

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

6

HOUSE BILL 1135
Committee Substitute Favorable 4/22/99
Third Edition Engrossed 4/26/99
Corrected Copy 4/30/99
Committee Substitute #2 Favorable 6/21/99
Sixth Edition Engrossed 6/28/99

Short Title: 1999 Governor's DWI Amendments.

(Public)

Sponsors:

Referred to:

April 15, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S
3 DWI TASK FORCE.

4 The General Assembly of North Carolina enacts:

5
6 PART I. LOWER TOLERANCE FOR REPEAT OFFENDERS

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

8 "§ 20-16.2. **Implied consent to chemical analysis; mandatory revocation of license in**
9 **event of refusal; right of driver to request analysis.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 38 PART II. IGNITION INTERLOCK

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 PART III. OPEN CONTAINER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 PART V. LIMITED DRIVING PRIVILEGE ALCOSENSOR ADMISSIBILITY

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

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

1 Notwithstanding any other provision of law, an alcohol screening test may be
2 administered to a driver suspected of violating this section, and the results of an alcohol
3 screening test or the driver's refusal to submit may be used by a law enforcement officer,
4 a court, or an administrative agency in determining if alcohol was present in the driver's
5 body. No alcohol screening tests are valid under this section unless the device used is
6 one approved by the Commission for Health Services, and the screening test is conducted
7 in accordance with the applicable regulations of the Commission as to the manner of its
8 use."
9

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

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

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

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

20 "**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time**
21 **of conviction of ~~misdemeanor.~~ misdemeanor; expunction of certain other**
22 **misdemeanors.**

23 (a) Whenever any person who has (i) not yet attained the age of 18 years and has
24 not previously been convicted of any felony, or misdemeanor other than a traffic
25 violation, under the laws of the United States, the laws of this State or any other state,
26 pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet
27 attained the age of 21 years and has not previously been convicted of any felony, or
28 misdemeanor other than a traffic violation, under the laws of the United States, the laws
29 of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession
30 of alcohol pursuant to G.S. 18B-302(b)(1), he may file a petition in the court where he
31 was convicted for expunction of the misdemeanor from his criminal record. The petition
32 cannot be filed earlier than two years after the date of the conviction or any period of
33 probation, whichever occurs later, and the petition shall contain, but not be limited to, the
34 following:

- 35 (1) An affidavit by the petitioner that he has been of good behavior for the
36 two-year period since the date of conviction of the misdemeanor in
37 question and has not been convicted of any felony, or misdemeanor in
38 question and has not been convicted of any felony, or misdemeanor
39 other than a traffic violation, under the laws of the United States or the
40 laws of this State or any other state.
- 41 (2) Verified affidavits of two persons who are not related to the petitioner
42 or to each other by blood or marriage, that they know the character and

1 reputation of the petitioner in the community in which he lives and that
2 his character and reputation are good.

3 (3) A statement that the petition is a motion in the cause in the case wherein
4 the petitioner was convicted.

5 (4) Affidavits of the clerk of superior court, chief of police, where
6 appropriate, and sheriff of the county in which the petitioner was
7 convicted and, if different, the county of which the petitioner is a
8 resident, showing that the petitioner has not been convicted of a felony
9 or misdemeanor other than a traffic violation under the laws of this State
10 at any time prior to the conviction for the misdemeanor in question or
11 during the two-year period following that conviction.

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

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

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

30 (c) The court shall also order that the said misdemeanor conviction be expunged
31 from the records of the court, and direct all law enforcement agencies bearing record of
32 the same to expunge their records of the conviction. The clerk shall forward a certified
33 copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff,
34 chief or head of such other arresting agency shall then transmit the copy of the order with
35 a form supplied by the State Bureau of Investigation to the State Bureau of Investigation,
36 and the State Bureau of Investigation shall forward the order to the Federal Bureau of
37 Investigation. The cost of expunging such records shall be taxed against the petitioner.

38 (d) The clerk of superior court in each county in North Carolina shall, as soon as
39 practicable after each term of court in his county, file with the Administrative Office of
40 the Courts, the names of those persons granted a discharge under the provisions of this
41 section, and the Administrative Office of the Courts, the names of those persons granted a
42 discharge under the provisions of this section, and the Administrative Office of the
43 Courts shall maintain a confidential file containing the names of persons granted

1 conditional discharges. The information contained in such file shall be disclosed only to
2 judges of the General Court of Justice of North Carolina for the purpose of ascertaining
3 whether any person charged with an offense has been previously granted a discharge."

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

5 "(a) If any person is charged with a crime, either a misdemeanor or a felony, or is
6 was charged with an infraction under ~~G.S. 18B-302(i)~~, G.S. 18B-302(i) prior to December
7 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is
8 entered, that person may apply to the court of the county where the charge was brought
9 for an order to expunge from all official records any entries relating to his apprehension
10 or trial. The court shall hold a hearing on the application and, upon finding that the
11 person had not previously received an expungement and that the person had not
12 previously been convicted of any felony under the laws of the United States, this State, or
13 any other state, the court shall order the expunction. No person as to whom such an order
14 has been entered shall be held thereafter under any provision of any law to be guilty of
15 perjury, or to be guilty of otherwise giving a false statement or response to any inquiry
16 made for any purpose, by reason of his failure to recite or acknowledge any expunged
17 entries concerning apprehension or trial."
18

19 PART VII. OTHER DWI CHANGES

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

21 **"§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in 22 event of refusal; right of driver to request analysis.**

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

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

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

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

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

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

40 (3) That if the person fails to comply fully with the test procedures, the
41 officer may charge the person with any offense for which the officer has
42 probable cause, and if the person is charged with an implied-consent
43 offense, the person's refusal to submit to the testing required as a result

1 of that charge would result in revocation of the person's driver's license.
2 The results of the chemical analysis are admissible in evidence in any
3 proceeding in which they are relevant."

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

5 **"§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving**
6 **license revocation.**

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

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

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

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

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

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

34 If the nondefendant owner is a lessor, the release shall also be conditioned upon the
35 lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor
36 vehicle to the defendant or any person acting on the defendant's behalf. A lessor who
37 refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or
38 any person acting on the behalf of the defendant shall not be liable for damages arising
39 out of the refusal.

40 No motor vehicle subject to forfeiture under this section shall be released to a
41 nondefendant motor vehicle owner if the records of the Division indicate the motor
42 vehicle owner had previously signed an acknowledgment, as required by this section, and
43 the same person was operating the motor vehicle while that person's license was revoked

1 unless the innocent owner shows by the greater weight of the evidence that the motor
2 vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle
3 by this particular person and immediately reports, upon discovery, any unauthorized use
4 to the appropriate law enforcement agency. A determination by the court at the forfeiture
5 hearing held pursuant to subsection (d) of this section that the petitioner is not an
6 innocent owner is a final judgment and is immediately appealable to the Court of
7 Appeals."

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

9 "(e) Procedure if Report Filed with Judicial Official When Person Is Present. – If a
10 properly executed revocation report concerning a person is filed with a judicial official
11 when the person is present before that official, the judicial official shall, after completing
12 any other proceedings involving the person, determine whether there is probable cause to
13 believe that each of the conditions of subsection (b) has been met. If he determines that
14 there is such probable cause, he shall enter an order revoking the person's driver's license
15 for the period required in this subsection. The judicial official shall order the person to
16 surrender his license and if necessary may order a law-enforcement officer to seize the
17 license. The judicial official shall give the person a copy of the revocation order. In
18 addition to setting it out in the order the judicial official shall personally inform the
19 person of his right to a hearing as specified in subsection (g), and that his license remains
20 revoked pending the hearing. The revocation under this subsection begins at the time the
21 revocation order is issued and continues until the person's license ~~has been revoked~~ has
22 been surrendered for the period specified in this subsection, and the person has paid the
23 applicable costs. The period of revocation is 30 days, if there are no pending offenses for
24 which the person's license had been or is revoked under this section. If at the time of the
25 current offense, the person has one or more pending offenses for which his license had
26 been or is revoked under this section, the revocation shall remain in effect until a final
27 judgment, including all appeals, has been entered for the current offense and for all
28 pending offenses. In no event, may the period of revocation under this subsection be less
29 than 30 days. If within five working days of the effective date of the order, the person
30 does not surrender his license or demonstrate that he is not currently licensed, the clerk
31 shall immediately issue a pick-up order. The pick-up order shall be issued to a member of
32 a local law-enforcement agency if the charging officer was employed by the agency at the
33 time of the charge and the person resides in or is present in the agency's territorial
34 jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector
35 of the Division. A pick-up order issued pursuant to this section is to be served in
36 accordance with G.S. 20-29 as if the order had been issued by the Division."

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

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

- 1 (1) A specification as to the minimum observation period before collection
2 of the first breath sample and the time requirements as to collection of
3 second and subsequent samples.
- 4 (2) That the test results may only be used to prove a person's particular
5 alcohol concentration if:
6 a. The pair of readings employed are from consecutively
7 administered tests; and
8 b. The readings do not differ from each other by an alcohol
9 concentration greater than 0.02.
- 10 (3) That when a pair of analyses meets the requirements of subdivision (2),
11 only the lower of the two readings may be used by the State as proof of
12 a person's alcohol concentration in any court or administrative
13 proceeding.

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

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

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

- 23 "(24a) Offense Involving Impaired Driving. – Any of the following offenses:
24 a. Impaired driving under G.S. 20-138.1.
25 b. Death by vehicle under G.S. 20-141.4 when conviction is based
26 upon impaired driving or a substantially equivalent offense under
27 previous law.
28 c. First or second degree murder under G.S. 14-17 or involuntary
29 manslaughter under G.S. 14-18 when conviction is based upon
30 impaired driving or a substantially equivalent offense under
31 previous law.
32 d. An offense committed in another jurisdiction which prohibits
33 substantially equivalent to similar conduct prohibited by the
34 offenses in subparagraphs a through e. this subsection.
35 e. A repealed or superseded offense substantially equivalent to
36 impaired driving, including offenses under former G.S. 20-138 or
37 G.S. 20-139.
38 f. Impaired driving in a commercial motor vehicle under G.S. 20-
39 138.2, except that convictions of impaired driving under G.S. 20-
40 138.1 and G.S. 20-138.2 arising out of the same transaction shall
41 be considered a single conviction of an offense involving
42 impaired driving for any purpose under this Chapter.
43 g. Habitual impaired driving under G.S. 20-138.5.

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

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

4 **"§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.**

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

11 (b) Implied-Consent Offense. – An offense under this section is an implied-
12 consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-
13 139.1 shall apply to an offense committed under this section.

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

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

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

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

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

40 **"§ 20-138.2B. Operating a school bus, school activity bus, or child care vehicle after**
41 **consuming alcohol.**

42 (a) Offense. – A person commits the offense of operating a school bus, school
43 activity bus, or child care vehicle after consuming alcohol if the person drives a school

1 bus, school activity bus, or child care vehicle upon any highway, any street, or any public
2 vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at~~
3 ~~any relevant time after the driving, an alcohol concentration greater than 0.00, while consuming~~
4 alcohol or while alcohol remains in the person's body.

5 (b) Implied-Consent Offense. – An offense under this section is an implied-
6 consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-
7 139.1 shall apply to an offense committed under this section.

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

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

21 (c) Punishment. – Except as otherwise provided in this subsection, a violation of
22 the offense described in subsection (a) of this section is a Class 3 misdemeanor and,
23 notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars
24 (\$100.00). A second or subsequent violation of this section is a misdemeanor punishable
25 under G.S. 20-179. This offense is a lesser included offense of impaired driving of a
26 commercial vehicle under G.S. 20-138.1.

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

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

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

- 34 a. Who did not know and had no reason to know that the
35 defendant's drivers license was revoked;
- 36 b. Who knew that the defendant's drivers license was revoked, but
37 the defendant drove the vehicle without the person's expressed or
38 implied ~~permission~~; permission, and the owner files a police
39 report for unauthorized use of the motor vehicle and agrees to
40 prosecute the unauthorized operator of the motor vehicle;
- 41 c. Whose vehicle was reported stolen;

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

12 **PART VIII. EFFECTIVE DATE**

13 Section 23. This act shall be implemented with funds available or appropriated
14 to the Department of Transportation and the Administrative Office of the Courts. This
15 act does not obligate the General Assembly to appropriate additional funds.

16 Section 24. Parts I and II of this act become effective July 1, 2000, and apply
17 to offenses committed on or after that date. The remainder of this act becomes effective
18 December 1, 1999, and applies to offenses committed on or after that date.