

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 177

Judiciary II/Election Laws Committee Substitute Adopted 5/3/95

Short Title: Car Seized–Driving on Revoked D.L.

(Public)

Sponsors:

Referred to:

February 13, 1995

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE SEIZURE OF A MOTOR VEHICLE USED BY A PERSON DRIVING WITH A PERMANENTLY REVOKED DRIVERS LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-28(a) reads as rewritten:

"(a) Driving While License Revoked. – Any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense. Any person whose drivers license is permanently revoked under this section shall be notified by the Division that a subsequent violation during the period of permanent revocation may result in forfeiture of the motor vehicle pursuant to G.S. 20-28.3.

The restoree of a revoked drivers license who operates a motor vehicle upon the highways of the State without maintaining financial responsibility as provided by law shall be punished as for operating without a drivers license."

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

1 "§ 20-28.3. Forfeiture of motor vehicle for driving while license permanently  
2 revoked.

3 (a) If at a sentencing hearing for any moving violation the judge determines that  
4 the defendant's drivers license was permanently revoked pursuant to G.S. 20-28(a), the  
5 motor vehicle that was driven by the defendant at the time he committed the offense  
6 becomes property subject to forfeiture.

7 (b) Duty of Prosecutor to Notify Possible Innocent Parties. – In any case in which  
8 a prosecutor determines that a motor vehicle driven by a defendant may be subject to  
9 forfeiture under this section, the prosecutor shall determine the identity of the vehicle  
10 owner as shown on the certificate of title for the vehicle; and he shall also determine if  
11 there are any security interests noted on the vehicle's certificate of title. The State shall  
12 notify the holder of each security interest that the vehicle may be subject to forfeiture and  
13 that he may intervene to protect his interest. If the defendant is not the owner, a similar  
14 notice shall be served on the owner. The notice may be served by any means reasonably  
15 likely to provide actual notice, and shall be served at least 14 days before the forfeiture  
16 hearing.

17 (c) Duty of Judge. – The judge at sentencing shall hold a hearing to determine if  
18 the vehicle should be forfeited. At the hearing the judge may order the forfeiture if he  
19 finds that:

- 20 (1) The vehicle is subject to forfeiture;  
21 (2) The vehicle is not primarily used by a member of the defendant's  
22 family or household for a business purpose or for driving to and  
23 from work or school;  
24 (3) All potential innocent parties have been notified as required in  
25 subsection (b) of this section; and  
26 (4) No party has shown that he is an innocent party as described in  
27 subsection (e) of this section.

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

32 (d) Sale of Forfeited Vehicle Required. – If the judge orders forfeiture of the  
33 vehicle pursuant to this section, he shall order the sale of the vehicle. Proceeds of the sale  
34 shall be paid to the school fund of the county in which the property was seized.

35 (e) Innocent Party May Intervene. – Possession of any vehicle seized under the  
36 provisions of this section shall, upon demand, be immediately restored to the owner  
37 pending trial of the defendant, conditioned on the return of the motor vehicle to the  
38 custody of the sheriff on the day of trial of the person accused. At any time before the  
39 forfeiture is ordered, the property owner or holder of a security interest, other than the  
40 defendant, may apply to protect his interest in the motor vehicle. The application may be  
41 made to a judge who has jurisdiction to try the offense with which the motor vehicle is  
42 associated. The judge shall order the vehicle returned to the owner if he finds that either

1 the owner or the holder of a security interest is an innocent party. An owner or holder of a  
2 security interest is an innocent party if he:

3           (1) Did not know and had no reason to know that the defendant's drivers  
4 license was revoked; or

5           (2) Knew that the defendant's drivers license was revoked, but the  
6 defendant drove the vehicle without his consent.

7 If an innocent party applies after the forfeited motor vehicle has been sold and the judge  
8 finds no laches in the innocent party's delay, the judge may order a payment to the  
9 innocent party from the net proceeds of the sale up to an amount equal to his equity or  
10 security interest in the vehicle.

11       (f) The Division of Motor Vehicles shall maintain a list of defendants who have  
12 forfeited vehicles pursuant to this section, and those persons shall be barred from  
13 registering any motor vehicle in this State until such time as their driving privileges have  
14 been restored."

15           Sec. 3. This act becomes effective July 1, 1995.