GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 435
SENATE BILL 1

AN ACT TO PROVIDE SAFE ROADS BY REQUIRING MANDATORY JAIL TERMS FOR GROSSLY AGGRAVATED DRUNKEN DRIVERS, PROVIDING AN EFFECTIVE DETERRENT TO REDUCE THE INCIDENCE OF IMPAIRED DRIVING, AND CLARIFYING THE STATUTES RELATED TO DRINKING AND DRIVING.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as the Safe Roads Act of 1983.

Sec. 2. The following table lists the parts and sections contained in this act:

PART I. DRIVING WHILE IMPAIRED.

–DMV RECORDS ADMISSIBLE TO PROVE PRIOR CONVICTION/Sec. 3.
–PRETRIAL RELEASE OF IMPAIRED DRIVERS/Sec. 4.
–CROSS-REFERENCE TO PROSECUTOR DISCLOSURE REQUIREMENTS/Sec. 5.
–IMMUNITY FOR COMMUNITY SERVICE WORK/Sec. 5.1.
–CROSS-REFERENCE TO CONTROLLED DRINKING PROGRAMS/Sec. 6.
–NO BEER DRINKING BY DRIVER/Sec. 7.
–MOTOR VEHICLE LAW DEFINITIONS/Sec. 8.
–IMPAIRED INSTRUCTION/Sec. 9.
–REVOCATION FOR IMPAIRED INSTRUCTION OR MILITARY REVOCATION/ Sec. 10.
–IMPLIED CONSENT; REVOCATION FOR REFUSAL/Sec. 11.
–PRELIMINARY ROADSIDE TESTING/Sec. 12.
–REVOCATION FOR FAILURE TO COMPLETE DUI SCHOOL/Sec. 13.
–TEN-DAY, IMMEDIATE PRETRIAL REVOCATION/Sec. 14.
–REVOCATION FOR IMPAIRED DRIVING CONVICTION/Sec. 15.
–DMV PROCEDURE AFTER COURT-ORDERED REVOCATIONS/Sec. 16.
–LENGTHS OF REVOCATIONS FOR IMPAIRED DRIVING/Sec. 17.
–REVOCATION FOR FEDERAL COURT CONVICTIONS/Sec. 18.
–CONVICTION DEFINED/Sec. 19.
–CERTIFIED RECORDS BY P.I.N./Sec. 20.
–FORFEITURE OF VEHICLE/Sec. 21.
–IMPAIRED DRIVING CHECKS/Sec. 22.
–REPEAL OF PRESENT OFFENSES/Sec. 23.
–IMPAIRED DRIVING OFFENSE DEFINED/Sec. 24.
–PROSECUTOR DISCLOSURE REQUIREMENTS/Sec. 25.
–CHEMICAL TESTING PROCEDURES/Sec. 26.

–FELONY AND MISDEMEANOR DEATH BY VEHICLE/Sec. 27.
–IMPAIRED DRIVING APPLICABLE TO ROAD CONSTRUCTION VEHICLES/ Sec. 28.
–SENTENCING PROCEDURES AND PUNISHMENT FOR IMPAIRED DRIVING OFFENSES/Sec. 29.
–ALCOHOL AND DRUG EDUCATION TRAFFIC SCHOOLS/Sec. 30.
–LIMITED DRIVING PRIVILEGE/Sec. 31.

PART II. PROTECTION OF YOUTHFUL DRIVERS.

–RAISING BEER PURCHASE AGE/Sec. 32.
–GROUNDS FOR REVOKING PROVISIONAL LICENSE/Sec. 33.
–DRIVING BY PROVISIONAL LICENSEE AFTER DRINKING/Sec. 34.
–FRAUDULENT USE OF ID; AIDER AND ABETTOR PUNISHMENT/Sec. 35.
–REVOCATION FOR UNDERAGE PURCHASERS OF ALCOHOL/Sec. 36.

PART III. DRAM SHOP OWNER LIABILITY.

–DRAM SHOP OWNER LIABILITY; BURDEN OF PROOF/Sec. 37.
–STATUTE OF LIMITATIONS/Sec. 38.
–ABC PERMITTEE'S REQUIREMENTS/Sec. 39.
–REVOCATION OF PERMIT FOR NONPAYMENT OF JUDGMENTS/Sec. 40.
–LOCAL BOARD NOT COUNTY OR CITY AGENCY/Sec. 41.
–NO LEGISLATIVE INTENT AS TO CIVIL LIABILITY FOR SALES TO INTOXICATED PERSONS/Sec. 41.1.

PART IV. EFFECTIVE DATE AND TRANSITIONAL PROVISIONS.

–SAVING CLAUSE FOR PROSECUTIONS AND REVOCATIONS/Sec. 42.
–APPLICABILITY OF DRAM SHOP PROVISIONS/Sec. 43.
–CAPTIONS NOT LIMIT TEXT/ONLY FOR REFERENCE/Sec. 44.
–SEVERABILITY/Sec. 45.
–RESERVE FUND FOR IMPLEMENTATION/Sec. 45.1.
–EFFECTIVE DATE/Sec. 46.

PART I. DRIVING WHILE IMPAIRED.

–DMV RECORDS ADMISSIBLE TO PROVE PRIOR CONVICTION.

Sec. 3. G.S. 8-35.1 is rewritten to read as follows:

"**§ 8-35.1. Division of Motor Vehicles' record admissible as prima facie evidence of convictions of offenses involving impaired driving. –** Notwithstanding the provisions of G.S. 15A- 924(d), a properly certified copy under G.S. 8-35 or G.S. 20- 26(b) of the license records of a defendant kept by the Division of Motor Vehicles under G.S. 20-26(a) is admissible as prima facie evidence of any prior conviction of a defendant for an offense involving impaired driving as defined in G.S. 20- 4.01(24a)."

–PRETRIAL RELEASE OF IMPAIRED DRIVERS.

Sec. 4. Chapter 15A of the General Statutes is amended by adding a new G.S. 15A-534.2 to read as follows:

"**§ 15A-534.2. Detention of impaired drivers. –** (a) A judicial official conducting an initial appearance for an offense involving impaired driving, as defined in G.S. 20-4.01(24a), must follow the procedure in G.S. 15A-511 except as modified by this section. This section may not be interpreted to impede a defendant's right to communicate with counsel and friends.

(b) If at the time of the initial appearance the judicial official finds by clear and convincing evidence that the impairment of the defendant's physical or mental faculties presents a danger, if he is released, of physical injury to himself or others or damage to property, the judicial official must order that the defendant be held in custody and inform the defendant that he will be held in custody until one of the requirements of subsection (c) is met; provided, however, that the judicial official must at this time determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.

(c) A defendant subject to detention under this section has the right to pretrial release under G.S. 15A-534 when the judicial official determines either that:

(1) The defendant's physical and mental faculties are no longer impaired to the extent that he presents a danger of physical injury to himself or others or of damage to property if he is released; or

(2) A sober, responsible adult is willing and able to assume responsibility for the defendant until his physical and mental faculties are no longer impaired. If the defendant is released to the custody of another, the judicial official may impose any other condition of pretrial release authorized by G.S. 15A-534, including a requirement that the defendant execute a secured appearance bond.

The defendant may be denied pretrial release under this section for a period no longer than 24 hours, and after such detention may be released only upon meeting the conditions of pretrial release set in accordance with G.S. 15A-534. If the defendant is detained for 24 hours, a judicial official must immediately determine the appropriate conditions of pretrial release in accordance with G.S. 15A-534.

(d) In making his determination whether a defendant detained under this section remains impaired, the judicial official may request that the defendant submit to periodic tests to determine his alcohol concentration. Instruments acceptable for making preliminary breath tests under G.S. 20-16.3 may be used for this purpose as well as instruments for making evidentiary chemical analyses. Unless there is evidence that the defendant is still impaired from a combination of alcohol and some other impairing substance or condition, a judicial official must determine that a defendant with an alcohol concentration less than 0.05 is no longer impaired. The results of any periodic test to determine alcohol concentration may not be introduced in evidence:

(1) Against the defendant by the State in any criminal, civil, or administrative proceeding arising out of an offense involving impaired driving; or

(2) For any purpose in any proceeding if the test was not performed by a method approved by the Commission for Health Services under G.S.

20-139.1 and by a person licensed to administer the test by the Department of Human Resources.

The fact that a defendant refused to comply with a judicial official's request that he submit to a chemical analysis may not be admitted into evidence in any criminal action, administrative proceeding, or a civil action to review a decision reached by an administrative agency in which the defendant is a party."

–CROSS-REFERENCE TO PROSECUTOR DISCLOSURE REQUIREMENTS.

Sec. 5. G.S. 15A-931(a) is amended by deleting the first word of the subsection and inserting in its place the words and punctuation "Except as provided in G.S. 20-138.4, the".

–IMMUNITY FOR COMMUNITY SERVICE WORK.

Sec. 5.1. G.S. 15A-1342 is amended by adding a new subsection (j) to read as follows:

"(j) Immunity for Injury to Defendant Performing Community Service. A person is not liable for damages for any injury or loss sustained by a defendant performing community or reparation service unless the injury is caused by the person's gross negligence or intentional wrongdoing. As used in this subsection, 'person' includes any governmental unit or agency, nonprofit corporation, or other nonprofit agency that is supervising the defendant or for whom the defendant is performing community service work, as well as any person employed by the agency or corporation while acting in the scope and course of his employment. This subsection does not affect the immunity from civil liability in tort available to local governmental units or agencies. Notice of the provisions of this subsection must be furnished to the defendant at the time he is served with a copy of the probation judgment or deferred prosecution order."

–CROSS-REFERENCE TO CONTROLLED DRINKING PROGRAMS.

Sec. 6. G.S. 18B-103(9) is rewritten to read as follows:

"(9) The possession and use of alcohol acquired for controlled-drinking programs as authorized under G.S. 20- 139.1(g)."

–NO BEER DRINKING BY DRIVER.

Sec. 7. G.S. 18B-401 is amended in subsection (a) by deleting the caption and the first sentence of that subsection and inserting in their place the following caption and sentences:

"(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."

G.S. 18B-401 is further amended in subsection (c) by deleting from that subsection the word "Definition" in the caption and inserting in its place the word "Definitions", and by inserting immediately after the caption the following sentences:

"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."

–MOTOR VEHICLE LAW DEFINITIONS.

Sec. 8. G.S. 20-4.01 is amended by rewriting subdivision 32 of that section and by adding new subdivisions (0.1), (0.2), (3a), (3b), (14a), (24a), (33a) and (48a) to read as follows:

"(0.1) Alcohol. Ethyl alcohol.

"(0.2) Alcohol Concentration. The concentration of alcohol in a person, expressed either as:

a. Grams of alcohol per 100 milliliters of blood; or
b. Grams of alcohol per 210 liters of breath.

"(3a) Chemical Analysis. A chemical test of the breath or blood of a person to determine his alcohol concentration, performed in accordance with G.S. 20-139.1. The term 'chemical analysis' includes duplicate or sequential analyses when necessary or desirable to insure the integrity of test results.

"(3b) Chemical Analyst. A person granted a permit by the Department of Human Resources under G.S. 20-139.1 to perform chemical analyses.

"(14a) Impairing Substance. Alcohol, controlled substance under Chapter 90 of the General Statutes, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances.

"(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. 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 substantially equivalent to the offenses in subparagraphs a through c.
e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

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

"(32) Public Vehicular Area. Any area within the State of North Carolina that is generally open to and used by the public, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of:

a. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions; or

b. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space for customers, patrons, or the public; or

c. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, Section 13.)

The term 'public vehicular area' shall also include any beach area used by the public for vehicular traffic as well as any road opened to vehicular traffic within or leading to a subdivision for use by subdivision residents, their guests, and members of the public, whether or not the subdivision roads have been offered for dedication to the public. The term 'public vehicular area' shall not be construed to mean any private property not generally open to and used by the public.

"(33a) Relevant Time after the Driving. Any time after the driving in which the driver still has in his body alcohol consumed before or during the driving.

"(48a) Under the Influence of an Impairing Substance. The state of a person having his physical or mental faculties, or both, appreciably impaired by an impairing substance."

–IMPAIRED INSTRUCTION.

Sec. 9. G.S. 20-12.1 is rewritten to read as follows:

"**§ 20-12.1. Impaired instruction. –** (a) It is unlawful for any person to accompany another person driving a motor vehicle, in accordance with G.S. 20-11, or instruct another person driving a motor vehicle, in accordance with G.S. 20-7(l-1) and (m) or G.S. 20-12:

(1) While the person accompanying or instructing is under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.10 or more.

(b) An offense under this section is an implied-consent offense under G.S. 20-16.2."

–REVOCATION FOR IMPAIRED INSTRUCTION OR MILITARY REVOCATION.

Sec. 10. G.S. 20-16(a) is amended by deleting the period at the end of subdivision (8) and replacing it with ";" and by adding the following two subdivisions:

"(8a) Has been convicted of impaired instruction under G.S. 20-12.1;

"(8b) Has violated on a military installation a regulation of that installation prohibiting conduct substantially equivalent to conduct that constitutes impaired driving under G.S. 20-138.1 and, as a result of that violation, has had his privilege to drive on that installation revoked or suspended after an administrative hearing authorized by the commanding officer of the installation and that commanding officer has general court martial jurisdiction;".

–IMPLIED CONSENT; REVOCATION FOR REFUSAL.

Sec. 11. G.S. 20-16.2 is rewritten to read as follows:

"**§ 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 he is charged with an implied- consent offense. The charging officer must designate the type of chemical analysis to be administered, and it may be administered when he has reasonable grounds to believe that the person charged has committed the implied-consent offense. Except as provided in subsection (b), the person charged must be taken before a chemical analyst authorized to administer a test of a person's breath, who must inform the person orally and also give him a notice in writing that:

(1) He has a right to refuse to be tested.

(2) Refusal to take any required test or tests will result in an immediate revocation of his driving privilege for at least 10 days and an additional 12-month revocation by the Division of Motor Vehicles.

(3) The test results, or the fact of his refusal, will be admissible in evidence at trial on the offense charged.

(4) If any test reveals an alcohol concentration of 0.10 or more, his driving privilege will be revoked immediately for at least 10 days.

(5) He may have a qualified person of his own choosing administer a chemical test or tests in addition to any test administered at the direction of the charging officer.

(6) He has the right to call an attorney and select a witness to view for him the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time he is notified of his rights.

(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 he 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 judical 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 him 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. The charging officer, in the presence of the chemical analyst who has notified the person of his 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. Then 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 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.

(d) Consequences of Refusal; Right to Hearing Before Division; Issues. Upon receipt of a properly executed affidavit required by subsection (c), the Division must expeditiously notify the person charged that his 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. If the person properly requests a hearing, he retains his license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if he makes the request in writing at least three days before the hearing. The person may subpoena any other witness he 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 must be conducted in the county where the charge was brought, under the provisions for hearings held under G.S. 20-16(d), except that the hearing is limited to consideration of whether:

(1) The person was charged with an implied-consent offense;
(2) The charging officer had reasonable grounds to believe that the person had committed an implied- consent offense;
(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 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 is not met, it must rescind the revocation. If the revocation is sustained, the person must surrender his 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 pursuant to

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 he 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 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 judicial district 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 applicant held a valid driver's license;
(2) At the time of the refusal, he had not within the preceding 10 years been convicted of an offense involving impaired driving;
(3) At the time of the refusal, he had not in the preceding 10 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 he has complied with at least one of the mandatory conditions of probation listed for the punishment level under which he was sentenced;
(6) Subsequent to the refusal he has had no unresolved pending charges for or additional convictions of an offense involving impaired driving; and
(7) His license has been revoked for at least six months for the refusal.

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 must be conducted in the district in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing must be conducted in the district in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if his 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 he has a license.

(g) Repealed.

(h) Repealed.

(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 must afford the person the opportunity to have a chemical analysis, if available, upon the procedures applicable had the person been charged. 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 must sign a form, to be supplied by the Division, confirming his request. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

–PRELIMINARY ROADSIDE TESTING.

Sec. 12. G.S. 20-16.3 is rewritten to read as follows:

"**§ 20-16.3. Alcohol screening tests required of certain drivers; approval of test devices and manner of use by Commission for Health Services; use of test results or refusal. –** (a) When Alcohol Screening Test May Be Required; Not an Arrest. A law enforcement officer may require the driver of a vehicle to submit to an alcohol screening test within a relevant time after the driving if the officer has:

(1) Reasonable grounds to believe that the driver has consumed alcohol and has:
   a. Committed a moving traffic violation; or
   b. Been involved in an accident or collision; or

(2) An articulable and reasonable suspicion that the driver has committed an implied-consent offense under G.S. 20-16.2, and the driver has been lawfully stopped for a driver's license check or otherwise lawfully stopped or lawfully encountered by the officer in the course of the performance of the officer's duties.

Requiring a driver to submit to an alcohol screening test in accordance with this section does not in itself constitute an arrest.

(b) Approval of Screening Devices and Manner of Use. The Commission for Health Services is directed to examine and approve devices suitable for use by law enforcement officers in making on-the-scene tests of drivers for alcohol concentration. For each alcohol screening device or class of devices approved, the Commission must adopt regulations governing the manner of use of the device. For any alcohol screening

device that tests the breath of a driver, the Commission is directed to specify in its regulations the shortest feasible minimum waiting period that does not produce an unacceptably high number of false positive test results.

(c) Tests Must Be Made with Approved Devices and in Approved Manner. No screening test for alcohol concentration is a valid one 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.

(d) Use of Screening Test Results or Refusal by Officer. The results of an alcohol screening test or a driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if there are reasonable grounds for believing that the driver has committed an implied- consent offense under G.S. 20-16.2. Negative or low results on the alcohol screening test may be used in factually appropriate cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol. Except as provided in this subsection, the results of an alcohol screening test may not be admitted in evidence in any court or administrative proceeding."

–REVOCATION FOR FAILURE TO COMPLETE DUI SCHOOL.

Sec. 13. Chapter 20 of the General Statutes is amended by adding a new G.S. 20-16.4 to read as follows:

"**§ 20-16.4. Revocation for failure to complete Alcohol and Drug Education Traffic School.–** (a) Division Must Revoke upon Notice of Willful Failure. Upon receipt of notice from an Alcohol and Drug Education Traffic School that a person assigned to the school as a court-imposed condition of probation has willfully failed to complete the program of instruction at the school successfully, the Division must revoke the person's driver's license for 12 months. A limited driving privilege does not authorize a person to drive while his license is revoked pursuant to the provisions of this section.

(b) Right of Notification and Hearing. Upon receipt of a properly executed notice of failure from the school, the Division must expeditiously notify the person that his license 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. If the person properly requests a hearing, he retains his license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or he fails to appear at a scheduled hearing. The person may request the hearing officer to subpoena the appropriate school personnel to appear in person at the hearing if he makes the request in writing at least three days before the hearing. The person may subpoena any other witness he 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.

(c) Hearing Procedures; Issues. The hearing must be conducted in the county where the school is located, under the provisions for hearings held under G.S. 20-16(d), except that the hearing is limited to consideration of whether:

(1) The person was validly assigned to the school by a court;

(2) The person failed to complete the course of instruction successfully; and

(3) The failure was willful.

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 is not met, it must rescind the revocation. If the revocation is sustained, the person must surrender his license immediately upon notification by the Division. The person may file a petition in superior court for a de novo review of the issues listed in this section, in the same manner and under the same conditions as provided in G.S. 20-25, except that the hearing must be held in the judicial district in which the school is located.

(d) When Failure Not Willful. A failure to complete the course of instruction successfully is not willful if it is based solely on a failure:

(1) To pay the prescribed fee and the person was unable to pay after making reasonable efforts to secure funds to pay it; or

(2) To attend classes and the person was unable to attend because of reasons over which he had no control other than alcoholism or drug abuse."

–TEN-DAY, IMMEDIATE PRETRIAL REVOCATION.

Sec. 14. Chapter 20 of the General Statutes is amended by adding a new section, G.S. 20-16.5, to read as follows:

"**§ 20-16.5. Immediate civil license revocation for certain persons charged with implied-consent offenses. –** (a) Definitions. As used in this section the following words and phrases have the following meanings:

(1) Charging Officer. As described in G.S. 20- 16.2(a1).

(2) Clerk. As defined in G.S. 15A-101(2).

(3) Judicial Official. As defined in G.S. 15A-101(5).

(4) Revocation Report. A sworn statement by a charging officer and a chemical analyst containing facts indicating that the conditions of subsection (b) have been met. When one chemical analyst analyzes a person's blood and another chemical analyst informs a person of his rights and responsibilities under G.S. 20-16.2, the report must include the statements of both analysts.

(5) Surrender of a Driver's License. The act of turning over to a court or a law enforcement officer the person's most recent, valid driver's license or learner's permit issued by the Division or by a similar agency in another jurisdiction, or a limited driving privilege issued by a North Carolina court.

(b) Revocations for Persons Who Refuse Chemical Analyses or Have Alcohol Concentrations of 0.10 or More. A person's driver's license is subject to revocation under this section if:

(1) A law enforcement officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis; or

b. Has an alcohol concentration of 0.10 or more within a relevant time after the driving.

(c) Duty of Charging Officers and Chemical Analysts to Report to Judicial Officials. If a person's driver's license is subject to revocation under this section, the charging officer and the chemical analyst must execute a revocation report. If the person has refused to submit to a chemical analysis, a copy of the report to be submitted to the Division under G.S. 20-16.2(c) may be substituted for the revocation report if it contains the information required by this section. It is the specific duty of the charging officer to make sure that the report is expeditiously filed with a judicial official as required by this section.

(d) Which Judicial Official Must Receive Report. The judicial official with whom the revocation report must be filed is:

(1) The judicial official conducting the initial appearance on the underlying criminal charge if:

a. No revocation report has previously been filed; and

b. At the time of the initial appearance the results of the chemical analysis, if administered, or the reports indicating a refusal, are available.

(2) A judicial official conducting any other proceeding relating to the underlying criminal charge at which the person is present, if no report has previously been filed.

(3) The clerk of superior court in the county in which the underlying criminal charge has been brought if subdivisions (1) and (2) are not applicable at the time the charging officer must file the report.

(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 must, 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 must enter an order revoking the person's driver's license for the period required in this subsection. The judicial official must order the person to surrender his license and if necessary may order a law enforcement officer to seize the license. The judicial official must give the person a copy of the revocation order. In addition to setting it out in the order the judicial official must personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. Unless the person is not currently licensed, the revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for 10 days and the person has paid the applicable costs. If the person is not currently licensed, the

revocation continues until 10 days from the date the revocation order is issued and the person has paid the applicable costs.

(f) Procedure if Report Filed with Clerk of Court When Person Not Present. When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk must 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 must mail to the person a revocation order by first class mail. The order must direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order must inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk must immediately issue a pick-up order. The pick-up order under this subsection may be issued by the clerk to any law enforcement officer to pick up the person's driver's license in accordance with G.S. 20-29 as if the pick-up order had been issued by the Division. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. The period of revocation under this subsection is:

(1) Ten days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) Ten days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) Thirty days from the time:

a. The person's driver's license is picked up by a law enforcement officer following service of a pick-up order; or

b. The person demonstrates to a law enforcement officer who has a pick-up order for his license that he is not currently licensed; or

c. The person's driver's license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

When a pick-up order is issued, it must inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the

hearing. An officer serving a pick-up order under this subsection must return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order must deposit it with the clerk within three days of the surrender.

(g) Hearing Before Magistrate or Judge if Person Contests Validity of Revocation. A person whose license is revoked under this section may request in writing a hearing to contest the validity of the revocation. The request may be made at the time of the person's initial appearance, or at any later time to the clerk or a magistrate designated by the clerk, and may specifically request that the hearing be conducted by a district court judge. The Administrative Office of the Courts must develop a hearing request form for any person requesting a hearing. Unless a district court judge is requested, the hearing must be conducted within the county by a magistrate assigned by the chief district judge to conduct such hearings. If the person requests that a district court judge hold the hearing, the hearing must be conducted within the judicial district by a district court judge assigned to conduct such hearings. The revocation remains in effect pending the hearing, but the hearing must be held within three working days following the request if the hearing is before a magistrate or within five working days if the hearing is before a district court judge. The request for the hearing must specify the grounds upon which the validity of the revocation is challenged. A witness may submit his evidence by affidavit unless he is subpoenaed to appear. Any person who appears and testifies is subject to questioning by the judicial official conducting the hearing, and the judicial official may adjourn the hearing to seek additional evidence if he is not satisfied with the accuracy or completeness of evidence. The person contesting the validity of the revocation may, but is not required to, testify in his own behalf. Unless contested by the person requesting the hearing, the judicial official may accept as true any matter stated in the revocation report. If any relevant condition under subsection (b) is contested, the judicial official must find by the greater weight of the evidence that the condition was met in order to sustain the revocation. At the conclusion of the hearing the judicial official must enter an order sustaining or rescinding the revocation. The judicial official's findings are without prejudice to the person contesting the revocation and to any other potential party as to any other proceedings, civil or criminal, that may involve facts bearing upon the conditions in subsection (b) considered by the judicial official. The decision of the judicial official is final and may not be appealed in the General Court of Justice. If the hearing is not held and completed within three working days of the written request for a hearing before a magistrate or within five working days of the written request for a hearing before a district court judge, the judicial official must enter an order rescinding the revocation, unless the person contesting the revocation contributed to the delay in completing the hearing.

(h) Return of License. After the applicable period of revocation under this section, or if the magistrate or judge orders the revocation rescinded, the person whose license was revoked may apply to the clerk for return of his surrendered license. Unless the clerk finds that the person is not eligible to use the surrendered license, he must return it if:

(1) The applicable period of revocation has passed and the person has tendered payment for the costs under subsection (j); or

(2) The magistrate or judge has ordered the revocation rescinded.

If the license has expired, he may return it to the person with a caution that it is no longer valid. Otherwise, if the person is not eligible to use the license and the license was issued by the Division or in another state, the clerk must mail it to the Division. If the person has surrendered his copy of a limited driving privilege and he is no longer eligible to use it, the clerk must make a record that he has withheld the limited driving privilege and forward that record to the clerk in the county in which the limited driving privilege was issued for filing in the case file.

(i) Effect of Revocations. A revocation under this section revokes a person's privilege to drive in North Carolina whatever the source of his authorization to drive. Revocations under this section are independent of and run concurrently with any other revocations. No court imposing a period of revocation following conviction of an offense involving impaired driving may give credit for any period of revocation imposed under this section. A person is not eligible for a limited driving privilege under any statute while his license is revoked under this section.

(j) Costs. Unless the magistrate or judge orders the revocation rescinded, a person whose license is revoked under this section must pay a fee of twenty-five dollars ($25.00) as costs for the action before his license may be returned under subsection (h). The costs collected under this section go to the State.

(k) Report to Division. Except as provided below, the clerk must mail a report to the Division within 10 working days of the return of a license under this section or of the termination of a revocation of the driving privilege of a person not currently licensed. The report must identify the person whose license has been revoked and specify the dates on which his license was revoked. No report need be made to the Division, however, if there was a surrender of the driver's license issued by the Division, a ten-day minimum revocation was imposed, and the license was properly returned to the person under subsection (h) within five working days after the ten-day period had elapsed.

(l) Restoration Fee for Unlicensed Persons. If a person whose license is revoked under this section has no valid license, he must pay the restoration fee required by G.S. 20-7 before he may apply for a license from the Division.

(m) Modification of Revocation Order. Any judicial official presiding over a proceeding under this section may issue a modified order if he determines that an inappropriate order has been issued.

(n) Exception for Revoked Licenses. Notwithstanding any other provision of this section, if the judicial official required to issue a revocation order under this section determines that the person whose license is subject to revocation under subsection (b):

(1) Has a currently revoked driver's license;

(2) Has no limited driving privilege; and

(3) Will not become eligible for restoration of his license or for a limited driving privilege during the period of revocation required by this section, the judicial official need not issue a revocation order under

this section. In this event the judicial official must file in the records of the civil proceeding a copy of any documentary evidence and set out in writing all other evidence on which he relies in making his determination.

(o) Designation of Proceedings. Proceedings under this section are civil actions, and must be identified by the caption 'In the Matter of _____' and filed as directed by the Administrative Office of the Courts."

–REVOCATION FOR IMPAIRED DRIVING CONVICTION.

Sec. 15. G.S. 20-17(2) is rewritten to read as follows:

"(2) Impaired driving under G.S. 20-138.1."

–DMV PROCEDURE AFTER COURT-ORDERED REVOCATIONS.

Sec. 16. Chapter 20 of the General Statutes is amended to add a new G.S. 20-17.2 to read as follows:

"**§ 20-17.2. Court-ordered revocations for offenses involving impaired driving; procedure for notice. –** When a person convicted of an offense involving impaired driving is ordered by a court not to operate a motor vehicle for a specified period of time as a condition of probation, the Division, upon receiving a copy of the judgment, must revoke the person's driver's license for the period and dates specified in the order of the court. The entry of the probationary judgment by the court is notice to the person that his license is revoked, and the Division need not notify the person of his revocation. In judgment forms for use in impaired driving cases under G.S. 20-138.1 the Administrative Office of the Courts must provide for inclusion of a notice provision, when applicable, of the terms of this section."

–LENGTHS OF REVOCATIONS FOR IMPAIRED DRIVING.

Sec. 17. G.S. 20-19 is amended by repealing subsection (h), adding a new subsection (i), and rewriting subsections (c1), (d), and (e) to read as follows:

"(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.

(d) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has another conviction of an offense involving impaired driving, occurring within the 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 convictions of an offense involving impaired driving, and the most recent conviction 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.

(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."

–REVOCATION FOR FEDERAL COURT CONVICTIONS.

Sec. 18. G.S. 20-23.2 is rewritten to read as follows:

"**§ 20-23.2. Suspension of license for conviction of offense involving impaired driving in federal court. –** Upon receipt of notice of conviction in any court of the federal government of an offense involving impaired driving, the Division is authorized to revoke the driving privilege of the person convicted in the same manner as if the conviction had occurred in a court of this State."

–CONVICTION DEFINED.

Sec. 19. G.S. 20-24, as it appears in the 1981 Cumulative Supplement to the 1978 Replacement Volume 1C of the General Statutes, is amended in subdivision (c)(1) by inserting "with a magistrate's order or" between "served" and "with" on line 7 of the subsection, and is further amended by adding a new subsection to read as follows:

"(e) When a court sends a report of a conviction of manslaughter to the Division, it must indicate on that report whether the manslaughter conviction is one involving impaired driving."

–CERTIFIED RECORDS BY P.I.N.

Sec. 20. G.S. 20-26(b) is amended by deleting the second sentence and inserting in its place the following sentences: "A certified copy of a driver's records kept pursuant to subsection (a) may be sent by the Police Information Network. In addition to the uses authorized by G.S. 8-35.1, a copy certified under the authority of this section is admissible as prima facie evidence of the status of the person's license."

–FORFEITURE OF VEHICLE.

Section 21. Chapter 20 of the General Statutes is amended by adding a new G.S. 20-28.2 to read:

"**§ 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 driver's 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, 20-16.4, 20- 16.5, 20-17(2), or 20-17.2; or

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

(b) When Motor Vehicle Becomes Property Subject to Forfeiture.

If at a sentencing hearing conducted pursuant to G.S. 20-179 the judge determines that the grossly aggravating factor described in G.S. 20-179(c)(2) applies, the motor vehicle that was driven by the defendant at the time he committed the offense of impaired driving becomes property subject to forfeiture.

(c) Duty of Prosecutor To Notify Possible Innocent Parties.

In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this section, the prosecutor must determine the identity of the vehicle owner as shown on the certificate of title for the vehicle and he must also determine if there are any security interests noted on the vehicle's certificate of title. The State must notify the holder of each security interest that the vehicle may be subject to forfeiture and that he may intervene to protect his interest. If the defendant is not the owner, a similar notice must be served on the owner. The notice may be served by any means reasonably likely to provide actual notice, and must be served at least fourteen days before the forfeiture hearing.

(d) Duty of Judge. The judge at sentencing must hold a hearing to determine if the vehicle should be forfeited. At the hearing the judge may order the forfeiture if he finds that:

(1) The vehicle is subject to forfeiture;

(2) The vehicle is not primarily used by a member of the defendant's family or household for a business purpose or for driving to and from work or school;

(3) All potential innocent parties have been notified as required in subsection (c); and

(4) No party has shown that he is an innocent party as described in subsection (f).

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

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

(f) Innocent Party May Intervene. At any time before the forfeiture is ordered, the property owner or holder of a security interest, other than the defendant, may apply to protect his interest in the motor vehicle. The application may be made to a judge who has jurisdiction to try the impaired driving offense with which the motor vehicle is associated. The judge must order the vehicle returned to the owner if he finds that either the owner or the holder of a security interest is an innocent party. An owner or holder of a security interest is an innocent party if he:

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

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

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

–IMPAIRED DRIVING CHECKS.

Sec. 22. Chapter 20 of the General Statutes is amended by adding a new G.S. 20-16.3A to read as follows:

"**§ 20-16.3A. Impaired driving checks. –** A law enforcement agency may make impaired driving checks of drivers of vehicles on highways and public vehicular areas if the agency:

(1) Develops a systematic plan in advance that takes into account the likelihood of detecting impaired drivers, traffic conditions, number of vehicles to be stopped, and the convenience of the motoring public.

(2) Designates in advance the pattern both for stopping vehicles and for requesting drivers that are stopped to submit to alcohol screening tests. The plan may include contingency provisions for altering either pattern if actual traffic conditions are different from those anticipated, but no individual officer may be given discretion as to which vehicle is stopped or, of the vehicles stopped, which driver is requested to submit to an alcohol screening test.

(3) Marks the area in which checks are conducted to advise the public that an authorized impaired driving check is being made.

This section does not prevent an officer from using the authority of G.S. 20-16.3 to request a screening test if, in the course of dealing with a driver under the authority of this section, he develops grounds for requesting such a test under G.S. 20-16.3. Alcohol

screening tests and the results from them are subject to the provisions of subsections (b), (c), and (d) of G.S. 20-16.3. This section does not limit the authority of a law enforcement officer or agency to conduct a license check independently or in conjunction with the impaired driving check, to administer psychophysical tests to screen for impairment, or to utilize roadblocks or other types of vehicle checks or checkpoints that are consistent with the laws of this State and the Constitution of North Carolina and of the United States."

–REPEAL OF PRESENT OFFENSES.

Sec. 23. G.S. 20-138, 20-139, 20-140(c), and 20-140(e) are repealed.

–IMPAIRED DRIVING OFFENSE DEFINED.

Sec. 24. Chapter 20 of the General Statutes is amended by noting that G.S. 20-138.2 is reserved for future codification purposes and by adding a new G.S. 20-138.1 to read as follows:

"**§ 20-138.1. Impaired driving. –** (a) Offense. A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

(1) While under the influence of an impairing substance; or

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.10 or more.

(b) Defense Precluded. The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section.

(c) Pleading. In any prosecution for impaired driving, 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 vehicle on a highway or public vehicular area while subject to an impairing substance.

(d) Sentencing Hearing and Punishment. Impaired driving as defined in this section is a misdemeanor. Upon conviction of a defendant of impaired driving, the presiding judge must hold a sentencing hearing and impose punishment in accordance with G.S. 20-179."

–PROSECUTOR DISCLOSURE REQUIREMENTS.

Sec. 25. Chapter 20 of the General Statutes is amended by adding a new section, G.S. 20-138.4, to read as follows:

"**§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge involving impaired driving. –** Any prosecutor must enter detailed facts in the record of any case involving impaired driving explaining the reasons for his action if he:

(1) Enters a voluntary dismissal; or

(2) Accepts a plea of guilty or no contest to a lesser included offense; or

(3) Substitutes another charge, by statement of charges or otherwise, if the substitute charge carries a lesser mandatory minimum punishment or is not an offense involving impaired driving; or

(4) Otherwise takes a discretionary action that effectively dismisses or reduces the original charge in the case involving impaired driving. General explanations such as 'interests of justice' or 'insufficient evidence' are not sufficiently detailed to meet the requirements of this section."

–CHEMICAL TESTING PROCEDURES.

Sec. 26. G.S. 20-139.1 is rewritten to read as follows:

"**§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs. –** (a) Chemical Analysis Admissible. In any implied- consent offense under G.S. 20-16.2, a person's alcohol concentration as shown by a chemical analysis is admissible in evidence. This section does not limit the introduction of other competent evidence as to a defendant's alcohol concentration, including other chemical tests.

(b) Approval of Valid Test Methods; Licensing Chemical Analysts. A chemical analysis, to be valid, must be performed in accordance with the provisions of this section. The chemical analysis must be performed according to methods approved by the Commission for Health Services by an individual possessing a current permit issued by the Department of Human Resources for that type of chemical analysis. The Commission for Health Services is authorized to adopt regulations approving satisfactory methods or techniques for performing chemical analyses, and the Department of Human Resources is authorized to ascertain the qualifications and competence of individuals to conduct particular chemical analyses. The Department may issue permits to conduct chemical analyses to individuals it finds qualified subject to periodic renewal, termination, and revocation of the permit in the Department's discretion.

(b1) Arresting or Charging Officer May Not Perform Chemical Analysis. A chemical analysis is not valid in any case in which it is performed by an arresting officer or by a charging officer under the terms of G.S. 20-16.2.

(b2) Breath Analysis Results Inadmissible if Preventive Maintenance Not Performed. Notwithstanding the provisions of subsection (b), the results of a chemical analysis of a person's breath performed in accordance with this section are not admissible in evidence if:

(1) The defendant objects to the introduction into evidence of the results of the chemical analysis of his breath; and

(2) The defendant demonstrates that, with respect to the instrument used to analyse his breath, preventive maintenance procedures required by the regulations of the Commission for Health Services had not been performed within the time limits prescribed by those regulations.

(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 must 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).

(c) Withdrawal of Blood for Chemical Analysis. When a blood test is specified as the type of chemical analysis by the charging officer, only a physician, registered nurse, or other qualified person may withdraw the blood sample. If the person withdrawing the blood requests written confirmation of the charging officer's request for the withdrawal of blood, the officer must furnish it before blood is withdrawn. When blood is withdrawn pursuant to a charging officer's request, neither the person withdrawing the blood nor any hospital, laboratory, or other institution, person, firm, or corporation employing him, or contracting for the service of withdrawing blood, may be held criminally or civilly liable by reason of withdrawing that blood, except that there is no immunity from liability for negligent acts or omissions.

(d) Right to Additional Test. A person who submits to a chemical analysis may have a qualified person of his own choosing administer an additional chemical test or tests, or have a qualified person withdraw a blood sample for later chemical testing by a qualified person of his own choosing. Any law enforcement officer having in his charge any person who has submitted to a chemical analysis must assist the person in contacting someone to administer the additional testing or to withdraw blood, and must allow access to the person for that purpose. The failure or inability of the person who submitted to a chemical analysis to obtain any additional test or to withdraw blood does not preclude the admission of evidence relating to the chemical analysis.

(e) Recording Results of Chemical Analysis of Breath. The chemical analyst who administers a test of a person's breath must record the following information after making any chemical analysis:

(1) The alcohol concentration or concentrations revealed by the chemical analysis.

(2) The time of the collection of the breath sample or samples used in the chemical analysis.

A copy of the record of this information must be furnished to the person submitting to the chemical analysis, or to his attorney, before any trial or proceeding in which the results of the chemical analysis may be used.

(e1) Use of Chemical Analyst's Affidavit in District Court.

An affidavit by a chemical analyst sworn to and properly executed before an official authorized to administer oaths is admissible in evidence without further authentication in any hearing or trial in the District Court Division of the General Court of Justice with respect to the following matters:

(1) The alcohol concentration or concentrations of a person given a chemical analysis and who is involved in the hearing or trial.

(2) The time of the collection of the blood or breath sample or samples for the chemical analysis.

(3) The type of chemical analysis administered and the procedures followed.

(4) The type and status of any permit issued by the Department of Human Resources that he held on the date he performed the chemical analysis in question.

(5) If the chemical analysis is performed on a breath- testing instrument for which regulations adopted pursuant to subsection (b) require preventive maintenance, the date the most recent preventive maintenance procedures were performed on the breath-testing instrument used, as shown on the maintenance records for that instrument.

The Department of Human Resources must develop a form for use by chemical analysts in making this affidavit. If any person who submitted to a chemical analysis desires that a chemical analyst personally testify in the hearing or trial in the District Court Division, he may subpoena the chemical analyst and examine him as if he were an adverse witness.

(f) Evidence of Refusal Admissible. If any person charged with an implied-consent offense refuses to submit to a chemical analysis, evidence of that refusal is admissible in any criminal action against him for an implied-consent offense under G.S. 20- 16.2.

(g) Controlled-Drinking Programs. The Department of Human Resources is empowered to make regulations concerning the ingestion of controlled amounts of alcohol by individuals submitting to chemical testing as a part of scientific, experimental, educational, or demonstration programs. These regulations must prescribe procedures consistent with controlling federal law governing the acquisition, transportation, possession, storage, administration, and disposition of alcohol intended for use in the programs. Any person in charge of a controlled-drinking program who acquires alcohol under these regulations must keep records accounting for the disposition of all alcohol acquired, and the records must at all reasonable times be available for inspection upon the request of any federal, State, or local law enforcement officer with jurisdiction over the laws relating to control of alcohol. A controlled-drinking program exclusively using lawfully purchased alcoholic beverages in places in which they may be lawfully possessed, however, need not comply with the record-keeping requirements of the regulations authorized by this subsection. All acts pursuant to the regulations reasonably done in furtherance of bona fide objectives of a controlled-

drinking program authorized by the regulations are lawful notwithstanding the provisions of any other general or local statute, regulation, or ordinance controlling alcohol."

–FELONY AND MISDEMEANOR DEATH BY VEHICLE.

Sec. 27. G.S. 20-141.4 is rewritten to read as follows:

"**§ 20-141.4. Felony and misdemeanor death by vehicle. –** (a). **(Repealed.)**

(a1) Felony Death by Vehicle. A person commits the offense of felony death by vehicle if he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 and commission of that offense is the proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. A person commits the offense of misdemeanor death by vehicle if he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.

(b) Punishments. Felony death by vehicle is a Class I felony. Misdemeanor death by vehicle is a misdemeanor punishable by a fine of not more than five hundred dollars ($500.00), imprisonment for not more than two years, or both, in the discretion of the court.

(c) No Double Prosecutions. No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of mansalughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

–IMPAIRED DRIVING APPLICABLE TO ROAD CONSTRUCTION VEHICLES.

Sec. 28. The numbered subdivisions of G.S. 20-168(b) are rewritten to read as follows:

"(1) G.S. 20-138.1. Impaired driving.
(2) (Repealed.)
(3) G.S. 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.
(4) G.S. 20-140. Reckless driving.
(5) (Repealed.)
(6) G.S. 20-141. Speed restrictions.
(7) G.S. 20-141.3. Unlawful racing on streets and highways.
(8) G.S. 20-141.4. Felony and misdemeanor death by vehicle."

–SENTENCING PROCEDURES AND PUNISHMENT FOR IMPAIRED DRIVING OFFENSES.

Sec. 29. G.S. 20-179 and G.S. 20-179.1 are rewritten to read as follows:

"**§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors;**

punishments. – (a) Sentencing Hearing Required. After a conviction for impaired driving under G.S. 20- 138.1, the judge must hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed. Before the hearing the prosecutor must make all feasible efforts to secure the defendant's full record of traffic convictions, and must present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor must furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In addition, the prosecutor must present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor must present evidence of the resulting alcohol concentration.

(b) (Repealed.)

(c) Determining Existence of Grossly Aggravating Factors. At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge must first determine whether there are any grossly aggravating factors in the case. If the defendant has been convicted of two or more prior offenses involving impaired driving, if the convictions occurred within seven years of the date of the offense for which he is being sentenced, the judge must impose the Level One punishment under subsection (g). The judge must also impose the Level One punishment if he determines that two or more of the following grossly aggravating factors apply:

(1) A single conviction for an offense involving impaired driving, if the conviction occurred within seven years of the date of the offense for which the defendant is being sentenced.

(2) Driving by the defendant while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20- 28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving.

If the judge determines that only one of the above grossly aggravating factors applies, he must impose the Level Two punishment under subsection (h). In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(d) Aggravating Factors To Be Weighed. The judge must determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge must weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.20 or more within a relevant time after the driving.

(2) Especially reckless or dangerous driving.

(3) Negligent driving that led to an accident causing property damage in excess of five hundred dollars ($500.00) or personal injury.

(4) Driving by the defendant while his driver's license was revoked.

(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.

(6) Conviction under G.S. 20-141(j) of speeding by the defendant while fleeing or attempting to elude apprehension, if the offense occurred during the same act or transaction as the impaired driving offense.

(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit, if the offense occurred during the same act or transaction as the impaired driving offense.

(8) Passing a stopped school bus in violation of G.S. 20-217.

(9) Any other factor that aggravates the seriousness of the offense.

(e) Mitigating Factors To Be Weighed. The judge must also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge must weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.11 at any relevant time after the driving.

(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.

(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.

(4) A safe driving record, with the defendant's having no conviction for any serious traffic violation within five years of the date of the offense for which the defendant is being sentenced.

(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with impaired driving, and, if recommended by the facility, his voluntary participation in the recommended treatment.

(7) Any other factor that mitigates the seriousness of the offense.

(f) Weighing the Aggravating and Mitigating Factors. If the judge in the sentencing hearing determines that there are no grossly aggravating factors, he must

weigh all aggravating and mitigating factors listed in subsections (d) and (e). If the judge determines that:

(1) The aggravating factors substantially outweigh any mitigating factors, he must note in the judgment the factors found and his finding that the defendant is subject to the Level Three punishment and impose a punishment within the limits defined in subsection (i).

(2) There are no aggravating and mitigating factors, or that aggravating factors are substantially counterbalanced by mitigating factors, he must note in the judgment any factors found and his finding that the defendant is subject to the Level Four punishment and impose a punishment within the limits defined in subsection (j).

(3) The mitigating factors substantially outweigh any aggravating factors, he must note in the judgment the factors found and his finding that the defendant is subject to the Level Five punishment and impose a punishment within the limits defined in subsection (k).

It is not a mitigating factor that the driver of the vehicle was suffering from alcoholism, drug addiction, diminished capacity, or mental disease or defect. Evidence of these matters may be received in the sentencing hearing, however, for use by the judge in formulating terms and conditions of sentence after determining which punishment level must be imposed.

(g) Level One Punishment. A defendant subject to Level One punishment may be fined up to two thousand dollars ($2,000) and must be sentenced to a term of imprisonment of not less than 14 days and not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 14 days. If the defendant is placed on probation, the judge must, if required by subsections (l) or (m), impose the conditions relating to treatment and education described in those subsections. The judge may impose any other lawful condition of probation. If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so.

(h) Level Two Punishment. A defendant subject to Level Two punishment may be fined up to one thousand dollars ($1,000) and must be sentenced to a term of imprisonment of not less than seven days and not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge must, if required by subsections (l) or (m), impose the conditions relating to treatment and education described in those subsections. The judge may impose any other lawful condition of probation. If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so.

(i) Level Three Punishment. A defendant subject to Level Three punishment may be fined up to five hundred dollars ($500.00) and must be sentenced to a term of

imprisonment of not less than 72 hours and not more than six months. The term of imprisonment must be suspended, on the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or
(2) Perform community service for a term of at least 72 hours; or
(3) Not operate a motor vehicle for a term of at least 90 days; or
(4) Any combination of these conditions.

The judge in his discretion may impose any other lawful condition of probation and, if required by subsections (l) or (m), must impose the conditions relating to treatment and education described in those subsections. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(j) Level Four Punishment. A defendant subject to Level Four punishment may be fined up to two hundred fifty dollars ($250.00) and must be sentenced to a term of imprisonment of not less than 48 hours and not more than 120 days. The term of imprisonment must be suspended, on the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or
(2) Perform community service for a term of 48 hours; or
(3) Not operate a motor vehicle for a term of 60 days; or
(4) Any combination of these conditions.

The judge in his discretion may impose any other lawful condition of probation and, if required by subsections (l) or (m), must impose the conditions relating to treatment and education described in those subsections. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(k) Level Five Punishment. A defendant subject to Level Five punishment may be fined up to one hundred dollars ($100.00) and must be sentenced to a term of imprisonment of not less than 24 hours and not more than 60 days. The term of imprisonment must be suspended, on the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or
(2) Perform community service for a term of 24 hours; or
(3) Not operate a motor vehicle for a term of 30 days; or
(4) Any combination of these conditions.

The judge may in his discretion impose any other lawful condition of probation and, if required subsections (l) or (m), must impose the conditions relating to treatment and education described in those subsections. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(l) Education Required in Certain Cases. If a defendant being sentenced under this section is placed on probation, he must be required as a condition of that probation to complete the course of instruction sucessfully at an Alcohol and Drug Education

Traffic School established pursuant to G.S. 20-179.2 within 90 days of the date of conviction unless:

(1) He has previously been assigned to an Alcohol and Drug Education Traffic School and has successfully completed the course of instruction; or

(2) The judge finds that the defendant will not benefit from the course of instruction because of specific, extenuating circumstances.

(m) Assessment and Treatment Required in Certain Cases. If a defendant being sentenced under this section is placed on probation, he must be required as a condition of that probation to obtain a substance abuse assessment if:

(1) He had an alcohol concentration of 0.20 or more as indicated by a chemical analysis taken when he was charged; or

(2) He has a prior conviction for an offense involving impaired driving within the five years preceding the date of the offense for which he is being sentenced and, when he was charged with the current offense, he either:

a. Had an alcohol concentration of 0.10 or more; or

b. Willfully refused to submit to a chemical analysis.

The judge must require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. In addition, he must require the defendant to participate in a treatment program if recommended by the assessing agency, and he must require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the Division of Adult Probation and Parole. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation in treatment should be imposed. The judge must require the defendant to pay twenty-five dollars ($25.00) for the services of the assessment facility and the treatment fees that may be charged by the treatment facility. If the defendant is treated by an area mental health facility, G.S. 122-35.47 applies. Any determinations with regard to the defendant's ability to pay the assessment fee must be made by the judge. In those cases in which no substance abuse handicap is identified, that finding must be forwarded in writing to the court. When treatment is required, the treatment agency's progress reports must be filed with the court or the Division of Adult Probation and Parole at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate.

(n) Time Limits for Performance of Community Service. If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service must be completed:

(1) Within 90 days, if the amount of community service required is 72 hours or more; or

(2) Within 60 days, if the amount of community service required is 48 hours; or

(3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection. Failure to complete the community service requirement within the applicable time limits is a violation of the defendant's probation and, in addition, is a ground for revocation of any limited driving privilege held by the defendant for the impaired driving offense.

(o) Evidentiary Standards; Proof of Prior Convictions. In the sentencing hearing, the State must prove any grossly aggravating or aggravating factor by the greater weight of the evidence, and the defendant must prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he must give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge must afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, that conviction may not be used as the basis for imposing an active sentence of imprisonment.

(p) Limit on Ameliorations of Punishment. With respect to the period of any minimum active term of imprisonment or minimum or specific term of imprisonment as a condition of special probation under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) No good time or gain time may be credited to reduce the minimum or specified term of imprisonment.

(3) The defendant may not be released on parole.

(q) Meaning of 'Conviction'. For the purposes of this Article, 'conviction' includes a guilty verdict, guilty plea, plea of no contest, or anything that would be treated as a conviction under G.S. 20-24(c).

"**§ 20-179.1. Presentence investigation of persons convicted of offense involving impaired driving. –** When a person has been convicted of an offense involving impaired driving, the trial judge may request a presentence investigation to determine whether the person convicted would benefit from treatment for habitual use of alcohol or drugs. If the person convicted objects, no presentence investigation may be ordered,

but the judge retains his power to order suitable treatment as a condition of probation, and must do so when required by statute."

–ALCOHOL AND DRUG EDUCATION TRAFFIC SCHOOLS.

Sec. 30. G.S. 20-179.2 is amended by repealing subsection (b) and by designating the present subdivisions (a)(1), (a)(2), (a)(3), and (a)(4) as subsections (c), (d), (e), and (f), respectively. That section is further amended by deleting the fourth sentence of the present subdivision (a)(1) (redesignated as subsection (c)) and inserting in its place the following sentence:

"The fee must be paid in full within two weeks from the date school attendance is ordered as a condition of probation, unless the court, upon a showing of hardship by the person, allows the person additional time to pay the fee."

–LIMITED DRIVING PRIVILEGE.

Sec. 31. Chapter 20 of the General Statutes is amended by adding a new G.S. 20-179.3 to read as follows:

"**§ 20-179.3. Limited driving privilege. –** (a) Definition of Limited Driving Privilege. A limited driving privilege is a judgment issued in the discretion of a court for good cause shown authorizing a person with a revoked driver's license to drive for essential purposes related to any of the following:

(1) His employment.
(2) The maintenance of his household.
(3) His education.
(4) His court-ordered treatment or assessment.
(5) Community service ordered as a condition of the person's probation.
(6) Emergency medical care.

(b) Eligibility. A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

(1) At the time of the offense he held a valid driver's license;
(2) At the time of the offense he had not within the preceding 10 years been convicted of an offense involving impaired driving;
(3) Punishment Level Three, Four, or Five was imposed for the offense of impaired driving; and
(4) Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(c) Privilege Not Effective Until After Compliance With Court- Ordered Revocation. A person convicted of an impaired driving offense may apply for a limited driving privilege at the time the judgment is entered. If the judgment does not require

the person to complete a period of nonoperation pursuant to G.S. 20-179, the privilege may be issued at the time the judgment is issued. If the judgment requires the person to complete a period of nonoperation pursuant to G.S. 20-179, the limited driving privilege may not be effective until the person successfully completes that period of nonoperation. A person whose license is revoked because of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1 may apply for a limited driving privilege only after having completed at least 60 days of a court-imposed term of nonoperation of a motor vehicle, if the court in the other jurisdiction imposed such a term of nonoperation.

(d) Application for and Scheduling of Subsequent Hearing. The application for a limited driving privilege made subsequent to sentencing must be filed with the clerk in duplicate, and no hearing scheduled may be held until a reasonable time after the clerk files a copy of the application with the district attorney's office. The hearing must be scheduled before:

(1) The presiding judge at the applicant's trial if that judge is assigned to a court in the judicial district in which the conviction for impaired driving was imposed.

(2) The senior regular resident superior court judge of the district in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in superior court.

(3) The chief district court judge of the district in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in district court.

If the applicant was convicted of an offense in another jurisdiction, the hearing must be scheduled before the chief district court judge of the district in which he resides. G.S. 20-16.2(e1) governs the judge before whom a hearing is scheduled if the revocation was under G.S. 20-16.2(d). The hearing may be scheduled in any county within the judicial district.

(e) Limited Basis for and Effect of Privilege. A limited driving privilege issued under this section authorizes a person to drive if his license is revoked solely under G.S. 20-17(2) or as a result of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1; if the person's license is revoked under any other statute, the limited driving privilege is invalid.

(f) Overall Restriction on Use of Privilege. In addition to specific restrictions that must be imposed under subsection (g), a limited driving privilege must restrict the applicant to essential driving related to the purposes listed in subsection (a). Driving related to emergency medical care is authorized at any time, but any other driving is unlawful unless it is for a purpose listed in subsection (a) and is within the times and at a place authorized under the subsection (g).

(g) Specific Restrictions on Driving Required to Be Stated.

Under this section, 'standard working hours' are 6:00 a.m. to 8:00 p.m. on Monday through Friday. If the applicant is not required to drive for essential work-related

purposes except during standard working hours, the judge in the limited driving privilege:

(1) Must prohibit driving during nonstandard working hours except for essential driving related to emergency medical care and specified essential driving for the applicant's education or court- ordered assessment, treatment, or community service; and

(2) May state other information and restrictions applicable to work-related driving during standard working hours.

The judge in the limited driving privilege may not allow the applicant to drive for maintenance of his household except during standard working hours, and the judge may impose any additional restrictions on such driving. If the applicant is required to drive for essential work-related purposes during nonstandard working hours, he must present documentation of that fact to the court before the judge may authorize him to drive during nonstandard working hours. If this authorization is granted, the limited driving privilege must contain the exact times and routes in which the holder will be driving to work or as a condition of employment, and restrict driving to those times and routes. The judge may also impose other restrictions, including a specification as to the vehicle to be driven. The judge must give the name and location of the place of work and may include any other information as to residence and essential driving needs that may assist law enforcement officers inspecting the limited driving privilege. If the applicant seeks permission to drive to and from court-ordered assessment, treatment, or community service or an educational program, including an Alcohol and Drug Education Traffic School, the judge must find that the applicant has no reasonable alternative to his driving. If the judge makes such a finding, he may authorize driving for that purpose, but if the driving will occur during nonstandard working hours, the judge must state the same information and restrictions applicable to work-related driving during those hours.

(h) Other Mandatory and Permissive Conditions or Restrictions. In all limited driving privileges the judge must also include a restriction that the applicant not consume alcohol while driving or drive at any time while he has remaining in his body any alcohol or in his blood a controlled substance previously consumed, unless the controlled substance was lawfully obtained and taken in therapeutically appropriate amounts. The judge may impose any other reasonable restrictions or conditions necessary to achieve the purposes of this section.

(i) Modification or Revocation of Privilege. A judge who issues a limited driving privilege is authorized to modify or revoke the limited driving privilege upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the limited driving privilege is not available, a judge authorized to issue a limited driving privilege under subsection (d) may modify or revoke a limited driving privilege in accordance with this subsection. The judge must indicate in the order of modification or revocation the reasons for the order, or he must make specific findings indicating the reason for the order and those findings must be entered in the record of the case.

(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 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.

(k) Copy of Limited Driving Privilege to Division; Action Taken if Privilege Invalid. The clerk of court must send a copy of any limited driving privilege issued in the county to the Division. A limited driving privilege that is not authorized by this section, G.S. 20-16.2(e1), or G.S. 20-16.1, or that does not contain the limitations required by law, is invalid. If the limited driving privilege is invalid on its face, the Division must immediately notify the court and the holder of the privilege that it considers the privilege void and that the Division records will not indicate that the holder has a limited driving privilege."

PART II. PROTECTION OF YOUTHFUL DRIVERS.

–RAISING BEER PURCHASE AGE.

Sec. 32. G.S. 18B-300(a), 18B-302(a)(1), 18B-900(a)(1), and 18B-900(d) are amended by deleting the number "18" wherever it appears in those subsections and inserting in its place the number "19".

–GROUNDS FOR REVOKING PROVISIONAL LICENSE.

Sec. 33. Chapter 20 of the General Statutes is amended to add a new G.S. 20-13.2 to read as follows:

"**§ 20-13.2. Grounds for revoking provisional license. –** (a) The Division must revoke the license of a person convicted of violating the provisions of G.S. 20-138.3 upon receipt of a record of the licensee's conviction.

(b) If a person is convicted of an offense involving impaired driving and the offense occurs while he is a provisional licensee, his license must be revoked under this section in addition to any other revocation required or authorized by law.

(c) If a person willfully refuses to submit to a chemical analysis pursuant to G.S. 20-16.2 while he is a provisional licensee, his license must be revoked under this section, in addition to any other revocation required or authorized by law. A revocation order entered under authority of this subsection becomes effective at the same time as a revocation order issued under G.S. 20-16.2 for the same willful refusal.

(d) A revocation under this section continues until the provisional licensee reaches 18 years of age or 45 days have elapsed, whichever occurs last. Revocations

under this section run concurrently with any other revocations, but a limited driving privilege issued pursuant to law does not authorize a provisional licensee to drive if his license is revoked under this section."

–DRIVING BY PROVISIONAL LICENSEE AFTER DRINKING.

Sec. 34. Chapter 20 of the General Statutes is amended by adding a new section, G.S. 20-138.3, to read as follows:

"**§ 20-138.3. Driving by provisional licensee after consuming alcohol or drugs. –** (a) Offense. It is unlawful for a provisional licensee to drive a motor vehicle on a highway or public vehicular area while consuming alcohol or at any time while he has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a provisional licensee does not violate this section if he drives with a controlled substance in his blood which was lawfully obtained and taken in therapeutically appropriate amounts.

(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) Punishment; Effect When Impaired Driving Offense Also Charged. The offense in this section is punishable under G.S. 20-176(b). It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable must be imposed."

–FRAUDULENT USE OF ID; AIDER AND ABETTOR PUNISHMENT.

Sec. 35. G.S. 18B-302 is amended by rewriting subsections (b), (c), (e), and (f), and adding subsection (g) to read as follows:

"(b) Purchase or Possession. It shall be unlawful for:

(1) A person less than 19 years old to purchase, to attempt to purchase, or to possess malt beverages or unfortified wine; or

(2) A person less than 21 years old to purchase, to attempt to purchase, or to possess fortified wine, spirituous liquor, or mixed beverages.

(c) Aider and Abettor.

(1) By underage person. Any person who is under the lawful age to purchase and who aids or abets another in violation of subsection (a) or (b) of this section shall be guilty of a misdemeanor punishable by a fine up to five hundred dollars ($500.00) or imprisonment for not more than six months, or both, in the discretion of the court.

(2) By person over lawful age. Any person who is over the lawful age to purchase and who aids or abets another in violation of subsection (a) or (b) of this section shall be guilty of a misdemeanor punishable by a fine of up to two thousand dollars ($2,000) or imprisonment for not more than two years, or both, in the discretion of the court.

(e) Fraudulent Use of Identification. It shall be unlawful for any person to obtain or attempt to obtain alcoholic beverages in violation of subsection (b) of this section by using or attempting to use:

(1) A fraudulent or altered driver's license; or
(2) A fraudulent or altered identification document other than a driver's license; or
(3) A driver's license issued to another person; or
(4) An identification document other than a driver's license issued to another person.

(f) Allowing Use of Identification. It shall be unlawful for any person to permit the use of his driver's license or any other identification document of any kind by any person who violates or attempts to violate subsection (b) of this section.

(g) Conviction Report Sent to Division of Motor Vehicles. The court shall file a conviction report with the Division of Motor Vehicles indicating the name of the person convicted and any other information requested by the Division if the person is convicted of:

(1) A violation of subsection (e) or (f) of this section; or
(2) A violation of subdivision (c)(1) of this section; or
(3) A violation of subsection (b) of this section, if the violation occurred while the person was purchasing or attempting to purchase an alcoholic beverage.

Upon receipt of a conviction report, the Division shall revoke the person's license as required by G.S. 20-17.3."

–REVOCATION FOR UNDERAGE PURCHASERS OF ALCOHOL.

Sec. 36. General Statutes Chapter 20 is amended by adding a new section to read:

"**§ 20-17.3. Revocation for underage purchasers of alcohol.–** The Division shall revoke for one year the driver's license of any person who has been convicted of violating any of the following:

(1) G.S. 18B-302(c)(1), (e), or (f); or
(2) G.S. 18B-302(b), if the violation occurred while the person was purchasing or attempting to purchase an alcoholic beverage.

If the person's license is currently suspended or revoked, then the revocation under this section shall begin at the termination of that revocation."

PART III. DRAM SHOP OWNER LIABILITY.

–DRAM SHOP OWNER LIABILITY; BURDEN OF PROOF.

Sec. 37. Chapter 18B of the General Statutes is amended by adding a new Article 1A to read:

"Article 1A.

"Compensation for Injury Caused by Sales to Underage Persons.

"**§ 18B-120. Definitions. –** As used in this Article:

(1) 'Aggrieved Party' means a person who sustains an injury as a consequence of the actions of the underage person, but does not include the underage person or a person who aided or abetted in the sale or furnishing to the underage person.

(2) 'Injury' includes, but is not limited to, personal injury, property loss, loss of means of support, or death. Damages for death shall be determined under the provisions of G.S. 28A-18- 2(b). Nothing in G.S. 28A-18-2(a) or subdivision (1) of this section shall be interpreted to preclude recovery under this Article for loss of support or death on account of injury to or death of the underage person or a person who aided or abetted in the sale or furnishing to the underage person.

(3) 'Underage person' means a person who is less than the age legally required for purchase of the alcoholic beverage in question.

(4) 'Vehicle' shall have the same meaning as prescribed by G.S. 20-4.01(49).

"**§ 18B-121. Claim for relief created for sale to underage person. –** An aggrieved party has a claim for relief for damages against a permittee or local Alcoholic Beverage Control Board if:

(1) The permittee or his agent or employee or the local board or its agent or employee negligently sold or furnished an alcoholic beverage to an underage person; and

(2) The consumption of the alcoholic beverage that was sold or furnished to an underage person caused or contributed to, in whole or in part, an underage driver's being subject to an impairing substance within the meaning of G.S. 20-138.1 at the time of the injury; and

(3) The injury that resulted was proximately caused by the underage driver's negligent operation of a vehicle while so impaired.

"**§ 18B-122. Burden of proof and admissibility of evidence. –** The plaintiff shall have the burden of proving that the sale or furnishing of the alcoholic beverage to the underage person, as defined, was, under the circumstances, negligent. Proof of the sale or furnishing of the alcoholic beverage to an underage person, as defined, without request for identification shall be admissible as evidence of negligence. Proof of good practices (including but not limited to, instruction of employees as to laws regarding the sale of alcoholic beverages, training of employees, enforcement techniques, admonishment to patrons concerning laws regarding the purchase or furnishing of alcoholic beverages, or detention of a person's identification documents in accordance with G.S. 18B-129 and inquiry about the age or degree of intoxication of the person), evidence that an underage person misrepresented his age, or that the sale or furnishing was made under duress is admissible as evidence that the permittee was not negligent.

"**§ 18B-123. Limitation_ on damages. –** The total amount of damages that may be awarded to all aggrieved parties pursuant to any claims for relief under this Article is limited to no more than five hundred thousand dollars ($500,000) per occurrence. When all claims arising out of an occurrence exceed five hundred thousand dollars ($500,000), each claim shall abate in the proportion it bears to the total of all claims.

"**§ 18B-124. Joint and several liability. –** The liability of the negligent driver or owner of the vehicle that caused the injury and the permittee or ABC Board which sold or furnished the alcoholic beverage shall be joint and several, with right of contribution but not indemnification.

"**§ 18B-125. Exceptions. –** This Article does not create a claim for relief against the following:

(1) One who holds only a brown bagging permit, a special occasions permit, or a limited special occasions permit;
(2) One who holds only a special one-time permit under G.S. 18B-1002;
(3) One who holds only permits listed in G.S. 18B-1100;
(4) One who holds any combination of the permits listed in this section.

"**§ 18B-126. Statute of limitations. –** The statute of limitations is as provided in G.S. 1-54.

"**§ 18B-127. Duty of clerk of superior court. –** When execution on a judgment on a cause of action under G.S. 18B-121 is returned unsatisfied, in whole or in part, the clerk of superior court to whom such return is made shall transmit to the Commission certified copies of the judgment, the execution and return and any other proceedings upon the judgment.

"**§ 18B-128. Common law rights not abridged. –** The creation of any claim for relief by this Article may not be interpreted to abrogate or abridge any claims for relief under the common law, but this Article does not authorize double recovery for the same injury.

"**§ 18B-129. No liability for refusal to sell or for holding documents. –** (a) No permittee or his agent or employee may be held liable for damages resulting from the refusal to sell or furnish an alcoholic beverage to a person who fails to show proper identification as described in G.S. 18B-302(d), or who appears to be an underage person.

(b) No permittee or his agent or employee may be held civilly liable if the permittee or his agent or employee holds a customer's identification documents for a reasonable length of time in a good faith attempt to determine whether the customer is of legal age to purchase an alcoholic beverage, provided the permittee or his agent or employee informs the customer of the reason for his actions."

–STATUTE OF LIMITATIONS.

Sec. 38. G.S. 1-54 is amended by adding a new subdivision (7) to read:

"(7) For recovery of damages under Article 1A of General Statutes Chapter 18B."

–ABC PERMITTEE'S REQUIREMENTS.

Sec. 39. G.S. 18B-900(a) is amended by adding a new subdivision (7) to read as follows:

"(7) Not have, whether as an individual or as an officer, director, shareholder or manager of a corporate permittee, an unsatisfied outstanding final judgment that was entered against him in an action under Article 1A of this Chapter."

–REVOCATION OF PERMIT FOR NONPAYMENT OF JUDGMENT.

Sec. 40. G.S. 18B-1003 is amended by adding thereto a new subsection (d) to read as follows:

"(d) Financial Responsibility. A permittee shall pay all judgments rendered against him under the provisions of Article 1A of this Chapter. When the Commission is informed, under the provisions of G.S. 18B-127 that there is an outstanding unsatisfied judgment against a permittee, the Commission shall suspend all of the permittee's permits. Notice and hearing are not required for a suspension under this subsection, and the suspension shall become effective immediately upon the Commission's receipt of the report. The suspension shall remain in effect until the permittee demonstrates that he has satisfied the judgment by payment in full. Nothing in this section relieves the permittee of the obligation to pay any applicable fees as a precondition of the reinstatement of his permit."

–LOCAL BOARD NOT COUNTY OR CITY AGENCY.

Sec. 41. G.S. 18B-101(8) is amended by adding thereto the following:

"A local board is an independent local political subdivision of the State. Nothing in this Chapter shall be construed as constituting a local board the agency of a city or county or of the Commission."

–NO LEGISLATIVE INTENT AS TO CIVIL LIABILITY FOR SALES TO INTOXICATED PERSONS.

Sec. 41.1. The original inclusion and ultimate deletion in the course of passing this act of statutory liability for certain persons who sell or furnish alcoholic beverages to intoxicated persons does not reflect any legislative intent one way or the other with respect to the issue of civil liability for negligence by persons who sell or furnish those beverages to such persons.

PART IV. EFFECTIVE DATE AND TRANSITIONAL PROVISIONS.

–SAVING CLAUSE FOR PROSECUTIONS AND REVOCATIONS.

Sec. 42. Prosecutions for offenses occurring before the effective date of this act and administrative actions affecting drivers' licenses based on these offenses are not abated or affected by the repeal or amendment in this act of statutes creating or punishing the offense or authorizing administrative action concerning a driver's license, and the statutes that would be applicable but for the amendments and repealers in this act remain applicable to those prosecutions and administrative actions.

–APPLICABILITY OF DRAM SHOP PROVISIONS.

Sec. 43. Sections 37, 38, 39 and 40 of this act apply only to acts and omissions occurring on or after the effective date of this act.

–CAPTIONS NOT LIMIT TEXT/ONLY FOR REFERENCE.

Sec. 44. The series of captions used in this act (the descriptive phrases in all capital letters identified by parts numbered with Roman numerals or preceded by hyphens) are inserted for convenience and reference only; and in no way define, limit, or prescribe the scope or application of the text of this act.

–SEVERABILITY.

Sec. 45. If any provision of this act or its application to any person or circumstances is held invalid by any court of competent jurisdiction, the invalidity will not affect other provisions or applications that can be given effect without the invalid provision or application; and to this end the provisions of this act are severable.

–RESERVE FUND FOR IMPLEMENTATION.

Sec. 45.1. The funds collected pursuant to Section 14 of this act shall be paid into a Reserve Fund. Funds from this Reserve Fund may be transferred by the Director of the Budget, with the advice of the Joint Legislative Commission on Governmental Operations, for the sole purpose of implementing the Safe Roads Act of 1983, including reimbursement to counties for increased jail expenses incurred as a result of this act. Any funds from the Reserve Fund not used to implement the Safe Roads Act of 1983 shall revert to the General Fund.

–EFFECTIVE DATE.

Sec. 46. Except as provided in Sections 42 and 43, this act shall become effective October 1, 1983.

In the General Assembly read three times and ratified, this the 3rd day of June, 1983.