

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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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

1 charging officer shall designate the type of chemical analysis to be administered, and it  
2 may be administered when the officer has reasonable grounds to believe that the person  
3 charged has committed the implied-consent offense.

4 Except as provided in this subsection or subsection (b), before any type of chemical  
5 analysis is administered the person charged shall be taken before a chemical analyst  
6 authorized to administer a test of a person's breath, who shall inform the person orally  
7 and also give the person a notice in writing that:

8 (1) The person has a right to refuse to be tested.

9 (2) Refusal to take any required test or tests will result in an immediate  
10 revocation of the person's driving privilege for at least 30 days and an  
11 additional 12-month revocation by the Division of Motor Vehicles.

12 (3) The test results, or the fact of the person's refusal, will be admissible in  
13 evidence at trial on the offense charged.

14 (4) The person's driving privilege will be revoked immediately for at least  
15 30 days if:

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

17 b. The person was driving a commercial motor vehicle and the test  
18 reveals an alcohol concentration of 0.04 or more; or

19 c. The person is under 21 years of age and the test reveals any  
20 alcohol concentration.

21 (5) The person may choose a qualified person to administer a chemical test  
22 or tests in addition to any test administered at the direction of the  
23 charging officer.

24 (6) The person has the right to call an attorney and select a witness to view  
25 for him or her the testing procedures, but the testing may not be delayed  
26 for these purposes longer than 30 minutes from the time when the  
27 person is notified of his or her rights.

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

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

40 (b) Unconscious Person May Be Tested. – If a charging officer has reasonable  
41 grounds to believe that a person has committed an implied-consent offense, and the  
42 person is unconscious or otherwise in a condition that makes the person incapable of  
43 refusal, the charging officer may direct the taking of a blood sample by a person qualified

1 under G.S. 20-139.1 or may direct the administration of any other chemical analysis that  
2 may be effectively performed. In this instance the notification of rights set out in  
3 subsection (a) and the request required by subsection (c) are not necessary.

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

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

- 25 (1) The person was charged with an implied-consent offense or had an  
26 alcohol concentration restriction on the drivers license;
- 27 (2) The charging officer had reasonable grounds to believe that the person  
28 had committed an implied-consent offense or violated the alcohol  
29 concentration restriction on the drivers license;
- 30 (3) Whether the implied-consent offense charged involved death or critical  
31 injury to another person, if the person willfully refused to submit to  
32 chemical analysis;
- 33 (4) The person was notified of the rights in subsection (a); and
- 34 (5) The results of any tests given or that the person willfully refused to  
35 submit to a chemical analysis upon the request of the charging officer.

36 The charging officer must immediately mail the affidavit(s) to the Division. If the  
37 charging officer is also the chemical analyst who has notified the person of the rights  
38 under subsection (a), the charging officer may perform alone the duties of this subsection.

39 (d) Consequences of Refusal; Right to Hearing before Division; Issues. – Upon  
40 receipt of a properly executed affidavit required by subsection (e), ~~(c1)~~, the Division must  
41 expeditiously notify the person charged that the person's license to drive is revoked for 12  
42 months, effective on the tenth calendar day after the mailing of the revocation order  
43 unless, before the effective date of the order, the person requests in writing a hearing  
44 before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows

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

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

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

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

1 eligible for such a hearing. If the person's driver's license is again revoked while the 12-  
2 month revocation under this subsection is in effect, that revocation, whether imposed by a  
3 court or by the Division, may only take effect after the period of revocation under this  
4 subsection has terminated.

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

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

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

40 Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the  
41 procedure for application and conduct of the hearing and the restrictions required or  
42 authorized to be included in the limited driving privilege apply to applications under this  
43 subsection. If the case was finally disposed of in the district court, the hearing shall be

1 conducted in the district court district as defined in G.S. 7A-133 in which the refusal  
2 occurred by a district court judge. If the case was finally disposed of in the superior court,  
3 the hearing shall be conducted in the superior court district or set of districts as defined in  
4 G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving  
5 privilege issued under this section authorizes a person to drive if the person's license is  
6 revoked solely under this section or solely under this section and G.S. 20-17(2). If the  
7 person's license is revoked for any other reason, the limited driving privilege is invalid.

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

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

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

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

- 24 (1) That the test results will be admissible in evidence and may be used  
25 against the person in any implied-consent offense that may arise;
- 26 (2) That the person's license will be revoked for at least 30 days if:  
27 a. The test reveals an alcohol concentration of 0.08 or more; or  
28 b. The person was driving a commercial motor vehicle and the test  
29 results reveal an alcohol concentration of 0.04 or more.
- 30 (3) That if the person fails to comply fully with the test procedures, the  
31 officer may charge the person with any offense for which the officer has  
32 probable cause, and if the person is charged with an implied-consent  
33 offense, the person's refusal to submit to the testing required as a result  
34 of that charge would result in revocation of the person's driver's license.  
35 The results of the chemical analysis are admissible in evidence in any  
36 proceeding in which they are relevant."

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

38 "**§ 20-19. Period of suspension or ~~revocation~~-revocation; conditions of restoration.**

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

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

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

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

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

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

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

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

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

1           (4) For any restoration of a drivers license revoked pursuant to G.S. 20-23  
2 or G.S. 20-23.2 when the offense for which the person's license was  
3 revoked prohibits substantially similar conduct which if committed in  
4 this State would result in a conviction of driving while impaired in a  
5 commercial motor vehicle, G.S. 20-138.2, driving while less than 21  
6 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death  
7 by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide  
8 resulting from the operation of a motor vehicle when the offense  
9 involved impaired driving, that the person not operate a vehicle with an  
10 alcohol concentration of 0.00 or more at any relevant time after the  
11 driving.

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

19           The restrictions placed on a license under this subsection shall be in effect (i) seven  
20 years from the date of restoration if the person's license was permanently revoked, (ii)  
21 until the person's twenty-first birthday if the revocation was for a conviction under G.S.  
22 20-138.3, and (iii) three years in all other cases.

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

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

37           (c5) Right to Hearing Before Division; Issues. – Upon receipt of a properly  
38 executed affidavit required by G.S. 20-16.2(c1), the Division must expeditiously notify  
39 the person charged that the person's license to drive is revoked for the period of time  
40 specified in this section, effective on the tenth calendar day after the mailing of the  
41 revocation order unless, before the effective date of the order, the person requests in  
42 writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if  
43 the person shows to the satisfaction of the Division that the person's license was



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

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

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

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

39 (d) When a person's license is revoked under subdivision (2) of G.S. 20-17 and  
40 the person has another offense involving impaired driving for which he has been  
41 convicted, which offense occurred within three years immediately preceding the date of  
42 the offense for which his license is being revoked, the period of revocation is four years,  
43 and this period may be reduced only as provided in this section. The Division may

1 conditionally restore the person's license after it has been revoked for at least two years  
2 under this subsection if he provides the Division with satisfactory proof that:

3 (1) He has not in the period of revocation been convicted in North Carolina  
4 or any other state or federal jurisdiction of a motor vehicle offense, an  
5 alcoholic beverage control law offense, a drug law offense, or any other  
6 criminal offense involving the possession or consumption of alcohol or  
7 drugs; and

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

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

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

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

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

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

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

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

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

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

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

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

4 (k) Before the Division restores a driver's license that has been suspended or  
5 revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking  
6 to have his driver's license restored shall submit to the Division proof that he has notified  
7 his insurance agent or company of his seeking the restoration and that he is financially  
8 responsible. Proof of financial responsibility shall be in one of the following forms:

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

20 (2) A binder for or policy of nonfleet private passenger motor vehicle  
21 liability insurance under which the applicant is insured, provided that  
22 the binder or policy states the effective date and expiration date of the  
23 nonfleet private passenger motor vehicle liability policy.

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

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

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

42  
43 PART II. IGNITION INTERLOCK

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

3 **"§ 20-17.7. Restoration of a license after certain driving while impaired convictions;  
4 ignition interlock.**

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

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

8 (2) The person has been convicted of another offense involving impaired  
9 driving, which offense occurred within seven years immediately  
10 preceding the date of the offense for which the person's license has been  
11 revoked.

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

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

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

24 (3) A requirement that the person not drive with an alcohol concentration of  
25 0.04 or greater.

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

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

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

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

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

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

1       (f) Effect of Violation of Restriction. – A person subject to this section who  
2 violates any of the restrictions of this section commits the offense of driving while license  
3 revoked under G.S. 20-28(a) and is subject to punishment and license revocation as  
4 provided in that section. If a law enforcement officer has reasonable grounds to believe  
5 that a person subject to this section has consumed alcohol while driving or has driven  
6 while he has remaining in his body any alcohol previously consumed, the suspected  
7 offense of driving while license is revoked is an alcohol-related offense subject to the  
8 implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged  
9 with driving while license revoked by violating a condition of subsection (b) of this  
10 section, and a judicial official determines that there is probable cause for the charge, the  
11 person's license is suspended pending the resolution of the case, and the judicial official  
12 must require the person to surrender the license. The judicial official must also notify the  
13 person that he is not entitled to drive until his case is resolved. An alcohol concentration  
14 report from the ignition interlock system shall not be admissible as evidence of driving  
15 while license revoked, nor shall it be admissible in an administrative revocation  
16 proceeding as provided in subsection (g) of this section; provided that the person did not  
17 operate a vehicle until the ignition interlock system indicated an alcohol concentration of  
18 less than 0.04.

19       (g) Effect of Violation of Restriction When Driving While License Revoked not  
20 Charged. – A person subject to this section who violates any of the restrictions of this  
21 section, but is not charged or convicted of driving while license revoked pursuant to G.S.  
22 20-28(a), shall have the person's license revoked by the Division for a period of one year.

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

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

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

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

8 (1) The drivers license of the person had an ignition interlock requirement;  
9 and

10 (2) The person:

11 a. Was driving a vehicle that was not equipped with a functioning  
12 ignition interlock system; or

13 b. Did not personally activate the ignition interlock system before  
14 driving the vehicle; or

15 c. Drove the vehicle with an alcohol concentration of 0.04 or  
16 greater.

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

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

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

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

36 (1) A restriction that the applicant may operate only a designated motor  
37 vehicle.

38 (2) A requirement that the designated motor vehicle be equipped with a  
39 functioning ignition interlock system of a type approved by the  
40 Commissioner. The Commissioner shall not unreasonably withhold  
41 approval of an ignition interlock system and shall consult with the  
42 Division of Purchase and Contract in the Department of Administration  
43 to ensure that potential vendors are not discriminated against.

1           (3) A requirement that the applicant personally activate the ignition  
2           interlock system before driving the motor vehicle."

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

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

6           (1) Is owned by the applicant's employer.

7           (2) Is operated by the applicant solely for work-related purposes.

8           (3) Its owner has filed with the court a written document authorizing the  
9 applicant to drive the vehicle, for work-related purposes, under the  
10 authority of a limited driving privilege."

### 11 12 PART III. LIMITED DRIVING PRIVILEGE ALCOSENSOR ADMISSIBILITY

13           Section 6. G.S. 20-179.3(j) reads as rewritten:

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

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

### 36 37 PART IV. INCREASE PUNISHMENT FOR 19- OR 20-YEAR OLD PURCHASE OR 38 POSSESSION OF ALCOHOLIC BEVERAGES

39           Section 7. G.S. 18B-302(i) reads as rewritten:

40           "(i) Purchase or Possession by 19 or 20-Year Old. – A violation of subdivision  
41 (b)(1) of this section by a person who is 19 or 20 years old is ~~an infraction and is punishable~~  
42 ~~by a fine of not more than twenty five dollars (\$25.00). An infraction is an unlawful act that is~~  
43 ~~not a crime. The procedure for charging and trying an infraction is the same as for a~~

1 ~~misdemeanor, but conviction of an infraction has no consequence other than payment of a fine.~~  
2 ~~A person convicted of an infraction may not be assessed court costs. a Class 3 misdemeanor."~~

3 Section 8. G.S. 15A-145 reads as rewritten:

4 "**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time**  
5 **of conviction of ~~misdemeanor.~~ misdemeanor; expunction of certain other**  
6 **misdemeanors.**

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

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

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



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

4 (b) If the court, after hearing, finds that the petitioner had remained of good  
5 behavior and been free of conviction of any felony or misdemeanor, other than a traffic  
6 violation, for two years from the date of conviction of the misdemeanor in question, and  
7 (i) petitioner was not 18 years old at the time of the conviction in question, or (ii)  
8 petitioner was not 21 years old at the time of the conviction of possession of alcohol  
9 pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the  
10 contemplation of the law, to the status he occupied before such arrest or indictment or  
11 information. No person as to whom such order has been entered shall be held thereafter  
12 under any provision of any laws to be guilty of perjury or otherwise giving a false  
13 statement by reason of his failure to recite or acknowledge such arrest, or indictment,  
14 information, or trial, or response to any inquiry made of him for any purpose.

15 (c) The court shall also order that the said misdemeanor conviction be expunged  
16 from the records of the court, and direct all law enforcement agencies bearing record of  
17 the same to expunge their records of the conviction. The clerk shall forward a certified  
18 copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff,  
19 chief or head of such other arresting agency shall then transmit the copy of the order with  
20 a form supplied by the State Bureau of Investigation to the State Bureau of Investigation,  
21 and the State Bureau of Investigation shall forward the order to the Federal Bureau of  
22 Investigation. The cost of expunging such records shall be taxed against the petitioner.

23 (d) The clerk of superior court in each county in North Carolina shall, as soon as  
24 practicable after each term of court in his county, file with the Administrative Office of  
25 the Courts, the names of those persons granted a discharge under the provisions of this  
26 section, and the Administrative Office of the Courts, the names of those persons granted a  
27 discharge under the provisions of this section, and the Administrative Office of the  
28 Courts shall maintain a confidential file containing the names of persons granted  
29 conditional discharges. The information contained in such file shall be disclosed only to  
30 judges of the General Court of Justice of North Carolina for the purpose of ascertaining  
31 whether any person charged with an offense has been previously granted a discharge."

32 Section 9. G.S. 15A-146(a) reads as rewritten:

33 "(a) If any person is charged with a crime, either a misdemeanor or a felony, or is  
34 was charged with an infraction under G.S. 18B-302(i), G.S. 18B-302(i) prior to December  
35 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is  
36 entered, that person may apply to the court of the county where the charge was brought  
37 for an order to expunge from all official records any entries relating to his apprehension  
38 or trial. The court shall hold a hearing on the application and, upon finding that the  
39 person had not previously received an expungement and that the person had not  
40 previously been convicted of any felony under the laws of the United States, this State, or  
41 any other state, the court shall order the expunction. No person as to whom such an order  
42 has been entered shall be held thereafter under any provision of any law to be guilty of  
43 perjury, or to be guilty of otherwise giving a false statement or response to any inquiry

1 made for any purpose, by reason of his failure to recite or acknowledge any expunged  
2 entries concerning apprehension or trial."

3  
4 PART V. OTHER DWI CHANGES

5 Section 10. G.S. 20-16.2(i) reads as rewritten:

6 **"§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in  
7 event of refusal; right of driver to request analysis.**

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

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

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

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

21 b. The person was driving a commercial motor vehicle and the test  
22 results reveal an alcohol concentration of 0.04 or ~~more~~-more; or

23 c. The person is under 21 years of age and the test reveals any  
24 alcohol concentration.

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

32 Section 11. G.S. 20-28.2(a) reads as rewritten:

33 **"§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving  
34 license revocation.**

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

38 (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12),  
39 20-17.2, or 20-138.5; or

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

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

4           Section 12. G.S. 20-28.2(e) reads as rewritten:

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

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

- 14           (1)    The identity of the person as a motor vehicle owner;  
15           (2)    The existence of financial responsibility to the extent required by  
16           Article 13 of this ~~Chapter~~; Chapter or by the laws of the state in which  
17           the vehicle is registered; and  
18           (3)    Repealed by Session Laws 1998-182, s. 2.  
19           (4)    The execution of an acknowledgment as defined in subdivision (a1)(1)  
20           of this section.

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

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

38          Section 13. G.S. 20-16.5(e) reads as rewritten:

39           "(e) Procedure if Report Filed with Judicial Official When Person Is Present. – If a  
40 properly executed revocation report concerning a person is filed with a judicial official  
41 when the person is present before that official, the judicial official shall, after completing  
42 any other proceedings involving the person, determine whether there is probable cause to  
43 believe that each of the conditions of subsection (b) has been met. If he determines that

1 there is such probable cause, he shall enter an order revoking the person's driver's license  
2 for the period required in this subsection. The judicial official shall order the person to  
3 surrender his license and if necessary may order a law-enforcement officer to seize the  
4 license. The judicial official shall give the person a copy of the revocation order. In  
5 addition to setting it out in the order the judicial official shall personally inform the  
6 person of his right to a hearing as specified in subsection (g), and that his license remains  
7 revoked pending the hearing. The revocation under this subsection begins at the time the  
8 revocation order is issued and continues until the person's license ~~has been revoked~~ has  
9 been surrendered for the period specified in this subsection, and the person has paid the  
10 applicable costs. The period of revocation is 30 days, if there are no pending offenses for  
11 which the person's license had been or is revoked under this section. If at the time of the  
12 current offense, the person has one or more pending offenses for which his license had  
13 been or is revoked under this section, the revocation shall remain in effect until a final  
14 judgment, including all appeals, has been entered for the current offense and for all  
15 pending offenses. In no event, may the period of revocation under this subsection be less  
16 than 30 days. If within five working days of the effective date of the order, the person  
17 does not surrender his license or demonstrate that he is not currently licensed, the clerk  
18 shall immediately issue a pick-up order. The pick-up order shall be issued to a member of  
19 a local law-enforcement agency if the charging officer was employed by the agency at the  
20 time of the charge and the person resides in or is present in the agency's territorial  
21 jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector  
22 of the Division. A pick-up order issued pursuant to this section is to be served in  
23 accordance with G.S. 20-29 as if the order had been issued by the Division."

24 Section 14. G.S. 20-4.01(24a) reads as rewritten:

25 "(24a) Offense Involving Impaired Driving. – Any of the following offenses:

- 26 a. Impaired driving under G.S. 20-138.1.  
27 b. Death by vehicle under G.S. 20-141.4 when conviction is based  
28 upon impaired driving or a substantially equivalent offense under  
29 previous law.  
30 c. First or second degree murder under G.S. 14-17 or involuntary  
31 manslaughter under G.S. 14-18 when conviction is based upon  
32 impaired driving or a substantially equivalent offense under  
33 previous law.  
34 d. An offense committed in another jurisdiction which prohibits  
35 substantially equivalent to similar conduct prohibited by the  
36 offenses in subparagraphs a through e. this subsection.  
37 e. A repealed or superseded offense substantially equivalent to  
38 impaired driving, including offenses under former G.S. 20-138 or  
39 G.S. 20-139.  
40 f. Impaired driving in a commercial motor vehicle under G.S. 20-  
41 138.2, except that convictions of impaired driving under G.S. 20-  
42 138.1 and G.S. 20-138.2 arising out of the same transaction shall

1 be considered a single conviction of an offense involving  
2 impaired driving for any purpose under this Chapter.

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

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

6 Section 15. G.S. 20-138.2A reads as rewritten:

7 **"§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

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

14 (b) Implied-Consent Offense. – An offense under this section is an implied-  
15 consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-  
16 139.1 shall apply to an offense committed under this section.

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

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

30 (c) Punishment. – Except as otherwise provided in this subsection, a violation of  
31 the offense described in subsection (a) of this section is a Class 3 misdemeanor and,  
32 notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars  
33 (\$100.00). A second or subsequent violation of this section is a misdemeanor punishable  
34 under G.S. 20-179. This offense is a lesser included offense of impaired driving of a  
35 commercial vehicle under G.S. 20-138.2.

36 (d) Second or Subsequent Conviction Defined. – A conviction for violating this  
37 offense is a second or subsequent conviction if at the time of the current offense the  
38 person has a previous conviction under this section, and the previous conviction occurred  
39 in the seven years immediately preceding the date of the current offense. This definition  
40 of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-  
41 17.4(a)(6)."

42 Section 16. G.S. 20-138.2B reads as rewritten:

1 **"§ 20-138.2B. Operating a school bus, school activity bus, or child care vehicle after**  
2 **consuming alcohol.**

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

9 (b) Implied-Consent Offense. – An offense under this section is an implied-  
10 consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-  
11 139.1 shall apply to an offense committed under this section.

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

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

25 (c) Punishment. – Except as otherwise provided in this subsection, a violation of  
26 the offense described in subsection (a) of this section is a Class 3 misdemeanor and,  
27 notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars  
28 (\$100.00). A second or subsequent violation of this section is a misdemeanor punishable  
29 under G.S. 20-179. This offense is a lesser included offense of impaired driving of a  
30 commercial vehicle under G.S. 20-138.1.

31 (d) Second or Subsequent Conviction Defined. – A conviction for violating this  
32 offense is a second or subsequent conviction if at the time of the current offense the  
33 person has a previous conviction under this section, and the previous conviction occurred  
34 in the seven years immediately preceding the date of the current offense. This definition  
35 of second or subsequent conviction also applies to G.S. 20-19(c2)."

36 Section 17. G.S. 20-28.2(a1)(2) reads as rewritten:

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

- 38 a. Who did not know and had no reason to know that the  
39 defendant's drivers license was revoked;  
40 b. Who knew that the defendant's drivers license was revoked, but  
41 the defendant drove the vehicle without the person's expressed or  
42 implied ~~permission; permission, and the owner files a police~~

- 1                    report for unauthorized use of the motor vehicle and agrees to  
2                    prosecute the unauthorized operator of the motor vehicle;  
3                    c.    Whose vehicle was reported stolen;  
4                    d.    ~~Who files a police report for unauthorized use of the motor~~  
5                    ~~vehicle and agrees to prosecute the unauthorized operator of the~~  
6                    ~~motor vehicle;~~  
7                    e.    Who is in the business of renting vehicles, ~~the driver and the~~  
8                    vehicle was driven by a person who is not listed as an authorized  
9                    driver on the rental contract; or  
10                  f.    Who is in the business of leasing motor vehicles, who holds legal  
11                  title to the motor vehicle as a lessor at the time of seizure and  
12                  who has no actual knowledge of the revocation of the lessee's  
13                  drivers license at the time the lease is entered."  
14

15 PART VI. EFFECTIVE DATE

16                  Section 18. This act shall be implemented with funds available or appropriated  
17 to the Department of Transportation and the Administrative Office of the Courts. This  
18 act does not obligate the General Assembly to appropriate additional funds.

19                  Section 19. Parts I and II of this act become effective July 1, 2000, and apply  
20 to offenses committed on or after that date. The remainder of this act becomes effective  
21 December 1, 1999, and applies to offenses committed on or after that date.