

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 400

Short Title: DWI Vehicle Impound/Confiscation.

(Public)

Sponsors: Senators Odom, Forrester, and Carpenter.

Referred to: Judiciary I/Constitution

March 20, 1995

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE IMPOUNDMENT OR CONFISCATION OF SOME
MOTOR VEHICLES USED IN IMPAIRED DRIVING OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. Part 12 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-179.5. Impoundment of vehicle driven by a defendant with an alcohol concentration of 0.16 or more or with a prior impaired driving conviction.

(a) When a defendant is arrested for impaired driving under G.S. 20-138.1 and the arresting officer determines:

(1) That the defendant has a prior conviction for an offense involving impaired driving as described in G.S. 20-179(c)(1);

(2) That the defendant was driving with an alcohol concentration of 0.16 or more within a relevant time after the driving; or

(3) That the defendant willfully refused to submit to a chemical analysis at the request of the charging officer,

the motor vehicle driven by the defendant at the time of the offense shall be immediately impounded for a period of 30 days.

(b) When a defendant is convicted of impaired driving under G.S. 20-138.1 and the sentencing judge determines:

1 (1) That there is the grossly aggravating factor of a single prior conviction
2 for impaired driving under G.S. 20-179(c)(1); or
3 (2) That the defendant was driving with an alcohol concentration of 0.16 or
4 more within a relevant time after the driving,
5 the judge shall order that the motor vehicle driven by the defendant at the time of the
6 offense be impounded for a period of 60 consecutive days if:

7 (1) The vehicle driven by the defendant was owned or co-owned by the
8 defendant; or
9 (2) The vehicle was driven by the defendant with the consent of the owner
10 of the vehicle at the time of the offense.

11 (c) There shall be a presumption that the vehicle was being driven at the time of
12 the offense was owned by the defendant or was being driven with the consent of the
13 owner. The presumption may be rebutted by the registration card or certificate of title
14 showing that the vehicle was not owned or co-owned by the defendant and by the filing
15 of a sworn affidavit signed by the vehicle's owner that the defendant was not operating
16 the vehicle with the owner's permission. The presumption may also be rebutted by a
17 showing that a duly licensed leasing company owned the vehicle and had no reason or
18 basis upon which to know that renter of the vehicle had previously been convicted of an
19 impaired driving offense.

20 (d) The impounded vehicle may be stored at any public or private parking lot,
21 garage, or other appropriate place. The storage charges and towing fees shall be a
22 possessory lien on the vehicle pursuant to G.S. 44A-2(d). The charges and fees shall be
23 paid by the defendant or the owner of the vehicle unless it is proven to the court that the
24 vehicle was stolen."

25 Sec. 2. Chapter 20 of the General Statutes is amended by adding a new section
26 to read:

27 **"§ 20-28.3. Forfeiture of motor vehicle after a third or subsequent impaired driving**
28 **conviction.**

29 (a) When Motor Vehicle Becomes Property Subject to Forfeiture. – If at a
30 sentencing hearing conducted pursuant to G.S. 20-179 the judge determines that:

31 (1) The defendant is the owner or co-owner of the vehicle or that if the
32 vehicle is owned by another, the vehicle was driven with the permission
33 of the owner; and

34 (2) The grossly aggravating factor described in G.S. 20-179(c)(1) with two
35 or more prior convictions applies,
36 the motor vehicle that was driven by the defendant at the time he committed the offense
37 of impaired driving becomes property subject to forfeiture.

38 (c) Duty of Prosecutor to Notify Possible Innocent Parties. – In any case in which
39 a prosecutor determines that a motor vehicle driven by a defendant may be subject to
40 forfeiture under this section, the prosecutor shall determine the identity of the vehicle
41 owner as shown on the certificate of title for the vehicle and he shall also determine if
42 there are any security interests noted on the vehicle's certificate of title. The State shall
43 notify the holder of each security interest that the vehicle may be subject to forfeiture and

1 that he may intervene to protect his interest. If the defendant is not the owner, a similar
2 notice shall be served on the owner. The notice may be served by any means reasonably
3 likely to provide actual notice, and shall be served at least 14 days before the forfeiture
4 hearing.

5 (d) Duty of Judge. – The judge at sentencing shall hold a hearing to determine if
6 the vehicle should be forfeited. At the hearing the judge shall order the forfeiture if he
7 finds that:

8 (1) The vehicle is subject to forfeiture;

9 (2) All potential innocent parties have been notified as required in
10 subsection (c) of this section; and

11 (3) No party has shown that he is an innocent party as described in
12 subsection (f) of this section.

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

17 (e) Sale of Forfeited Vehicle Required. – If the judge orders forfeiture of the
18 vehicle pursuant to this section, he shall order the sale of the vehicle. Proceeds of the
19 sale, after the payment of costs of storage and towing, shall be paid to the school fund of
20 the county in which the property was seized.

21 (f) Innocent Party May Intervene. – At any time before the forfeiture is ordered,
22 the property owner or holder of a security interest, other than the defendant, may apply to
23 protect his interest in the motor vehicle. The application may be made to a judge who has
24 jurisdiction to try the impaired driving offense with which the motor vehicle is
25 associated. The judge shall order the vehicle returned to the owner if he finds that the
26 owner or the holder of a security interest is an innocent party, and the innocent party
27 signs an affidavit that the released vehicle shall not be made available to the defendant.
28 An owner or holder of a security interest is an innocent party if he:

29 (1) Did not know and had no reasonable basis to know that the defendant
30 had previously been convicted of an impaired driving offense; or

31 (2) The owner of the vehicle took reasonable precautions to prevent the
32 defendant from gaining access to the vehicle and that the defendant
33 drove the vehicle without his consent.

34 The party to whom the vehicle is returned shall pay the costs of storage and towing,
35 unless the judge determines that the vehicle had been stolen from the innocent party. If
36 an innocent party applies after the forfeited motor vehicle has been sold and the judge
37 finds no laches in the innocent party's delay, the judge may order a payment to the
38 innocent party from the net proceeds of the sale equal to his equity or security interest in
39 the vehicle."

40 Sec. 3. This act becomes effective January 1, 1996.