

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 451

Short Title: DWLR Penalties Increased/Vehicle Seizures. (Public)

Sponsors: Representative Starnes (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee B.

March 24, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTIES FOR DRIVING WHILE LICENSE REVOKED BY SETTING MINIMUM FINES FOR THE INITIAL AND SUBSEQUENT CONVICTIONS, BY REQUIRING THE VEHICLE BEING OPERATED BY A DRIVER WHOSE LICENSE OR DRIVING PRIVILEGES ARE REVOKED AFTER TWO PRIOR CONVICTIONS FOR DRIVING WHILE LICENSE REVOKED TO BE SEIZED AND FORFEITED TO THE STATE, AND TO REQUIRE A MINIMUM TERM OF IMPRISONMENT OR IN THE ALTERNATIVE HOUSE ARREST FOR A THIRD OR SUBSEQUENT CONVICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-28 reads as rewritten:

"§ 20-28. Unlawful to drive while license revoked, after notification, or while disqualified.

(a) Driving While License Revoked. – Except as provided in subsection (a1) of this section, any person whose drivers license has been revoked who drives any motor vehicle upon the highways of the State while the license is revoked is guilty of a Class 1 misdemeanor. Upon conviction, the person's license shall be revoked for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

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

(a1) Driving Without Reclaiming License. – A person convicted under subsection (a) shall be punished as if the person had been convicted of driving without a license under G.S. 20-35 if the person demonstrates to the court that either subdivisions (1) and (2), or subdivision (3) of this subsection is true:

- (1) At the time of the offense, the person's license was revoked solely under G.S. 20-16.5; and
- (2) a. The offense occurred more than 45 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 45 days as provided under subdivision (3) of that subsection; or
- b. The offense occurred more than 30 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5; or



- 1 (3) At the time of the offense the person had met the requirements of
2 G.S. 50-13.12, or G.S. 110-142.2 and was eligible for reinstatement of the
3 person's drivers license privilege as provided therein.

4 In addition, a person punished under this subsection shall be treated for drivers license and
5 insurance rating purposes as if the person had been convicted of driving without a license under
6 G.S. 20-35, and the conviction report sent to the Division must indicate that the person is to be
7 so treated.

8 (a2) Driving After Notification or Failure to Appear. – A person shall be guilty of a
9 Class 1 misdemeanor if:

- 10 (1) The person operates a motor vehicle upon a highway while that person's
11 license is revoked for an impaired drivers license revocation after the
12 Division has sent notification in accordance with G.S. 20-48; or

- 13 (2) The person fails to appear for two years from the date of the charge after
14 being charged with an implied-consent offense.

15 Upon conviction, the person's drivers license shall be revoked for an additional period of
16 one year for the first offense, two years for the second offense, and permanently for a third or
17 subsequent offense. The restoree of a revoked drivers license who operates a motor vehicle
18 upon the highways of the State without maintaining financial responsibility as provided by law
19 shall be punished as for driving without a license.

20 (a3) Felony Driving While License Revoked. – Any person whose drivers license has
21 been revoked who drives any motor vehicle upon the highways of the State while the license is
22 revoked and has two or more prior convictions for violations of subsection (a) of this section
23 shall be guilty of a Class I felony.

24 ...

25 (e) Fines. – In addition to any period of revocation required by this section, any person
26 convicted for driving while the persons license or driving privileges are revoked shall pay a
27 fine of not less than two hundred fifty dollars (\$250.00) for the first offense, one thousand
28 dollars (\$1,000) for the second offense, and two thousand five hundred dollars (\$2,500) for the
29 third and subsequent offenses.

30 (f) Vehicles Subject to Seizure. – In addition to any other fine or penalty required by
31 this section, if a person is convicted for a fourth subsequent violation under this section, the
32 motor vehicle that was driven by the defendant at the time the defendant committed the offense
33 of driving while the person's license or driving privileges are revoked becomes property subject
34 to forfeiture in accordance with the procedure set out in G.S. 20-28.3. In applying the
35 procedure set out in G.S. 20-28.3, an owner or a holder of a security interest is considered an
36 innocent party with respect to a motor vehicle subject to forfeiture under this subsection if the
37 defendant drove the motor vehicle without the consent of the owner or the holder of the
38 security interest.

39 (g) Mandatory Confinement. – A person convicted of felony driving while license
40 revoked under subsection (a3) of this section shall be sentenced to a minimum active term of
41 not less than six months of imprisonment. A judge may suspend the active sentence required by
42 this subsection and place the defendant on supervised probation with a special condition of
43 house arrest with electronic monitoring in accordance with G.S. 15A-1343 for a period not less
44 than 90 days."

45 **SECTION 2.** G.S. 20-28.3 reads as rewritten:

46 "**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving**
47 **impaired driving while license revoked or without license and**
48 **insurance, insurance, and for felony driving while license revoked.**

49 (a) Motor Vehicles Subject to Seizure. ~~Seizure for Impaired Driving Offenses.~~ – A
50 motor vehicle that is driven by a person who is charged with an offense involving impaired
51 driving is subject to seizure if:

1 (1) At the time of the violation, the drivers license of the person driving the
2 motor vehicle was revoked as a result of a prior impaired driving license
3 revocation as defined in G.S. 20-28.2(a); or

4 (2) At the time of the violation:

5 a. The person was driving without a valid drivers license, and

6 b. The driver was not covered by an automobile liability policy.

7 For the purposes of this subsection, a person who has a complete defense, pursuant to
8 G.S. 20-35, to a charge of driving without a drivers license, shall be considered to have had a
9 valid drivers license at the time of the violation.

10 (a1) Motor Vehicles Subject to Seizure for Felony Driving While License Revoked. – A
11 motor vehicle is subject to seizure if that vehicle is being driven by a person who is charged
12 with the offense of felony driving while license revoked pursuant to G.S. 20-28(a3).

13 (b) Duty of Officer. – If the charging officer has probable cause to believe that a motor
14 vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall
15 seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the
16 motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to
17 this section. If the officer determines prior to seizure that the motor vehicle was a rental vehicle
18 driven by a person not listed as an authorized driver on the rental contract, the officer shall not
19 seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the
20 owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was
21 not listed as an authorized driver on the rental contract. Probable cause may be based on the
22 officer's personal knowledge, reliable information conveyed by another officer, records of the
23 Division, or other reliable source-sources. The seizing officer shall notify the ~~executive agency~~
24 ~~designated under subsection (b1) of this section~~ Division as soon as practical but no later than
25 24 hours after seizure of the motor vehicle of the seizure in accordance with procedures
26 established by the executive agency designated under subsection (b1) of this section.

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

45 ...

46 (k) County Board of Education Right to Appear and Participate in Proceedings. – The
47 attorney for the county board of education shall be given notice of all proceedings regarding
48 offenses ~~involving impaired driving~~ related to a motor vehicle subject to ~~forfeiture~~ forfeiture
49 under this section. However, the notice requirement under this subsection does not apply to
50 proceedings conducted under G.S. 20-28.3(e1). The attorney for the county board of education
51 shall also have the right to appear and to be heard on all issues relating to the seizure,

1 possession, release, forfeiture, sale, and other matters related to the seized vehicle under this
2 section. With the prior consent of the county board of education, the district attorney may
3 delegate to the attorney for the county board of education any or all of the duties of the district
4 attorney under this section. Clerks of superior court, law enforcement agencies, and all other
5 agencies with information relevant to the seizure, impoundment, release, or forfeiture of motor
6 vehicles are authorized and directed to provide county boards of education with access to that
7 information and to do so by electronic means when existing technology makes this type of
8 transmission possible.

9 (l) Payment of Fees Upon Conviction. – If the driver of a motor vehicle seized pursuant
10 to this section is convicted ~~of an offense involving impaired driving, of the underlying offense~~
11 leading to the seizure of a motor vehicle pursuant to this section the defendant shall be ordered
12 to pay as restitution to the county board of education, the motor vehicle owner, or the
13 lienholder the cost paid or owing for the towing, storage, and sale of the motor vehicle to the
14 extent the costs were not covered by the proceeds from the forfeiture and sale of the motor
15 vehicle. If the underlying offense is for felony driving while license revoked pursuant to
16 G.S. 20-28(a3), and the conviction is based on a plea agreement or a reduced charge to
17 misdemeanor driving while license revoked pursuant to G.S. 20-28(a), the defendant shall be
18 ordered to pay as restitution to the county board of education, the motor vehicle owner, or the
19 lienholder the cost paid or owing for the towing and storage of the motor vehicle. In addition, a
20 civil judgment for the costs under this section in favor of the party to whom the restitution is
21 owed shall be docketed by the clerk of superior court. If the defendant is sentenced to an active
22 term of imprisonment, the civil judgment shall become effective and be docketed when the
23 defendant's conviction becomes final. If the defendant is placed on probation, the civil
24 judgment in the amount found by a judge during the probation revocation or termination
25 hearing to be due shall become effective and be docketed by the clerk when the defendant's
26 probation is revoked or terminated.

27"

28 **SECTION 3.** This act becomes effective October 1, 2011, and applies to offenses
29 committed on or after that date.