§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation; forfeiture for felony speeding to elude arrest.

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

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

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

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

(a1) Definitions. – As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, 20-28.7, 20-28.8, 20-28.9, 20-54.1, and 20-141.5, the following terms mean:

(1) Fair Market Value. – The value of the seized motor vehicle, as determined in accordance with the schedule of values adopted by the Commissioner pursuant to G.S. 105-187.3.

(1a) Impaired Driving Acknowledgment. – A written document acknowledging that:

a. The motor vehicle was operated by a person charged with an offense involving impaired driving, and:

1. That person's drivers license was revoked as a result of a prior impaired drivers license revocation; or

2. That person did not have a valid drivers license, and did not have liability insurance.

b. If the motor vehicle is again operated by this particular person, and the person is charged with an offense involving impaired driving, then the vehicle is subject to impoundment and forfeiture if (i) the offense occurs while that person's drivers license is revoked, or (ii) the offense occurs while the person has no valid drivers license, and has no liability insurance.

c. A lack of knowledge or consent to the operation will not be a defense in the future, unless the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.

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

a. Who, if the offense resulting in seizure was an impaired driving offense, did not know and had no reason to know that (i) the defendant's drivers license was revoked, or (ii) that the defendant did not have a valid drivers license, and that the defendant had no liability insurance; or

b. Who, if the offense resulting in seizure was an impaired driving offense, knew that (i) the defendant's drivers license was revoked, or (ii) that the defendant had no valid drivers license, and that the defendant had no liability insurance, but the defendant drove the vehicle without the person's expressed or implied permission, and the owner files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle, or who, if the offense resulting in seizure was a felony speeding to elude arrest offense, did not give the defendant express

or implied permission to drive the vehicle, and the owner files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle; or

c. Whose vehicle was reported stolen; or

d. Repealed by Session Laws 1999-406, s. 17.

e. Who is (i) a rental car company as defined in G.S. 66-201(a) and the vehicle was driven by a person who is not listed as an authorized driver on the rental agreement as defined in G.S. 66-201; or (ii) a rental car company as defined in G.S. 66-201(a) and the vehicle was driven by a person who is listed as an authorized driver on the rental agreement as defined in G.S. 66-201 and if the offense resulting in seizure was an impaired driving offense, the rental car company has no actual knowledge of the revocation of the renter's drivers' license at the time the rental agreement is entered, or if the offense resulting in seizure was a felony speeding to elude arrest offense, the rental agreement expressly prohibits use of the vehicle while committing a felony; or

f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and, if the offense resulting in seizure was an impaired driving offense, who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered.

(2a) Insurance Company. – Any insurance company that has coverage on or is otherwise liable for repairs or damages to the motor vehicle at the time of the seizure.

(2b) Insurance Proceeds. – Proceeds paid under an insurance policy for damage to a seized motor vehicle less any payments actually paid to valid lienholders and for towing and storage costs incurred for the motor vehicle after the time the motor vehicle became subject to seizure.

(3) Lienholder. – A person who holds a perfected security interest in a motor vehicle at the time of seizure.

(3a) Motor Vehicle Owner. – A person in whose name a registration card or certificate of title for a motor vehicle is issued at the time of seizure.

(4) Order of Forfeiture. – An order by the court which terminates the rights and ownership interest of a motor vehicle owner in a motor vehicle and any insurance proceeds or proceeds of sale in accordance with G.S. 20-28.2.

(5) Repealed by Session Laws 1998-182, s. 2.

(6) Registered Owner. – A person in whose name a registration card for a motor vehicle is issued at the time of seizure.

(7) Repealed by Session Laws 1998-182, s. 2.

(8) Speeding to Elude Arrest Acknowledgment. – A written document acknowledging that:

a. The motor vehicle was operated by a person charged with felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).

b. If the motor vehicle is again operated by this particular person and the person is charged with felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1), then the vehicle is subject to impoundment and forfeiture.

c. A lack of knowledge or consent to the operation will not be a defense in the future unless the motor vehicle owner has taken all reasonable

precautions to prevent the use of the motor vehicle by this particular person and immediately reports upon discovery any unauthorized use to the appropriate law enforcement agency.

(9) State Surplus Property Agency. – The Department of Administration.

(b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture; Impaired Driving and Prior Revocation. – A judge may determine whether the vehicle driven by an impaired driver at the time of the offense becomes subject to an order of forfeiture. The determination may be made at any of the following times:

(1) A sentencing hearing for the underlying offense involving impaired driving.
(2) A separate hearing after conviction of the defendant.
(3) A forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense, and the defendant's order of arrest for failing to appear has not been set aside.

The vehicle shall become subject to an order of forfeiture if the greater weight of the evidence shows that the defendant is guilty of an offense involving impaired driving, and that the defendant's license was revoked pursuant to an impaired driving license revocation as defined in subsection (a) of this section.

(b1) When a Motor Vehicle Becomes Property Subject to Order of Forfeiture; No License and No Insurance. – A judge may determine whether the vehicle driven by an impaired driver at the time of the offense becomes subject to an order of forfeiture. The determination may be made at any of the following times:

(1) A sentencing hearing for the underlying offense involving impaired driving.
(2) A separate hearing after conviction of the defendant.
(3) A forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense, and the defendant's order of arrest for failing to appear has not been set aside.

The vehicle shall become subject to an order of forfeiture if the greater weight of the evidence shows that the defendant is guilty of an offense involving impaired driving, and: (i) the defendant was driving without a valid drivers license, and (ii) the defendant was not covered by an automobile liability policy.

(b2) When a Motor Vehicle Becomes Property Subject to Order of Forfeiture; Felony Speeding to Elude Arrest. – A judge may determine whether the vehicle driven at the time of the offense becomes subject to an order of forfeiture. The determination may be made at any of the following times:

(1) A sentencing hearing for the underlying felony speeding to elude arrest offense.
(2) A separate hearing after conviction of the defendant.
(3) A forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense, and the defendant's order of arrest for failing to appear has not been set aside.

The vehicle shall become subject to an order of forfeiture if the greater weight of the evidence shows that the defendant is guilty of felony speeding to elude arrest pursuant to G.S. 20-141.5(b) or (b1).

(c) Duty of Prosecutor to Notify Possible Innocent Parties. – In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this section and the motor vehicle has not been permanently released to a nondefendant vehicle owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or a lienholder, pursuant to G.S. 20-28.3(e3), the prosecutor shall notify the defendant, each motor vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that the defendant, motor vehicle owner, or the lienholder may intervene to protect that person's

interest. The notice may be served by any means reasonably likely to provide actual notice, and shall be served at least 10 days before the hearing at which an order of forfeiture may be entered.

(c1) Motor Vehicles Involved in Accidents. – If a motor vehicle subject to forfeiture was damaged while the defendant operator was committing the underlying offense resulting in seizure, or was damaged incident to the seizure of the motor vehicle, the Division shall determine the name of any insurance companies that are the insurers of record with the Division for the motor vehicle at the time of the seizure or that may otherwise be liable for repair to the motor vehicle. In any case where a seized motor vehicle was involved in an accident, the Division shall notify the insurance companies that the claim for insurance proceeds for damage to the seized motor vehicle shall be paid to the clerk of superior court of the county where the motor vehicle driver was charged to be held and disbursed pursuant to further orders of the court. Any insurance company that receives written or other actual notice of seizure pursuant to this section shall not be relieved of any legal obligation under any contract of insurance unless the claim for property damage to the seized motor vehicle minus the policy owner's deductible is paid directly to the clerk of court. The insurance company paying insurance proceeds to the clerk of court pursuant to this section shall be immune from suit by the motor vehicle owner for any damages alleged to have occurred as a result of the motor vehicle seizure. The proceeds shall be held by the clerk. The clerk shall disburse the insurance proceeds pursuant to further orders of the court.

(d) Forfeiture Hearing. – Unless a motor vehicle that has been seized pursuant to G.S. 20-28.3 has been permanently released to an innocent owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or to a lienholder pursuant to G.S. 20-28.3(e3), the court shall conduct a hearing on the forfeiture of the motor vehicle. The hearing may be held at the sentencing hearing on the underlying offense resulting in seizure, at a separate hearing after conviction of the defendant, or at a separate forfeiture hearing held not less than 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside. If at the forfeiture hearing, the judge determines that the motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited. If at the sentencing hearing or at a forfeiture hearing, the judge determines that the motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited unless another motor vehicle owner establishes, by the greater weight of the evidence, that such motor vehicle owner is an innocent owner as defined in this section, in which case the trial judge shall order the motor vehicle released to the innocent owner pursuant to the provisions of subsection (e) of this section. In any case where the motor vehicle is ordered forfeited, the judge shall:

(1) a. Authorize the sale of the motor vehicle at public sale or allow the county board of education to retain the motor vehicle for its own use pursuant to G.S. 20-28.5; or
   b. Order the motor vehicle released to a lienholder pursuant to the provisions of subsection (f) of this section; and

(2) a. Order any proceeds of sale or insurance proceeds held by the clerk of court to be disbursed to the county board of education; and
   b. Order any outstanding insurance claims be assigned to the county board of education in the event the motor vehicle has been damaged in an accident incident to the seizure of the motor vehicle.

If the judge determines that the motor vehicle is subject to forfeiture pursuant to this section, but that notice as required by subsection (c) has not been given, the judge shall continue the forfeiture proceeding until adequate notice has been given. In no circumstance shall the

sentencing of the defendant be delayed as a result of the failure of the prosecutor to give adequate notice.

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

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

(1) The identity of the person as a motor vehicle owner;

(2) The existence of financial responsibility to the extent required by Article 13 of this Chapter or by the laws of the state in which the vehicle is registered; and

(3) Repealed by Session Laws 1998-182, s. 2, effective December 1, 1998.

(4) The execution of:

a. An impaired driving acknowledgment as defined in subdivision (a1)(1a) of this section if the seizure was for an offense involving impaired driving; or

b. A speeding to elude arrest acknowledgment as defined in subdivision (a1)(8) of this section if the seizure was for violation of G.S. 20-141.5(b) or (b1).

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

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an impaired driving acknowledgment or a speeding to elude arrest acknowledgment, as required by this section, and the same person was operating the motor vehicle at the time of the current seizure unless the innocent owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals.

(f) Release to Lienholder. – At a forfeiture hearing, the trial judge shall order a forfeited motor vehicle released to the lienholder upon payment of all towing and storage charges incurred as a result of the seizure of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

(1) The lienholder's interest has been perfected and appears on the title to the forfeited vehicle;

(2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or to the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant's or motor vehicle owner's behalf;

(3) The forfeited motor vehicle had not previously been released to the lienholder;

(4) The owner is in default under the terms of the security instrument evidencing the interest of the lienholder and as a consequence of the default the lienholder is entitled to possession of the motor vehicle; and

(5) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 6 of Article 9 of Chapter 25 of the General Statutes. Upon the sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the vehicle was forfeited all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder.

A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle to the defendant, the vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the behalf of the defendant or motor vehicle owner shall not be liable for damages arising out of such refusal. The defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, and any person acting on the defendant's or motor vehicle owner's behalf are prohibited from purchasing the motor vehicle at any sale conducted by the lienholder.

(g) Repealed by Session Laws 1998-182, s. 2, effective December 1, 1998.

(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. (1983, c. 435, s. 21; 1983 (Reg. Sess., 1984), c. 1101, s. 19; 1989 (Reg. Sess., 1990), c. 1024, s. 6; 1997-379, s. 1.1; 1997-456, s. 30; 1998-182, s. 2; 1999-406, ss. 11, 12, 17; 2000-169, s. 28; 2001-362, s. 7; 2006-253, s. 31; 2007-493, ss. 7, 8, 21; 2013-243, s. 1; 2013-410, s. 18(a); 2015-241, s. 27.3(a).)