

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

**SESSION LAW 2001-362  
HOUSE BILL 1217**

AN ACT TO SPEED THE NOTIFICATION TO LIENHOLDERS WHEN A MOTOR VEHICLE IS SEIZED UNDER DWI FORFEITURE PROVISIONS AND TO SPEED THE RELEASE OF A SEIZED VEHICLE TO INNOCENT OWNERS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-28.3(b) reads as rewritten:

"(b) **Duty of Officer.** – If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle driven by a person not listed as an authorized driver on the rental contract, the officer shall not seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was not listed as an authorized driver on the rental contract. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. The seizing officer shall notify the executive agency designated under subsection (b1) of this section as soon as practical but no later than ~~72~~ 24 hours after seizure of the motor vehicle of the seizure in accordance with procedures established by the executive agency designated under subsection (b1) of this section."

**SECTION 2.** G.S. 20-28.3(b1) reads as rewritten:

"(b1) Written Notification of Impoundment. – Within 48 hours of receipt within regular business hours of the notice of seizure, an executive agency designated by the Governor shall issue written notification of impoundment to the Division, to any lienholder of record and to any motor vehicle owner who was not operating the motor vehicle at the time of the offense. A notice of seizure received outside regular business hours shall be considered to have been received at the start of the next business day. ~~This notice~~ The notification of impoundment shall be sent by first-class mail to the most recent address contained in the Division's records. If the motor vehicle is registered in another state, notice shall be sent to the address shown on the records of the state where the motor vehicle is registered. This written notification shall provide notice that the motor vehicle has been seized, state the reason for the seizure and the procedure for requesting release of the motor vehicle. Additionally, if the motor vehicle was damaged while the defendant operator was committing an offense involving impaired driving or incident to the seizure, the agency shall issue written notification of the seizure to the owner's insurance company of record and to any other insurance companies that may be insuring other motor vehicles involved in the accident. The Division shall prohibit title to a seized motor vehicle from being transferred by a motor vehicle owner unless authorized by court order."

**SECTION 3.** G.S. 20-28.3 is amended by adding a new subsection to read:

"(b2) Additional Notification to Lienholders. – In addition to providing written notification pursuant to subsection (b1) of this section, within eight hours of receipt within regular business hours of the notice of seizure, the executive agency designated under subsection (b1) of this section shall notify by facsimile any lienholder of record

that has provided the executive agency with a designated facsimile number for notification of impoundment. The facsimile notification of impoundment shall state that the vehicle has been seized, state the reason for the seizure, and notify the lienholder of the additional written notification that will be provided pursuant to subsection (b1) of this section. The executive agency shall establish procedures to allow a lienholder to provide one designated facsimile number for notification of impoundment for any vehicle for which the lienholder is a lienholder of record and shall maintain a centralized database of the provided facsimile numbers. The lienholder must provide a facsimile number at which the executive agency may give notification of impoundment at any time."

**SECTION 4.** G.S. 20-28.3(e1) reads as rewritten:

"(e1) Pretrial Release of Motor Vehicle to Innocent Owner. – A nondefendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the petitioner is an innocent owner. The clerk shall ~~schedule a hearing before a judge to be held within 10 business days or consider the petition and make a determination~~ as soon as thereafter may be feasible. ~~Notice of the hearing shall be given to the petitioner, the district attorney, and the attorney for the county board of education. The clerk shall forward a copy of the petition to the district attorney for the district attorney's review. If, based on available information, the district attorney determines that the petitioner is an innocent owner and that the motor vehicle is not subject to forfeiture, the district attorney may note the State's consent to the release of the motor vehicle on the petition and return the petition to the clerk of court who shall enter an order releasing the motor vehicle to the petitioner subject to the conditions of release as set forth in G.S. 20-28.2(e) and no hearing shall be held. The clerk shall send a copy of the order of release to the county board of education attorney. At any pretrial hearing proceeding conducted pursuant to this subsection, the court clerk is not required to determine the issue of forfeiture, only the issue of whether the petitioner is an innocent owner. Accordingly, the State shall not be required to prove the underlying offense of impaired driving or the existence of a prior drivers license revocation. If the court clerk determines that the petitioner is an innocent owner, the court clerk shall release the motor vehicle to the petitioner subject to the same conditions as if the petitioner were an innocent owner under G.S. 20-28.2(e). The clerk shall send a copy of the order authorizing or denying release of the vehicle to the district attorney and the attorney for the county board of education. An order issued under this subsection finding that the petitioner failed to establish that the petitioner is an innocent owner may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d)."~~

**SECTION 5.** G.S. 20-28.3(k) reads as rewritten:

"(k) County Board of Education Right to Appear and Participate in Proceedings. – The attorney for the county board of education shall be given notice of all proceedings regarding offenses involving impaired driving related to a motor vehicle subject to forfeiture. However, the notice requirement under this subsection does not apply to proceedings conducted under G.S. 20-28.3(e1). The attorney for the county board of education shall also have the right to appear and to be heard on all issues relating to the seizure, possession, release, forfeiture, sale, and other matters related to the seized vehicle under this section. With the prior consent of the county board of education, the district attorney may delegate to the attorney for the county board of education any or all of the duties of the district attorney under this section. Clerks of superior court, law enforcement agencies, and all other agencies with information relevant to the seizure, impoundment, release, or forfeiture of motor vehicles are authorized and directed to provide county boards of education with access to that information and to do so by electronic means when existing technology makes this type of transmission possible."

**SECTION 6.** G.S. 20-28.3 is amended by adding a new subsection to read:

"(n) Any order issued pursuant to this section authorizing the release of a seized vehicle shall require the payment of all towing and storage charges incurred as a result

of the seizure and impoundment of the motor vehicle. This requirement shall not be waived."

**SECTION 7.** G.S. 20-28.2 is amended by adding a new subsection to read:

"(h) Any order issued pursuant to this section authorizing the release of a seized vehicle shall require the payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle. This requirement shall not be waived."

**SECTION 8.** G.S. 20-28.4 reads as rewritten:

**"§ 20-28.4. Release of impounded motor vehicles by judge.**

Release Upon Conclusion of Trial. – If the driver of a motor vehicle seized pursuant to G.S. 20-28.3:

- (1) Is subsequently not convicted of an offense involving impaired driving due to dismissal or a finding of not guilty; or
- (2) The judge at a forfeiture hearing conducted pursuant to G.S. 20-28.2(d) fails to find that the drivers license was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2; and
- (3) The vehicle has not previously been released to a lienholder pursuant to G.S. 20-28.3(e3),

the seized motor vehicle or insurance proceeds held by the clerk of court pursuant to G.S. 20-28.2(c1) or G.S. 20-28.3(h) shall be released to the motor vehicle owner conditioned upon payment of towing and storage costs. The court shall not waive the payment of towing and storage costs. Notwithstanding G.S. 44A-2(d), if the owner of the seized motor vehicle does not obtain release of the vehicle within 30 days from the date of the court's order, the possessor of the seized motor vehicle has a mechanics' lien on the seized motor vehicle for the full amount of the towing and storage charges incurred since the motor vehicle was seized and may dispose of the seized motor vehicle pursuant to Article 1 of Chapter 44A of the General Statutes."

**SECTION 9.** This act becomes effective January 1, 2002.

In the General Assembly read three times and ratified this the 1<sup>st</sup> day of August, 2001.

s/ Beverly E. Perdue  
President of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 11:45 a.m. this 10<sup>th</sup> day of August, 2001