

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**HOUSE BILL 1217
Committee Substitute Favorable 4/25/01
Senate Judiciary II Committee Substitute Adopted 7/16/01**

Short Title: Notify DWI Lienholders Immediately.

(Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

1
2 AN ACT TO SPEED THE NOTIFICATION TO LIENHOLDERS WHEN A MOTOR
3 VEHICLE IS SEIZED UNDER DWI FORFEITURE PROVISIONS AND TO
4 SPEED THE RELEASE OF A SEIZED VEHICLE TO INNOCENT OWNERS.

5 The General Assembly of North Carolina enacts:

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

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

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

23 "(b1) Written Notification of Impoundment. – Within 48 hours of receipt within
24 regular business hours of the notice of seizure, an executive agency designated by the
25 Governor shall issue written notification of impoundment to the Division, to any
26 lienholder of record and to any motor vehicle owner who was not operating the motor
27 vehicle at the time of the offense. A notice of seizure received outside regular business
28 hours shall be considered to have been received at the start of the next business day.

1 ~~This notice~~The notification of impoundment shall be sent by first-class mail to the most
2 recent address contained in the Division's records. If the motor vehicle is registered in
3 another state, notice shall be sent to the address shown on the records of the state where
4 the motor vehicle is registered. This written notification shall provide notice that the
5 motor vehicle has been seized, state the reason for the seizure and the procedure for
6 requesting release of the motor vehicle. Additionally, if the motor vehicle was damaged
7 while the defendant operator was committing an offense involving impaired driving or
8 incident to the seizure, the agency shall issue written notification of the seizure to the
9 owner's insurance company of record and to any other insurance companies that may be
10 insuring other motor vehicles involved in the accident. The Division shall prohibit title
11 to a seized motor vehicle from being transferred by a motor vehicle owner unless
12 authorized by court order."

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

14 "(b2) Additional Notification to Lienholders. – In addition to providing written
15 notification pursuant to subsection (b1) of this section, within eight hours of receipt
16 within regular business hours of the notice of seizure, the executive agency designated
17 under subsection (b1) of this section shall notify by facsimile any lienholder of record
18 that has provided the executive agency with a designated facsimile number for
19 notification of impoundment. The facsimile notification of impoundment shall state that
20 the vehicle has been seized, state the reason for the seizure, and notify the lienholder of
21 the additional written notification that will be provided pursuant to subsection (b1) of
22 this section. The executive agency shall establish procedures to allow a lienholder to
23 provide one designated facsimile number for notification of impoundment for any
24 vehicle for which the lienholder is a lienholder of record and shall maintain a
25 centralized database of the provided facsimile numbers. The lienholder must provide a
26 facsimile number at which the executive agency may give notification of impoundment
27 at any time."

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

29 "(e1) Pretrial Release of Motor Vehicle to Innocent Owner. – A nondefendant
30 motor vehicle owner may file a petition with the clerk of court seeking a pretrial
31 determination that the petitioner is an innocent owner. The clerk shall ~~schedule a~~
32 ~~hearing before a judge to be held within 10 business days or~~ consider the petition and
33 make a determination as soon as thereafter may be feasible. ~~Notice of the hearing shall~~
34 ~~be given to the petitioner, the district attorney, and the attorney for the county board of~~
35 ~~education. The clerk shall forward a copy of the petition to the district attorney for the~~
36 ~~district attorney's review. If, based on available information, the district attorney~~
37 ~~determines that the petitioner is an innocent owner and that the motor vehicle is not~~
38 ~~subject to forfeiture, the district attorney may note the State's consent to the release of~~
39 ~~the motor vehicle on the petition and return the petition to the clerk of court who shall~~
40 ~~enter an order releasing the motor vehicle to the petitioner subject to the conditions of~~
41 ~~release as set forth in G.S. 20-28.2(e) and no hearing shall be held. The clerk shall send~~
42 ~~a copy of the order of release to the county board of education attorney. At any pretrial~~

1 ~~hearing proceeding~~ conducted pursuant to this subsection, the ~~court clerk~~ is not required
2 to determine the issue of forfeiture, only the issue of whether the petitioner is an
3 innocent owner. ~~Accordingly, the State shall not be required to prove the underlying~~
4 ~~offense of impaired driving or the existence of a prior drivers license revocation.~~ If the
5 ~~court clerk~~ determines that the petitioner is an innocent owner, the ~~court clerk~~ shall
6 release the motor vehicle to the petitioner subject to the same conditions as if the
7 petitioner were an innocent owner under G.S. 20-28.2(e). The clerk shall send a copy of
8 the order authorizing or denying release of the vehicle to the district attorney and the
9 attorney for the county board of education. An order issued under this subsection
10 finding that the petitioner failed to establish that the petitioner is an innocent owner may
11 be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S.
12 20-28.2(d)."

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

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

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

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

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

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

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

39 "**§ 20-28.4. Release of impounded motor vehicles by judge.**

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

1 (1) Is subsequently not convicted of an offense involving impaired driving
2 due to dismissal or a finding of not guilty; or
3 (2) The judge at a forfeiture hearing conducted pursuant to G.S.
4 20-28.2(d) fails to find that the drivers license was revoked as a result
5 of a prior impaired driving license revocation as defined in G.S.
6 20-28.2; and
7 (3) The vehicle has not previously been released to a lienholder pursuant
8 to G.S. 20-28.3(e3),
9 the seized motor vehicle or insurance proceeds held by the clerk of court pursuant to
10 G.S. 20-28.2(c1) or G.S. 20-28.3(h) shall be released to the motor vehicle owner
11 conditioned upon payment of towing and storage costs. The court shall not waive the
12 payment of towing and storage costs. Notwithstanding G.S. 44A-2(d), if the owner of
13 the seized motor vehicle does not obtain release of the vehicle within 30 days from the
14 date of the court's order, the possessor of the seized motor vehicle has a mechanics' lien
15 on the seized motor vehicle for the full amount of the towing and storage charges
16 incurred since the motor vehicle was seized and may dispose of the seized motor vehicle
17 pursuant to Article 1 of Chapter 44A of the General Statutes."

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