

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1135

Short Title: 1999 Governor's DWI Amendments.

(Public)

Sponsors: Representatives Hackney, Bowie, Wainwright (Primary Sponsors); and Barefoot.

Referred to: Judiciary I.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S
DWI TASK FORCE.

The General Assembly of North Carolina enacts:

PART I. LOWER TOLERANCE FOR REPEAT OFFENDERS

Section 1. G.S. 20-16.2 reads as rewritten:

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

(a) Basis for Charging Officer to Require Chemical Analysis; Notification of Rights. – Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

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

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

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

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

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

40 (c) Request to Submit to Chemical Analysis; ~~Procedure upon Refusal Analysis.~~ –
41 The charging officer, in the presence of the chemical analyst who has notified the person
42 of his or her rights under subsection (a), must request the person charged to submit to the
43 type of chemical analysis designated. If the person charged willfully refuses to submit to

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

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

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

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

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

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

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

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

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

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

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

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

36 Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the
37 procedure for application and conduct of the hearing and the restrictions required or
38 authorized to be included in the limited driving privilege apply to applications under this
39 subsection. If the case was finally disposed of in the district court, the hearing shall be
40 conducted in the district court district as defined in G.S. 7A-133 in which the refusal
41 occurred by a district court judge. If the case was finally disposed of in the superior court,
42 the hearing shall be conducted in the superior court district or set of districts as defined in
43 G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving

1 privilege issued under this section authorizes a person to drive if the person's license is
2 revoked solely under this section or solely under this section and G.S. 20-17(2). If the
3 person's license is revoked for any other reason, the limited driving privilege is invalid.

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

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

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

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

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

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

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

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

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

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

34 **"§ 20-19. Period of suspension or ~~revocation~~-revocation; conditions of restoration.**

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

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

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

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

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

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

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

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

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

37 (4) For any restoration of a drivers license revoked pursuant to G.S. 20-23
38 or G.S. 20-23.2 when the offense for which the person's license was
39 revoked prohibits substantially similar conduct which if committed in
40 this State would result in a conviction of driving while impaired in a
41 commercial motor vehicle, G.S. 20-138.2, driving while less than 21
42 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death
43 by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide

1 resulting from the operation of a motor vehicle when the offense
2 involved impaired driving, that the person not operate a vehicle with an
3 alcohol concentration of 0.00 or more at any relevant time after the
4 driving.

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

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

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

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

30 (c5) Right to Hearing before Division: Issues. – Upon receipt of a properly
31 executed affidavit required by G.S. 20-16.2(c1), the Division must expeditiously notify
32 the person charged that the person's license to drive is revoked for the period of time
33 specified in this section, effective on the tenth calendar day after the mailing of the
34 revocation order unless, before the effective date of the order, the person requests in
35 writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if
36 the person shows to the satisfaction of the Division that the person's license was
37 surrendered to the court and remained in the court's possession, then the Division shall
38 credit the amount of time for which the license was in the possession of the court against
39 the revocation period required by this section. If the person properly requests a hearing,
40 the 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 provision of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued
5 under the authority of this section. The hearing officer is authorized to administer oaths
6 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 charging officer had reasonable grounds to believe that the person
9 had violated the alcohol concentration restriction;

10 (2) The person was notified of the person's rights as required by G.S. 20-
11 16.2(a);

12 (3) The drivers license of the person had an alcohol concentration
13 restriction; and

14 (4) The person submitted to a chemical analysis upon the request of the
15 charging officer, and the analysis revealed an alcohol concentration in
16 excess of the restriction on the person's drivers license.

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 any of the conditions (1), (2), (3), or
19 (4) is not met, it must rescind the revocation. If the revocation is sustained, the person
20 must surrender the person's license immediately upon notification by the Division.

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

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

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

1 (2) He is not currently an excessive user of alcohol or drugs.
2 If the Division restores the person's license, it may place reasonable conditions or
3 restrictions on the person for the duration of the original revocation period.

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

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

16 (2) He is not currently an excessive user of alcohol or drugs.
17 If the Division restores the person's license, it may place reasonable conditions or
18 restrictions on the person for any period up to three years from the date of restoration.

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

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

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

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

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

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

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

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

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

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

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

34 PART II. IGNITION INTERLOCK

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

37 **"§ 20-17.7. Restoration of a license after certain driving while impaired convictions; 38 ignition interlock.**

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

- 41 (1) The person had an alcohol concentration of 0.16 or more; or
42

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

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

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

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

17 (3) A requirement that the person not drive with an alcohol concentration of
18 0.01 or greater.

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

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

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

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

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

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

37 (f) Effect of Violation of Restriction. – A person subject to this section who
38 violates any of the restrictions of this section commits the offense of driving while license
39 revoked under G.S. 20-28(a) and is subject to punishment and license revocation as
40 provided in that section. If a law enforcement officer has reasonable grounds to believe
41 that a person subject to this section has consumed alcohol while driving or has driven
42 while he has remaining in his body any alcohol previously consumed, the suspected
43 offense of driving while license is revoked is an alcohol-related offense subject to the

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

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

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

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

26 (j) **Right to Hearing Before Division; Issues.** – If the person's license is revoked
27 pursuant to subsection (g) of this section, before the effective date of the order issued
28 under subsection (i) of this section, the person may request in writing a hearing before the
29 Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the
30 satisfaction of the Division that the person's license was surrendered to the court and
31 remained in the court's possession, then the Division shall credit the amount of time for
32 which the license was in the possession of the court against the revocation period
33 required by subsection (g) of this section. If the person properly requests a hearing, the
34 person retains the person's license, unless it is revoked under some other provision of
35 law, until the hearing is held, the person withdraws the request, or the person fails to
36 appear at a scheduled hearing. The hearing officer may subpoena any witnesses or
37 documents that the hearing officer deems necessary. The person may request the hearing
38 officer to subpoena the charging officer, the chemical analyst, or both to appear at the
39 hearing if the person makes the request in writing at least three days before the hearing.
40 The person may subpoena any other witness whom the person deems necessary, and the
41 provision of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued
42 under the authority of this section. The hearing officer is authorized to administer oaths

1 to witnesses appearing at the hearing. The hearing must be conducted in the county
2 where the charge was brought, and must be limited to consideration of whether:

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

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

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

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

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

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

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

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

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

7 PART III. OPEN CONTAINER

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

9 **"§ 18B-401. Manner of transportation.**

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

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

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

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

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

33 **"§ 20-138.7. Transporting an open container of alcoholic beverage after consuming** 34 **alcohol beverage.**

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

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

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

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

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

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

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

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

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

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

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

38 (f) Definitions. – If the seal on a container of alcoholic beverages has been
39 broken, it is opened within the meaning of this section. For purposes of this section,
40 "passenger area of a motor vehicle" means the area designed to seat the driver and
41 passengers and any area within the reach of a seated driver or passenger, including the
42 glove compartment. The area of the trunk or the area behind the last upright back seat of

1 a station wagon, hatchback, or similar vehicle shall not be considered part of the
2 passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

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

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

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

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

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

24 25 PART IV. HGN TEST ADMISSIBILITY

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

28 **"§ 8-50.3. Results of Horizontal Gaze Nystagmus; admissibility.**

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

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

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

42 43 PART V. LIMITED DRIVING PRIVILEGE ALCOSENSOR ADMISSIBILITY

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

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

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

24
25 PART VI. INCREASE PUNISHMENT FOR 19 OR 20 YEAR OLD PURCHASE OR
26 POSSESSION OF ALCOHOLIC BEVERAGES

27 Section 11. G.S. 18B-302(i) is repealed.

28 Section 12. G.S. 15A-146(a) reads as rewritten:

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

42
43 PART VII. OTHER DWI CHANGES

1 Section 13. G.S. 20-16.2(i) reads as rewritten:

2 **"§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in**
3 **event of refusal; right of driver to request analysis.**

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

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

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

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

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

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

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

28 Section 14. G.S. 20-28.2(a) reads as rewritten:

29 **"§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving**
30 **license revocation.**

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

34 (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12),
35 20-17.2, or 20-138.5; or

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

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

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

42 "(e) Release of Vehicle to Innocent Motor Vehicle Owner. – At a forfeiture
43 hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the

1 evidence that: (i) the motor vehicle was being driven by a person who was not the only
2 motor vehicle owner or had no ownership interest in the motor vehicle at the time of the
3 underlying offense and (ii) the petitioner is an "innocent owner", as defined by this
4 section, a judge shall order the motor vehicle released to that owner, conditioned upon
5 payment of all towing and storage charges incurred as a result of the seizure and
6 impoundment of the motor vehicle.

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

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

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

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

32 Section 16. G.S. 20-16.5(e) reads as rewritten:

33 "(e) Procedure if Report Filed with Judicial Official When Person Is Present. – If a
34 properly executed revocation report concerning a person is filed with a judicial official
35 when the person is present before that official, the judicial official shall, after completing
36 any other proceedings involving the person, determine whether there is probable cause to
37 believe that each of the conditions of subsection (b) has been met. If he determines that
38 there is such probable cause, he shall enter an order revoking the person's driver's license
39 for the period required in this subsection. The judicial official shall order the person to
40 surrender his license and if necessary may order a law-enforcement officer to seize the
41 license. The judicial official shall give the person a copy of the revocation order. In
42 addition to setting it out in the order the judicial official shall personally inform the
43 person of his right to a hearing as specified in subsection (g), and that his license remains

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

18 Section 17. G.S. 20-139.1(b3) reads as rewritten:

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

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

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

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

1 Section 18. G.S. 20-4.01(24a) reads as rewritten:

2 "(24a) Offense Involving Impaired Driving. – Any of the following offenses:

- 3 a. Impaired driving under G.S. 20-138.1.
- 4 b. Death by vehicle under G.S. 20-141.4 when conviction is based
5 upon impaired driving or a substantially equivalent offense under
6 previous law.
- 7 c. First or second degree murder under G.S. 14-17 or involuntary
8 manslaughter under G.S. 14-18 when conviction is based upon
9 impaired driving or a substantially equivalent offense under
10 previous law.
- 11 d. An offense committed in another jurisdiction which prohibits
12 substantially equivalent to similar conduct prohibited by the
13 offenses in subparagraphs a through e. this subsection.
- 14 e. A repealed or superseded offense substantially equivalent to
15 impaired driving, including offenses under former G.S. 20-138 or
16 G.S. 20-139.
- 17 f. Impaired driving in a commercial motor vehicle under G.S. 20-
18 138.2, except that convictions of impaired driving under G.S. 20-
19 138.1 and G.S. 20-138.2 arising out of the same transaction shall
20 be considered a single conviction of an offense involving
21 impaired driving for any purpose under this Chapter.
- 22 g. Habitual impaired driving under G.S. 20-138.5.

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

25 Section 19. G.S. 20-138.2A reads as rewritten:

26 **"§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

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

33 (b) Implied-Consent Offense. – An offense under this section is an implied-
34 consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-
35 139.1 shall apply to an offense committed under this section.

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

41 (b2) Alcohol Screening Test. – Notwithstanding any other provision of law, an
42 alcohol screening test may be administered to a driver suspected of violation of
43 subsection (a) of this section, and the results of an alcohol screening test or the driver's

1 refusal to submit may be used by a law enforcement officer, a court, or an administrative
2 agency in determining if alcohol was present in the driver's body. No alcohol screening
3 tests are valid under this section unless the device used is one approved by the
4 Commission on Health Services, and the screening test is conducted in accordance with
5 the applicable regulations of the Commission as to its manner and use.

6 (c) Punishment. – Except as otherwise provided in this subsection, a violation of
7 the offense described in subsection (a) of this section is a Class 3 misdemeanor and,
8 notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars
9 (\$100.00). A second or subsequent violation of this section is a misdemeanor punishable
10 under G.S. 20-179. This offense is a lesser included offense of impaired driving of a
11 commercial vehicle under G.S. 20-138.2.

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

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

19 **"§ 20-138.2B. Operating a school bus, school activity bus, or child care vehicle after**
20 **consuming alcohol.**

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

27 (b) Implied-Consent Offense. – An offense under this section is an implied-
28 consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-
29 139.1 shall apply to an offense committed under this section.

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

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

1 (c) Punishment. – Except as otherwise provided in this subsection, a violation of
2 the offense described in subsection (a) of this section is a Class 3 misdemeanor and,
3 notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars
4 (\$100.00). A second or subsequent violation of this section is a misdemeanor punishable
5 under G.S. 20-179. This offense is a lesser included offense of impaired driving of a
6 commercial vehicle under G.S. 20-138.1.

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

12 Section 21. G.S. 20-28.2(a1)(2) reads as rewritten:

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

- 14 a. Who did not know and had no reason to know that the
15 defendant's drivers license was revoked;
- 16 b. Who knew that the defendant's drivers license was revoked, but
17 the defendant drove the vehicle without the person's expressed or
18 implied permission;
- 19 c. Whose vehicle was reported stolen;
- 20 d. Who files a police report for unauthorized use of the motor
21 vehicle and agrees to prosecute the unauthorized operator of the
22 motor vehicle;
- 23 e. Who is in the business of renting vehicles, ~~the driver and the~~
24 vehicle was driven by a person who is not listed as an authorized
25 driver on the rental contract; or
- 26 f. Who is in the business of leasing motor vehicles, who holds legal
27 title to the motor vehicle as a lessor at the time of seizure and
28 who has no actual knowledge of the revocation of the lessee's
29 drivers license at the time the lease is entered."
- 30

31 PART VIII. EFFECTIVE DATE

32 Section 22. This act becomes effective December 1, 1999, and applies to
33 offenses committed on or after that date.