facsimile shall state  
9 the effective date and expiration date of the nonfleet private passenger  
10 motor vehicle liability policy and shall state the date that the certificate  
11 or facsimile is issued. The certificate or facsimile shall remain effective  
12 proof of financial responsibility for a period of 30 consecutive days  
13 following the date the certificate or facsimile is issued but shall not in  
14 and of itself constitute a binder or policy of insurance or
- 15 (2) A binder for or policy of nonfleet private passenger motor vehicle  
16 liability insurance under which the applicant is insured, provided that  
17 the binder or policy states the effective date and expiration date of the  
18 nonfleet private passenger motor vehicle liability policy.

19 The preceding provisions of this subsection do not apply to applicants who do not  
20 own currently registered motor vehicles and who do not operate nonfleet private  
21 passenger motor vehicles that are owned by other persons and that are not insured under  
22 commercial motor vehicle liability insurance policies. In such cases, the applicant shall  
23 sign a written certificate to that effect. Such certificate shall be furnished by the Division  
24 and may be incorporated into the restoration application form. Any material  
25 misrepresentation made by such person on such certificate shall be grounds for  
26 suspension of that person's license for a period of 90 days.

27 For the purposes of this subsection, the term "nonfleet private passenger motor  
28 vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

29 The Commissioner may require that certificates required by this subsection be on a  
30 form approved by the Commissioner. The financial responsibility required by this  
31 subsection shall be kept in effect for not less than three years after the date that the  
32 license is restored. Failure to maintain financial responsibility as required by this  
33 subsection shall be grounds for suspending the restored driver's license for a period of  
34 thirty (30) days. Nothing in this subsection precludes any person from showing proof of  
35 financial responsibility in any other manner authorized by Articles 9A and 13 of this  
36 Chapter."

## 37 38 PART II. IGNITION INTERLOCK

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

41 "**§ 20-17.7. Restoration of a license after certain driving while impaired convictions;**  
42 **ignition interlock.**

1       (a) Scope. – This section applies to a person whose license was revoked as a result  
2 of a conviction of driving while impaired, G.S. 20-138.1, and:

3           (1) The person had an alcohol concentration of 0.16 or more; or

4           (2) The person has been convicted of another offense involving impaired  
5 driving, which offense occurred within seven years immediately  
6 preceding the date of the offense for which the person's license has been  
7 revoked.

8       (b) Ignition Interlock Required. – When the Division restores the license of a  
9 person who is subject to this section, in addition to any other restriction or condition, it  
10 shall require the person to agree to and shall indicate on the person's drivers license the  
11 following restrictions for the period designated in subsection (c):

12           (1) A restriction that the person may operate only a vehicle that is equipped  
13 with a functioning ignition interlock system of a type approved by the  
14 Commissioner. The Commissioner shall not unreasonably withhold  
15 approval of an ignition interlock system and shall consult with the  
16 Division of Purchase and Contract in the Department of Administration  
17 to ensure that potential vendors are not discriminated against.

18           (2) A requirement that the person personally activate the ignition interlock  
19 system before driving the motor vehicle.

20           (3) A requirement that the person not drive with an alcohol concentration of  
21 0.01 or greater.

22       (c) Length of Requirement. – The requirements of subsection (b) shall remain in  
23 effect for:

24           (1) One year from the date of restoration if the original revocation period  
25 was one year;

26           (2) Three years from the date of restoration if the original revocation period  
27 was four years; or

28           (3) Seven years from the date of restoration if the original revocation was a  
29 permanent revocation.

30       (d) Effect of Limited Driving Privileges. – If the person was eligible for and  
31 received a limited driving privilege under G.S. 20-179.3, with the ignition interlock  
32 requirement contained in G.S. 20-179.3(g5), the period of time for which that limited  
33 driving privilege was held shall be applied towards the requirements of subsection(c).

34       (e) Notice of Requirement. – When a court reports to the Division a conviction of  
35 a person who is subject to this section, the Division must send the person written notice  
36 of the requirements of this section and of the consequences of failing to comply with  
37 these requirements. The notification must include a statement that the person may  
38 contact the Division for information on obtaining and having installed an ignition  
39 interlock system of a type approved by the Commissioner.

40       (f) Effect of Violation of Restriction. – A person subject to this section who  
41 violates any of the restrictions of this section commits the offense of driving while license  
42 revoked under G.S. 20-28(a) and is subject to punishment and license revocation as  
43 provided in that section. If a law enforcement officer has reasonable grounds to believe

1 that a person subject to this section has consumed alcohol while driving or has driven  
2 while he has remaining in his body any alcohol previously consumed, the suspected  
3 offense of driving while license is revoked is an alcohol-related offense subject to the  
4 implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged  
5 with driving while license revoked by violating a condition of subsection (b) of this  
6 section, and a judicial official determines that there is probable cause for the charge, the  
7 person's license is suspended pending the resolution of the case, and the judicial official  
8 must require the person to surrender the license. The judicial official must also notify the  
9 person that he is not entitled to drive until his case is resolved. An alcohol concentration  
10 report from the ignition interlock system shall not be admissible as evidence of driving  
11 while license revoked, but may be used in an administrative revocation proceeding as  
12 provided in subsection (g) of this section.

13 (g) Effect of Violation of Restriction When Driving While License Revoked not  
14 Charged. – A person subject to this section who violates any of the restrictions of this  
15 section, but is not charged or convicted of driving while license revoked pursuant to G.S.  
16 20-28(a), shall have the person's license revoked by the Division for a period of one year.  
17 An alcohol concentration report from the ignition interlock system indicating an alcohol  
18 concentration of 0.01 or greater is sufficient evidence for revocation under this  
19 subsection.

20 (h) Beginning of Revocation Period. – If the original period of revocation was  
21 imposed pursuant to G.S. 20-19(d) or (e), any remaining period of the original  
22 revocation, prior to its reduction, shall be reinstated and the revocation required by  
23 subsection (f) or (g) of this section begins after all other periods of revocation have  
24 terminated.

25 (i) Notification of Revocation. – If the person's license has not already been  
26 surrendered to the court, the Division must expeditiously notify the person that the  
27 person's license to drive is revoked pursuant to subsection (f) or (g) of this section  
28 effective on the tenth calendar day after the mailing of the revocation order.

29 (j) Right to Hearing Before Division; Issues. – If the person's license is revoked  
30 pursuant to subsection (g) of this section, before the effective date of the order issued  
31 under subsection (i) of this section, the person may request in writing a hearing before the  
32 Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the  
33 satisfaction of the Division that the person's license was surrendered to the court and  
34 remained in the court's possession, then the Division shall credit the amount of time for  
35 which the license was in the possession of the court against the revocation period  
36 required by subsection (g) of this section. If the person properly requests a hearing, the  
37 person retains the person's license, unless it is revoked under some other provision of  
38 law, until the hearing is held, the person withdraws the request, or the person fails to  
39 appear at a scheduled hearing. The hearing officer may subpoena any witnesses or  
40 documents that the hearing officer deems necessary. The person may request the hearing  
41 officer to subpoena the charging officer, the chemical analyst, or both to appear at the  
42 hearing if the person makes the request in writing at least three days before the hearing.  
43 The person may subpoena any other witness whom the person deems necessary, and the

1 provision of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued  
2 under the authority of this section. The hearing officer is authorized to administer oaths  
3 to witnesses appearing at the hearing. The hearing must be conducted in the county  
4 where the charge was brought, and must be limited to consideration of whether:

- 5       (1) The drivers license of the person had an ignition interlock requirement;  
6       and  
7       (2) The person:  
8           a. Was driving a vehicle that was not equipped with a functioning  
9           ignition interlock system; or  
10          b. Did not personally activate the ignition interlock system before  
11          driving the vehicle; or  
12          c. Drove the vehicle with an alcohol concentration of 0.01 or  
13          greater.

14 If the Division finds that the conditions specified in this subsection are met, it must order  
15 the revocation sustained. If the Division finds that the condition of subdivision (1) is not  
16 met, or that none of the conditions of subdivision (2) are met, it must rescind the  
17 revocation. If the revocation is sustained, the person must surrender the person's license  
18 immediately upon notification by the Division. If the revocation is sustained, the person  
19 may appeal the decision of the Division pursuant to G.S. 20-25.

20       (k) Restoration After Violation. – When the Division restores the license of a  
21 person whose license was revoked pursuant to subsection (f) or (g) of this section prior to  
22 completion of time period required by subsection (c) of this section, in addition to any  
23 other restriction or condition, it shall require the person to comply with the conditions of  
24 subsection (b) of this section until the person has complied with those conditions for the  
25 cumulative period of time as set forth in subsection (c) of this section. The period of time  
26 for which the person successfully complied with subsection (b) of this section prior to  
27 revocation pursuant to subsection (f) or (g) of this section shall be applied towards the  
28 requirements of subsection (c) of this section."

29       Section 4. G.S. 20-179.3 is amended by adding a new subsection to read:

30       "(g5) Ignition Interlock Required. – If a person's drivers license is revoked for a  
31 conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more,  
32 a judge shall include all of the following in a limited driving privilege order:

- 33       (1) A restriction that the applicant may operate only a designated motor  
34       vehicle.  
35       (2) A requirement that the designated motor vehicle be equipped with a  
36       functioning ignition interlock system of a type approved by the  
37       Commissioner. The Commissioner shall not unreasonably withhold  
38       approval of an ignition interlock system and shall consult with the  
39       Division of Purchase and Contract in the Department of Administration  
40       to ensure that potential vendors are not discriminated against.  
41       (3) A requirement that the applicant personally activate the ignition  
42       interlock system before driving the motor vehicle."

43       Section 5. G.S. 20-179.3(g4) reads as rewritten:

1 "(g4) The restrictions set forth in subsection (g3) and (g5) of this section do not  
2 apply to a motor vehicle that meets all of the following requirements:

- 3 (1) Is owned by the applicant's employer.
- 4 (2) Is operated by the applicant solely for work-related purposes.
- 5 (3) Its owner has filed with the court a written document authorizing the  
6 applicant to drive the vehicle, for work-related purposes, under the  
7 authority of a limited driving privilege."  
8

### 9 PART III. OPEN CONTAINER

10 Section 6. G.S. 18B-401 reads as rewritten:

#### 11 "**§ 18B-401. Manner of transportation.**

12 (a) Opened Containers. – It shall be unlawful for a person to transport fortified  
13 wine or spirituous liquor in the passenger area of a motor vehicle in other than the  
14 manufacturer's unopened original container. ~~It shall be unlawful for a person who is driving~~  
15 ~~a motor vehicle on a highway or public vehicular area to consume in the passenger area of that~~  
16 ~~vehicle any malt beverage or unfortified wine.~~ Violation of this subsection shall constitute a  
17 Class 3 misdemeanor.

18 (a1) Transportation of an open container of malt beverage or unfortified wine shall  
19 be governed by G.S. 20-138.7.

20 (b) Taxis. – It shall be unlawful for a person operating a for-hire passenger vehicle  
21 as defined in G.S. 20-4.01(27)b, to transport fortified wine or spirituous liquor unless the  
22 vehicle is transporting a paying passenger who owns the alcoholic beverage being  
23 transported. Not more than eight liters of fortified wine or spirituous liquor, or  
24 combination of the two, may be transported by each passenger. A violation of this  
25 subsection shall not be grounds for suspension of the driver's license for illegal  
26 transportation of intoxicating liquors under G.S. 20-16(a)(8).

27 (c) Definitions. – The definitions in Chapter 20 of the General Statutes apply in  
28 interpreting this section. If the seal on a container of alcoholic beverages has been  
29 broken, it is opened within the meaning of this section. For purposes of this section,  
30 "passenger area of a motor vehicle" means the area designed to seat the driver and  
31 passengers and any area within the reach of a seated driver or passenger, including the  
32 glove compartment. In the case of a station wagon, hatchback or similar vehicle, the area  
33 behind the last upright back seat shall not be considered part of the passenger area."

34 Section 7. G.S. 20-138.7 reads as rewritten:

#### 35 "**§ 20-138.7. Transporting an open container of alcoholic beverage after consuming** 36 **alcohol beverage.**

37 (a) Offense. – No person shall drive a motor vehicle on a highway or public  
38 vehicular area:

- 39 (1) While there is an alcoholic beverage other than in the unopened  
40 manufacturer's original container in the passenger area; and
- 41 (2) While the driver is consuming alcohol or while alcohol remains in the  
42 driver's body.

1       (a1) Offense. – No person shall drive a motor vehicle on a highway or public  
2 vehicular area while there is an alcoholic beverage other than in the unopened  
3 manufacturer's original container in the passenger area.

4       (a2) Exception. – If the driver is not consuming alcohol and has no alcohol  
5 remaining in the driver's body, it shall not be a violation of subsection (a1) for the driver  
6 to drive the motor vehicle on a highway or public vehicular area while there is an  
7 alcoholic beverage other than in the unopened manufacturer's original container if the  
8 container is:

9           (1) In the passenger area of a motor vehicle designed, maintained, or used  
10 primarily for the transportation of persons for compensation; or

11           (2) In the living quarters of a house trailer, motor home, or house car.

12       (b) Subject to Implied-Consent Law. – An offense under this section is an alcohol-  
13 related offense subject to the implied-consent provisions of G.S. 20-16.2.

14       (c) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the  
15 driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was  
16 remaining in the driver's body in violation of this section, unless the driver was offered an  
17 alcohol screening test or chemical analysis and refused to provide all required samples of  
18 breath or blood for analysis.

19       (d) Alcohol Screening Test. – Notwithstanding any other provision of law, an  
20 alcohol screening test may be administered to a driver suspected of violating subsection  
21 (a) of this section, and the results of an alcohol screening test or the driver's refusal to  
22 submit may be used by a law enforcement officer, a court, or an administrative agency in  
23 determining if alcohol was present in the driver's body. No alcohol screening tests are  
24 valid under this section unless the device used is one approved by the Commission for  
25 Health Services, and the screening test is conducted in accordance with the applicable  
26 regulations of the Commission as to the manner of its use.

27       (e) Punishment; Effect When Impaired Driving Offense Also Charged. – Violation  
28 of this section-subsection (a) shall be punished as a Class 3 misdemeanor for the first  
29 offense and shall be punished as a Class 2 misdemeanor for a second or subsequent  
30 offense. A fine imposed for a second or subsequent offense may not exceed one thousand  
31 dollars (\$1,000). Violation of this section-subsection (a) is not a lesser included offense of  
32 impaired driving under G.S. 20-138.1, but if a person is convicted under this section  
33 subsection (a) and of an offense involving impaired driving arising out of the same  
34 transaction, the punishment imposed by the court shall not exceed the maximum  
35 applicable to the offense involving impaired driving, and any minimum applicable  
36 punishment shall be imposed. Violation of subsection (a1) is a lesser included offense of  
37 subsection (a). A violation of this section-subsection (a) shall be considered a moving  
38 violation for purposes of G.S. 20-16(c).

39       Violation of subsection (a1) shall be an infraction and shall not be considered a  
40 moving violation for purposes of G.S. 20-16(c).

41       (f) Definitions. – If the seal on a container of alcoholic beverages has been  
42 broken, it is opened within the meaning of this section. For purposes of this section,  
43 "passenger area of a motor vehicle" means the area designed to seat the driver and



1 passengers and any area within the reach of a seated driver or passenger, including the  
2 glove compartment. The area of the trunk or the area behind the last upright back seat of  
3 a station wagon, hatchback, or similar vehicle shall not be considered part of the  
4 passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

5 (g) Pleading. – In any prosecution for a violation of ~~this section~~, subsection (a), the  
6 pleading is sufficient if it states the time and place of the alleged offense in the usual  
7 form and charges that the defendant drove a motor vehicle on a highway or public  
8 vehicular area with an open container of alcoholic beverage after drinking.

9 In any prosecution for a violation of subsection (a1), the pleading is sufficient if it  
10 states the time and place of the alleged offense in the usual form and charges that the  
11 defendant drove a motor vehicle on a highway or public vehicular area with an open  
12 container of alcoholic beverage.

13 (h) Limited Driving Privilege. – A person who is convicted of violating subsection  
14 (a) of this section and whose drivers license is revoked solely based on that conviction  
15 may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge  
16 may issue the limited driving privilege only if the driver meets the eligibility  
17 requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S.  
18 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in  
19 G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the  
20 issuance of a limited driving privilege to a person who is convicted of violating  
21 subsection (a) of this section and of driving while impaired as a result of the same  
22 transaction.

23 Section 8. G.S. 20-17(a)(12) reads as rewritten:

24 "(12) A second or subsequent conviction of transporting an open container of  
25 alcoholic beverage under ~~G.S. 20-138.7~~. G.S. 20-138.7(a).

#### 26 27 PART IV. HGN TEST ADMISSIBILITY

28 Section 9. Chapter 8 of the General Statutes is amended by adding a new  
29 section which reads:

#### 30 **"§ 8-50.3. Results of Horizontal Gaze Nystagmus; admissibility.**

31 (a) The results of the Horizontal Gaze Nystagmus (HGN) test are admissible as  
32 evidence of a person's impairment by an impairing substance in any criminal, civil, or  
33 administrative proceeding and for the purpose of corroborating the opinion of a person as  
34 to another's mental or physical impairment from an impairing substance.

35 (b) Notwithstanding the provisions of subsection (a) of this section, the results of a  
36 HGN test are not admissible in any proceeding unless it is found that the person  
37 administering the HGN test (i) had received training in administering the HGN test prior  
38 to conducting the HGN test for which admission of the test results is sought and (ii) had  
39 followed the training in administering the HGN test for which admission of the test  
40 results is sought.

41 (c) Nothing contained herein shall prohibit a court from admitting the HGN test  
42 into evidence for any purpose when a proper foundation has been established in  
43 accordance with the rules of evidence."

## PART V. LIMITED DRIVING PRIVILEGE ALCOSENSOR ADMISSIBILITY

Section 10. G.S. 20-179.3(j) reads as rewritten:

"(j) Effect of Violation of Restriction. – A holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while his license is revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use."

## PART VI. INCREASE PUNISHMENT FOR 19- OR 20-YEAR OLD PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES

Section 11. G.S. 18B-302(i) reads as rewritten:

"(i) Purchase or Possession by 19 or 20-Year Old. – A violation of subdivision (b)(1) of this section by a person who is 19 or 20 years old is ~~an infraction and is punishable by a fine of not more than twenty five dollars (\$25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.~~ a Class 3 misdemeanor."

Section 12. G.S. 15A-145 reads as rewritten:

**"§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of ~~misdemeanor.~~ misdemeanor; expunction of certain other misdemeanors.**

(a) Whenever any person who has (i) not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet

1 attained the age of 21 years and has not previously been convicted of any felony, or  
2 misdemeanor other than a traffic violation, under the laws of the United States, the laws  
3 of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession  
4 of alcohol pursuant to G.S. 18B-302(b)(1), he may file a petition in the court where he  
5 was convicted for expunction of the misdemeanor from his criminal record. The petition  
6 cannot be filed earlier than two years after the date of the conviction or any period of  
7 probation, whichever occurs later, and the petition shall contain, but not be limited to, the  
8 following:

- 9 (1) An affidavit by the petitioner that he has been of good behavior for the  
10 two-year period since the date of conviction of the misdemeanor in  
11 question and has not been convicted of any felony, or misdemeanor in  
12 question and has not been convicted of any felony, or misdemeanor  
13 other than a traffic violation, under the laws of the United States or the  
14 laws of this State or any other state.
- 15 (2) Verified affidavits of two persons who are not related to the petitioner  
16 or to each other by blood or marriage, that they know the character and  
17 reputation of the petitioner in the community in which he lives and that  
18 his character and reputation are good.
- 19 (3) A statement that the petition is a motion in the cause in the case wherein  
20 the petitioner was convicted.
- 21 (4) Affidavits of the clerk of superior court, chief of police, where  
22 appropriate, and sheriff of the county in which the petitioner was  
23 convicted and, if different, the county of which the petitioner is a  
24 resident, showing that the petitioner has not been convicted of a felony  
25 or misdemeanor other than a traffic violation under the laws of this State  
26 at any time prior to the conviction for the misdemeanor in question or  
27 during the two-year period following that conviction.

28 The petition shall be served upon the district attorney of the court wherein the case  
29 was tried resulting in conviction. The district attorney shall have 10 days thereafter in  
30 which to file any objection thereto and shall be duly notified as to the date of the hearing  
31 of the petition.

32 The judge to whom the petition is presented is authorized to call upon a probation  
33 officer for any additional investigation or verification of the petitioner's conduct during  
34 the two-year period that he deems desirable.

35 (b) If the court, after hearing, finds that the petitioner had remained of good  
36 behavior and been free of conviction of any felony or misdemeanor, other than a traffic  
37 violation, for two years from the date of conviction of the misdemeanor in question, and  
38 (i) petitioner was not 18 years old at the time of the conviction in question, or (ii)  
39 petitioner was not 21 years old at the time of the conviction of possession of alcohol  
40 pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the  
41 contemplation of the law, to the status he occupied before such arrest or indictment or  
42 information. No person as to whom such order has been entered shall be held thereafter  
43 under any provision of any laws to be guilty of perjury or otherwise giving a false

1 statement by reason of his failure to recite or acknowledge such arrest, or indictment,  
2 information, or trial, or response to any inquiry made of him for any purpose.

3 (c) The court shall also order that the said misdemeanor conviction be expunged  
4 from the records of the court, and direct all law-enforcement agencies bearing record of  
5 the same to expunge their records of the conviction. The clerk shall forward a certified  
6 copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff,  
7 chief or head of such other arresting agency shall then transmit the copy of the order with  
8 a form supplied by the State Bureau of Investigation to the State Bureau of Investigation,  
9 and the State Bureau of Investigation shall forward the order to the Federal Bureau of  
10 Investigation. The cost of expunging such records shall be taxed against the petitioner.

11 (d) The clerk of superior court in each county in North Carolina shall, as soon as  
12 practicable after each term of court in his county, file with the Administrative Office of  
13 the Courts, the names of those persons granted a discharge under the provisions of this  
14 section, and the Administrative Office of the Courts, the names of those persons granted a  
15 discharge under the provisions of this section, and the Administrative Office of the  
16 Courts shall maintain a confidential file containing the names of persons granted  
17 conditional discharges. The information contained in such file shall be disclosed only to  
18 judges of the General Court of Justice of North Carolina for the purpose of ascertaining  
19 whether any person charged with an offense has been previously granted a discharge."

20 Section 13. G.S. 15A-146(a) reads as rewritten:

21 "(a) If any person is charged with a crime, either a misdemeanor or a felony, or is  
22 was charged with an infraction under ~~G.S. 18B-302(i)~~, G.S. 18B-302(i) prior to December  
23 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is  
24 entered, that person may apply to the court of the county where the charge was brought  
25 for an order to expunge from all official records any entries relating to his apprehension  
26 or trial. The court shall hold a hearing on the application and, upon finding that the  
27 person had not previously received an expungement and that the person had not  
28 previously been convicted of any felony under the laws of the United States, this State, or  
29 any other state, the court shall order the expunction. No person as to whom such an order  
30 has been entered shall be held thereafter under any provision of any law to be guilty of  
31 perjury, or to be guilty of otherwise giving a false statement or response to any inquiry  
32 made for any purpose, by reason of his failure to recite or acknowledge any expunged  
33 entries concerning apprehension or trial."

#### 34 35 PART VII. OTHER DWI CHANGES

36 Section 14. G.S. 20-16.2(i) reads as rewritten:

37 "**§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in**  
38 **event of refusal; right of driver to request analysis.**

39 (i) Right to Chemical Analysis before Arrest or Charge. – A person stopped or  
40 questioned by a law-enforcement officer who is investigating whether the person may  
41 have committed an implied-consent offense may request the administration of a chemical  
42 analysis before any arrest or other charge is made for the offense. Upon this request, the  
43 officer shall afford the person the opportunity to have a chemical analysis of his or her

1 breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The  
2 request constitutes the person's consent to be transported by the law-enforcement officer  
3 to the place where the chemical analysis is to be administered. Before the chemical  
4 analysis is made, the person shall confirm the request in writing and shall be notified:

- 5 (1) That the test results will be admissible in evidence and may be used  
6 against the person in any implied-consent offense that may arise;
- 7 (2) That the person's license will be revoked for at least 30 days if:
  - 8 a. The test reveals an alcohol concentration of 0.08 or more; or
  - 9 b. The person was driving a commercial motor vehicle and the test  
10 results reveal an alcohol concentration of 0.04 or ~~more~~ more; or
  - 11 c. The person is under 21 years of age and the test reveals any  
12 alcohol concentration.
- 13 (3) That if the person fails to comply fully with the test procedures, the  
14 officer may charge the person with any offense for which the officer has  
15 probable cause, and if the person is charged with an implied-consent  
16 offense, the person's refusal to submit to the testing required as a result  
17 of that charge would result in revocation of the person's driver's license.  
18 The results of the chemical analysis are admissible in evidence in any  
19 proceeding in which they are relevant."

20 Section 15. G.S. 20-28.2(a) reads as rewritten:

21 **"§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving**  
22 **license revocation.**

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

- 26 (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12),  
27 20-17.2, or 20-138.5; or
- 28 (2) G.S. 20-16(a)(7), 20-17(a)(1), 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11),  
29 if the offense involves impaired ~~driving~~ driving; or
- 30 (3) The laws of another state and the offense for which the person's license  
31 is revoked prohibits substantially similar conduct which if committed in  
32 this state would result in a revocation listed in subdivisions (1) or (2)."

33 Section 16. G.S. 20-28.2(e) reads as rewritten:

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

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

- 43 (1) The identity of the person as a motor vehicle owner;

- 1           (2) The existence of financial responsibility to the extent required by  
2 Article 13 of this ~~Chapter~~; Chapter or by the laws of the state in which  
3 the vehicle is registered; and  
4           (3) Repealed by Session Laws 1998-182, s. 2.  
5           (4) The execution of an acknowledgment as defined in subdivision (a1)(1)  
6 of this section.

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

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

24           Section 17. G.S. 20-16.5(e) reads as rewritten:

25           "(e) Procedure if Report Filed with Judicial Official When Person Is Present. – If a  
26 properly executed revocation report concerning a person is filed with a judicial official  
27 when the person is present before that official, the judicial official shall, after completing  
28 any other proceedings involving the person, determine whether there is probable cause to  
29 believe that each of the conditions of subsection (b) has been met. If he determines that  
30 there is such probable cause, he shall enter an order revoking the person's driver's license  
31 for the period required in this subsection. The judicial official shall order the person to  
32 surrender his license and if necessary may order a law-enforcement officer to seize the  
33 license. The judicial official shall give the person a copy of the revocation order. In  
34 addition to setting it out in the order the judicial official shall personally inform the  
35 person of his right to a hearing as specified in subsection (g), and that his license remains  
36 revoked pending the hearing. The revocation under this subsection begins at the time the  
37 revocation order is issued and continues until the person's license ~~has been revoked~~ has  
38 been surrendered for the period specified in this subsection, and the person has paid the  
39 applicable costs. The period of revocation is 30 days, if there are no pending offenses for  
40 which the person's license had been or is revoked under this section. If at the time of the  
41 current offense, the person has one or more pending offenses for which his license had  
42 been or is revoked under this section, the revocation shall remain in effect until a final  
43 judgment, including all appeals, has been entered for the current offense and for all

1 pending offenses. In no event, may the period of revocation under this subsection be less  
2 than 30 days. If within five working days of the effective date of the order, the person  
3 does not surrender his license or demonstrate that he is not currently licensed, the clerk  
4 shall immediately issue a pick-up order. The pick-up order shall be issued to a member of  
5 a local law-enforcement agency if the charging officer was employed by the agency at the  
6 time of the charge and the person resides in or is present in the agency's territorial  
7 jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector  
8 of the Division. A pick-up order issued pursuant to this section is to be served in  
9 accordance with G.S. 20-29 as if the order had been issued by the Division."

10 Section 18. G.S. 20-139.1(b3) reads as rewritten:

11 "(b3) Sequential Breath Tests Required. – By January 1, 1985, the regulations of the  
12 Commission for Health Services governing the administration of chemical analyses of the  
13 breath shall require the testing of at least duplicate sequential breath samples. Those  
14 regulations must provide:

- 15 (1) A specification as to the minimum observation period before collection  
16 of the first breath sample and the time requirements as to collection of  
17 second and subsequent samples.
- 18 (2) That the test results may only be used to prove a person's particular  
19 alcohol concentration if:
- 20 a. The pair of readings employed are from consecutively  
21 administered tests; and
- 22 b. The readings do not differ from each other by an alcohol  
23 concentration greater than 0.02.
- 24 (3) That when a pair of analyses meets the requirements of subdivision (2),  
25 only the lower of the two readings may be used by the State as proof of  
26 a person's alcohol concentration in any court or administrative  
27 proceeding.

28 A person's ~~willful~~-refusal to give the sequential breath samples necessary to constitute a  
29 valid chemical analysis is a ~~willful~~-refusal under G.S. 20-16.2(c).

30 A person's ~~willful~~-refusal to give the second or subsequent breath sample shall make  
31 the result of the first breath sample, or the result of the sample providing the lowest  
32 alcohol concentration if more than one breath sample is provided, admissible in any  
33 judicial or administrative hearing for any relevant purpose, including the establishment  
34 that a person had a particular alcohol concentration for conviction of an offense involving  
35 impaired driving."

36 Section 19. G.S. 20-4.01(24a) reads as rewritten:

37 "(24a) Offense Involving Impaired Driving. – Any of the following offenses:

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

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

3 d. An offense committed in another jurisdiction which prohibits  
4 substantially equivalent to similar conduct prohibited by the  
5 offenses in subparagraphs a through e. this subsection.

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

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

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

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

17 Section 20. G.S. 20-138.2A reads as rewritten:

18 **"§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

19 (a) Offense. – A person commits the offense of operating a commercial motor  
20 vehicle after consuming alcohol if the person drives a commercial motor vehicle, as  
21 defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public  
22 vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at~~  
23 ~~any relevant time after the driving, an alcohol concentration greater than 0.00 and less than 0.04.~~  
24 while consuming alcohol or while alcohol remains in the person's body.

25 (b) Implied-Consent Offense. – An offense under this section is an implied-  
26 consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-  
27 139.1 shall apply to an offense committed under this section.

28 (b1) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the  
29 driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol  
30 was remaining in the driver's body in violation of this section unless the driver was  
31 offered an alcohol screening test or chemical analysis and refused to provide all required  
32 samples of breath or blood for analysis.

33 (b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an  
34 alcohol screening test may be administered to a driver suspected of violation of  
35 subsection (a) of this section, and the results of an alcohol screening test or the driver's  
36 refusal to submit may be used by a law enforcement officer, a court, or an administrative  
37 agency in determining if alcohol was present in the driver's body. No alcohol screening  
38 tests are valid under this section unless the device used is one approved by the  
39 Commission on Health Services, and the screening test is conducted in accordance with  
40 the applicable regulations of the Commission as to its manner and use.

41 (c) Punishment. – Except as otherwise provided in this subsection, a violation of  
42 the offense described in subsection (a) of this section is a Class 3 misdemeanor and,  
43 notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars



1 (\$100.00). A second or subsequent violation of this section is a misdemeanor punishable  
2 under G.S. 20-179. This offense is a lesser included offense of impaired driving of a  
3 commercial vehicle under G.S. 20-138.2.

4 (d) Second or Subsequent Conviction Defined. – A conviction for violating this  
5 offense is a second or subsequent conviction if at the time of the current offense the  
6 person has a previous conviction under this section, and the previous conviction occurred  
7 in the seven years immediately preceding the date of the current offense. This definition  
8 of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-  
9 17.4(a)(6).

10 Section 21. G.S. 20-138.2B reads as rewritten:

11 **"§ 20-138.2B. Operating a school bus, school activity bus, or child care vehicle after**  
12 **consuming alcohol.**

13 (a) Offense. – A person commits the offense of operating a school bus, school  
14 activity bus, or child care vehicle after consuming alcohol if the person drives a school  
15 bus, school activity bus, or child care vehicle upon any highway, any street, or any public  
16 vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at~~  
17 ~~any relevant time after the driving, an alcohol concentration greater than 0.00, while consuming~~  
18 alcohol or while alcohol remains in the person's body.

19 (b) Implied-Consent Offense. – An offense under this section is an implied-  
20 consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-  
21 139.1 shall apply to an offense committed under this section.

22 (b1) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the  
23 driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol  
24 was remaining in the driver's body in violation of this section unless the driver was  
25 offered an alcohol screening test or chemical analysis and refused to provide all required  
26 samples of breath or blood for analysis.

27 (b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an  
28 alcohol screening test may be administered to a driver suspected of violation of  
29 subsection (a) of this section, and the results of an alcohol screening test or the driver's  
30 refusal to submit may be used by a law enforcement officer, a court, or an administrative  
31 agency in determining if alcohol was present in the driver's body. No alcohol screening  
32 tests are valid under this section unless the device used is one approved by the  
33 Commission on Health Services, and the screening test is conducted in accordance with  
34 the applicable regulations of the Commission as to its manner and use.

35 (c) Punishment. – Except as otherwise provided in this subsection, a violation of  
36 the offense described in subsection (a) of this section is a Class 3 misdemeanor and,  
37 notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars  
38 (\$100.00). A second or subsequent violation of this section is a misdemeanor punishable  
39 under G.S. 20-179. This offense is a lesser included offense of impaired driving of a  
40 commercial vehicle under G.S. 20-138.1.

41 (d) Second or Subsequent Conviction Defined. – A conviction for violating this  
42 offense is a second or subsequent conviction if at the time of the current offense the  
43 person has a previous conviction under this section, and the previous conviction occurred

1 in the seven years immediately preceding the date of the current offense. This definition  
2 of second or subsequent conviction also applies to G.S. 20-19(c2).

3 Section 22. G.S. 20-28.2(a1)(2) reads as rewritten:

4 "(2) Innocent Owner. – A motor vehicle owner:

- 5 a. Who did not know and had no reason to know that the  
6 defendant's drivers license was revoked;
- 7 b. Who knew that the defendant's drivers license was revoked, but  
8 the defendant drove the vehicle without the person's expressed or  
9 implied ~~permission~~; permission, and the owner files a police  
10 report for unauthorized use of the motor vehicle and agrees to  
11 prosecute the unauthorized operator of the motor vehicle;
- 12 c. Whose vehicle was reported stolen;
- 13 ~~d. Who files a police report for unauthorized use of the motor~~  
14 ~~vehicle and agrees to prosecute the unauthorized operator of the~~  
15 ~~motor vehicle;~~
- 16 e. Who is in the business of renting vehicles, ~~the driver and the~~  
17 vehicle was driven by a person who is not listed as an authorized  
18 driver on the rental contract; or
- 19 f. Who is in the business of leasing motor vehicles, who holds legal  
20 title to the motor vehicle as a lessor at the time of seizure and  
21 who has no actual knowledge of the revocation of the lessee's  
22 drivers license at the time the lease is entered."

23  
24 PART VIII. EFFECTIVE DATE

25 Section 23. Parts I and II of this act become effective July 1, 2000, and apply  
26 to offenses committed on or after that date. The remainder of this act becomes effective  
27 December 1, 1999, and applies to offenses committed on or after that date.