

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 989*

Short Title: 1999 Governor's DWI Amendments.

(Public)

Sponsors: Senators Odom and Forrester.

Referred to: Judiciary II.

April 15, 1999

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

The General Assembly of North Carolina enacts:

PART I. LOWER TOLERANCE FOR REPEAT OFFENDERS

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

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

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

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

- (1) The person has a right to refuse to be tested.

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

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

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

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

(c) **Request to Submit to Chemical Analysis; Procedure upon Refusal.** -- ~~Analysis.~~ -- The charging officer, in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to

that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law. ~~If the person refuses to submit to the chemical analysis, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit stating that the person charged, after being advised of his or her rights under subsection (a), willfully refused to submit to a chemical analysis at the request of the charging officer. The charging officer must immediately mail the affidavit to the Division. If the person's refusal to submit to a chemical analysis occurs in a case involving death or critical injury to another person, the charging officer must include that fact in the affidavit mailed to the Division. If the charging officer is also the chemical analyst who has notified the person of his or her rights under subsection (a), the charging officer may perform alone the duties of this subsection.~~

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

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

The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection. The affidavit(s) under this subsection is not required if the Division is notified of the information specified in this subsection through approved electronic means.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. -- Upon receipt of a properly executed affidavit required by subsection (c), affidavit(s) or information transmitted by electronic means as required in subsection (c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the

court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

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

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

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

eligible for such a hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

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

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

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

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this

subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

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

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

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

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

- (1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;
- (2) That the person's license will be revoked for at least 30 days if:
 - a. The test reveals an alcohol concentration of 0.08 or more; or
 - b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.
- (3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

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

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

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

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

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

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

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

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

- (1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;
- (2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;
- (3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;

- (4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

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

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

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

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

(c5) Right to Hearing before Division: Issues. -- Upon receipt of a properly executed affidavit required by G.S. 20-16.2(c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for the period of time specified in this section, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if

the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provision of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

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

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

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

(d) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of

the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

- (1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and
- (2) He is not currently an excessive user of alcohol or drugs.

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

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

- (1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and
- (2) He is not currently an excessive user of alcohol or drugs.

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

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

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

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

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

(i) When a person's license is revoked under subdivision (1) or (9) of G.S. 20-17 and the offense is one involving impaired driving, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been

revoked for at least three years in accordance with the procedure in subsection (e) of this section.

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

(k) Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

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

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

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

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing proof of

financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter."

PART II. IGNITION INTERLOCK

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

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

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

- (1) The person had an alcohol concentration of 0.16 or more; or
- (2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding the date of the offense for which the person's license has been revoked.

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

- (1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.
- (2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.
- (3) A requirement that the person not drive with an alcohol concentration of 0.01 or greater.

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

- (1) One year from the date of restoration if the original revocation period was one year;
- (2) Three years from the date of restoration if the original revocation period was four years; or
- (3) Seven years from the date of restoration if the original revocation was a permanent revocation.

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

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

(f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, but may be used in an administrative revocation proceeding as provided in subsection (g) of this section.

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

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

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

(j) Right to Hearing Before Division; Issues. -- If the person's license is revoked pursuant to subsection (g) of this section, before the effective date of the order issued under subsection (i) of this section, the person may request in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the

satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by subsection (g) of this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provision of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

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

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

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

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

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

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

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

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

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

PART III. OPEN CONTAINER

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

"§ 18B-401. Manner of transportation.

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

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

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

(c) Definitions. -- The definitions in Chapter 20 of the General Statutes apply in interpreting this section. If the seal on a container of alcoholic beverages has been

broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. In the case of a station wagon, hatchback or similar vehicle, the area behind the last upright back seat shall not be considered part of the passenger area."

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

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

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

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

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

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

- (1) In the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation; or
- (2) In the living quarters of a house trailer, motor home, or house car.

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

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

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

(e) Punishment; Effect When Impaired Driving Offense Also Charged. -- Violation of ~~this section~~ subsection (a) shall be ~~punished as a Class 3 misdemeanor~~ for the first offense and shall be ~~punished as a Class 2 misdemeanor~~ for a second or subsequent

offense. ~~A fine imposed for a second or subsequent offense may not exceed one thousand dollars (\$1,000).~~ Violation of ~~this section~~ subsection (a) is not a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under ~~this section~~ subsection (a) and of an offense involving impaired driving arising out of the same transaction, the punishment imposed by the court shall not exceed the maximum applicable to the offense involving impaired driving, and any minimum applicable punishment shall be imposed. Violation of subsection (a1) is a lesser included offense of subsection (a). A violation of ~~this section~~ subsection (a) shall be considered a moving violation for purposes of G.S. 20-16(c).

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

(f) Definitions. -- If the seal on a container of alcoholic beverages has been broken, it is opened within the meaning of this section. For purposes of this section, "passenger area of a motor vehicle" means the area designed to seat the driver and passengers and any area within the reach of a seated driver or passenger, including the glove compartment. The area of the trunk or the area behind the last upright back seat of a station wagon, hatchback, or similar vehicle shall not be considered part of the passenger area. The term "alcoholic beverage" is as defined in G.S. 18B-101(4).

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

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

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

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

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

PART IV. HGN TEST ADMISSIBILITY

Section 9. Chapter 8 of the General Statutes is amended by adding a new section which reads:

"§ 8-50.3. Results of Horizontal Gaze Nystagmus; admissibility.

(a) The results of the Horizontal Gaze Nystagmus (HGN) test are admissible as evidence of a person's impairment by an impairing substance in any criminal, civil, or administrative proceeding and for the purpose of corroborating the opinion of a person as to another's mental or physical impairment from an impairing substance.

(b) Notwithstanding the provisions of subsection (a) of this section, the results of a HGN test are not admissible in any proceeding unless it is found that the person administering the HGN test (i) had received training in administering the HGN test prior to conducting the HGN test for which admission of the test results is sought and (ii) had followed the training in administering the HGN test for which admission of the test results is sought.

(c) Nothing contained herein shall prohibit a court from admitting the HGN test into evidence for any purpose when a proper foundation has been established in accordance with the rules of evidence."

PART V. LIMITED DRIVING PRIVILEGE ALCOSENSOR ADMISSIBILITY

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

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

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

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

Section 11. G.S. 18B-302(i) is repealed.

Section 12. G.S. 15A-146(a) reads as rewritten:

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

PART VII. OTHER DWI CHANGES

Section 13. G.S. 20-16.2(i) reads as rewritten:

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

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

- (1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;
- (2) That the person's license will be revoked for at least 30 days if:
 - a. The test reveals an alcohol concentration of 0.08 or more; or
 - b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or ~~more~~ more; or
 - c. The person is under 21 years of age and the test reveals any alcohol concentration.
- (3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has

probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 14. G.S. 20-28.2(a) reads as rewritten:

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

(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), 20-17.2, 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~~ 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)."

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

"(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~~ Chapter or by the laws of the state in which the vehicle is registered; and
- (3) Repealed by Session Laws 1998-182, s. 2.
- (4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

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 acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was revoked 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."

Section 16. G.S. 20-16.5(e) reads as rewritten:

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

Section 17. G.S. 20-139.1(b3) reads as rewritten:

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

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

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

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

Section 18. G.S. 20-4.01(24a) reads as rewritten:

- " (24a) Offense Involving Impaired Driving. -- Any of the following offenses:
- a. Impaired driving under G.S. 20-138.1.
 - b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.
 - c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.
 - d. An offense committed in another jurisdiction which prohibits substantially equivalent to similar conduct prohibited by the offenses in subparagraphs a through e. this subsection.
 - e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

- f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.
- g. Habitual impaired driving under G.S. 20-138.5.

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

Section 19. G.S. 20-138.2A reads as rewritten:

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

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

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

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

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

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

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition

of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-17.4(a)(6).

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

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

(a) Offense. -- A person commits the offense of operating a school bus, school activity bus, or child care vehicle after consuming alcohol if the person drives a school bus, school activity bus, or child care vehicle upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00.~~ while consuming alcohol or while alcohol remains in the person's body.

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

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

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

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

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

Section 21. G.S. 20-28.2(a1)(2) reads as rewritten:

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

- a. Who did not know and had no reason to know that the defendant's drivers license was revoked;

- b. Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied permission;
- c. Whose vehicle was reported stolen;
- d. Who files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;
- e. Who is in the business of renting vehicles, ~~the driver and the vehicle was driven by a person who~~ is not listed as an authorized driver on the rental contract; 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 who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered."

PART VIII. EFFECTIVE DATE

Section 22. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.