

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 6\*

Short Title: Safe Roads Act Study Bill Package.

(Public)

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Sponsors: Representatives Wicker; and Bowman.

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Referred to: Judiciary.

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January 12, 1989

A BILL TO BE ENTITLED

1 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE SAFE ROADS  
2 ACT STUDY COMMITTEE OF THE LEGISLATIVE RESEARCH  
3 COMMISSION.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 20-12.1(a) reads as rewritten:

6 "(a) It is unlawful for any person to accompany another person driving a motor  
7 vehicle, in accordance with G.S. 20-11, or instruct another person driving a motor  
8 vehicle, in accordance with G.S. 20-7(1-1) and (m) or G.S. 20-12:

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

11 (2) After having consumed sufficient alcohol that he has, at any relevant  
12 time after the driving, an alcohol concentration of ~~0.10~~ 0.08 or more."

13 Sec. 2. G.S. 20-16.2(a) reads as rewritten:

14 "(a) Basis for Charging Officer to Require Chemical Analysis; Notification of  
15 Rights.—Any person who drives a vehicle on a highway or public vehicular area thereby  
16 gives consent to a chemical analysis if he is charged with an implied-consent offense.  
17 The charging officer must designate the type of chemical analysis to be administered,  
18 and it may be administered when he has reasonable grounds to believe that the person  
19 charged has committed the implied-consent offense. Except as provided in subsection  
20 (b), the person charged must be taken before a chemical analyst authorized to administer  
21 a test of a person's breath, who must inform the person orally and also give him a notice  
22 in writing that:

23 (1) He has a right to refuse to be tested.  
24

- 1 (2) Refusal to take any required test or tests will result in an immediate  
2 revocation of his driving privilege for at least 10 days and an  
3 additional 12-month revocation by the Division of Motor Vehicles.  
4 (3) The test results, or the fact of his refusal, will be admissible in  
5 evidence at trial on the offense charged.  
6 (4) If any test reveals an alcohol concentration of ~~0.10~~0.08 or more, his  
7 driving privilege will be revoked immediately for at least 10 days.  
8 (5) He may have a qualified person of his own choosing administer a  
9 chemical test or tests in addition to any test administered at the  
10 direction of the charging officer.  
11 (6) He has the right to call an attorney and select a witness to view for him  
12 the testing procedures, but the testing may not be delayed for these  
13 purposes longer than 30 minutes from the time he is notified of his  
14 rights."

15 Sec. 3. G.S. 20-16.2(i) reads as rewritten:

16 (i) Right to Chemical Analysis before Arrest or Charge.—A person stopped or  
17 questioned by a law-enforcement officer who is investigating whether the person may  
18 have committed an implied-consent offense may request the administration of a  
19 chemical analysis before any arrest or other charge is made for the offense. Upon this  
20 request, the officer must afford the person the opportunity to have a chemical analysis  
21 of his breath, if available, in accordance with the procedures required by G.S. 20-  
22 139.1(b). The request constitutes the person's consent to be transported by the law-  
23 enforcement officer to the place where the chemical analysis is to be administered.  
24 Before the chemical analysis is made, the person must confirm his request in writing  
25 and he must be notified:

- 26 (1) That the test results will be admissible in evidence and may be used  
27 against him in any implied-consent offense that may arise;  
28 (2) That his license will be revoked for at least 10 days if the test reveals  
29 an alcohol concentration of ~~0.10~~0.08 or more; and  
30 (3) That if he fails to comply fully with the test procedures, the officer  
31 may charge him with any offense for which the officer has probable  
32 cause, and if he is charged with an implied-consent offense, his refusal  
33 to submit to the testing required as a result of that charge would result  
34 in revocation of his driver's license. The results of the chemical  
35 analysis are admissible in evidence in any proceeding in which they  
36 are relevant."

37 Sec. 4. G.S. 20-16.5(b) reads as rewritten:

38 "(b) Revocations for Persons Who Refuse Chemical Analyses or Have Alcohol  
39 Concentrations of ~~0.10~~0.08 or More.—A person's driver's license is subject to revocation  
40 under this section if:

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

- 1 (2) The person is charged with that offense as provided in G.S. 20-  
2 16.2(a);
- 3 (3) The charging officer and the chemical analyst comply with the  
4 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's  
5 submission to or procuring a chemical analysis; and
- 6 (4) The person:
- 7 a. Willfully refuses to submit to the chemical analysis; or
- 8 b. Has an alcohol concentration of ~~0.10~~0.08 or more within a  
9 relevant time after the driving."

10 Sec. 5. G.S. 20-16.5(b1) reads as rewritten:

11 "(b1) Precharge Test Results as Basis for Revocation.—Notwithstanding the  
12 provisions of subsection (b), a person's driver's license is subject to revocation under  
13 this section if:

- 14 (1) He requests a precharge chemical analysis pursuant to G.S. 20-16.2(i);  
15 and
- 16 (2) He has, at any relevant time after the driving, an alcohol concentration  
17 of ~~0.10~~0.08 or more; and
- 18 (3) He is charged with an implied-consent offense."

19 Sec. 6. G.S. 20-138.1(a) reads as rewritten:

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

- 22 (1) While under the influence of an impairing substance; or
- 23 (2) After having consumed sufficient alcohol that he has, at any relevant  
24 time after the driving, an alcohol concentration of ~~0.10~~0.08 or more."

25 Sec. 7. G.S. 20-179(m) reads as rewritten:

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

- 29 (1) He had an alcohol concentration of 0.15 or more as  
30 indicated by a chemical analysis taken when he was charged; or
- 31 (2) He has a prior conviction for an offense involving impaired  
32 driving within the five years preceding the date of the offense for  
33 which he is being sentenced and, when he was charged with the  
34 current offense, he had an alcohol concentration of ~~0.10~~0.08 or  
35 more; or
- 36 (3) He willfully refused to submit to a chemical analysis.

37 The judge shall require the defendant to obtain the assessment from an area mental  
38 health agency, its designated agent, or a private facility licensed by the State for the  
39 treatment of alcoholism and substance abuse. Unless a different time limit is specified in  
40 the court's judgment, the defendant shall schedule the assessment within 30 days from  
41 the date of the judgment. Any agency performing assessments shall give written  
42 notification of its intention to do so to the area mental health authority in the catchment  
43 area in which it is located and to the Department of Human Resources. The Secretary  
44 of the Department of Human Resources may adopt rules to implement the provisions of

1 this subsection, and these rules may include provisions to allow defendant to obtain  
2 assessments and treatment from agencies not located in North Carolina. The assessing  
3 agency shall give the client a standardized test, approved by the Department of Human  
4 Resources to determine chemical dependency. A clinical interview concerning the  
5 general status of the defendant with respect to chemical dependency shall be conducted  
6 by the assessing agency before making any recommendation for further treatment. A  
7 recommendation made by the assessing agency shall be signed by a 'Certified  
8 Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the Department  
9 of Human Resources. If the assessing agency recommends that the defendant  
10 participate in a treatment program, the judge may require the defendant to do so, and he  
11 shall require the defendant to execute a Release of Information authorizing the treatment  
12 agency to report his progress to the court or the Department of Correction. The judge  
13 may order the defendant to participate in an appropriate treatment program at the time  
14 he is ordered to obtain an assessment, or he may order him to reappear in court when the  
15 assessment is completed to determine if a condition of probation requiring participation  
16 in treatment should be imposed. An order of the court shall not require the defendant to  
17 participate in any treatment program for more than 90 days unless a longer treatment  
18 program is recommended by the assessing agency and his alcohol concentration was .15  
19 or greater as indicated by a chemical analysis taken when he was charged or this was a  
20 second or subsequent offense within five years. The judge shall require the defendant to  
21 pay fifty dollars (\$50.00) for the services of the assessment facility and any additional  
22 treatment fees that may be charged by the treatment facility. If the defendant is treated  
23 by an area mental health facility, G.S. 122C-146 applies. Any determinations with  
24 regard to the defendant's ability to pay the assessment fee shall be made by the judge. In  
25 those cases in which no substance abuse handicap is identified, that finding shall be  
26 filed with the court. When treatment is required, the treatment agency's progress reports  
27 shall be filed with the court or the Department of Correction at intervals of no greater  
28 than six months until the termination of probation or the treatment agency determines  
29 and reports that no further treatment is appropriate. Upon the completion of the court-  
30 ordered assessment or court-ordered treatment, the assessing or treatment agency shall  
31 give the Division of Motor Vehicles the original of the certificate of completion, shall  
32 provide the defendant with a copy of that certificate, and shall retain a copy of the  
33 certificate on file for a period of five years. The Division of Motor Vehicles shall not  
34 reissue the driver's license of a defendant ordered to obtain assessment or participate in  
35 a treatment program unless it has received the original certificate of completion from  
36 the assessing or treatment agency, provided, however that a defendant may be issued a  
37 limited driving privilege pursuant to G.S. 20-179.3.

38 The Department of Human Resources may approve programs offered in another  
39 state if they are substantially similar to programs approved in this State, and if that state  
40 recognizes North Carolina programs for similar purposes. The defendant shall be  
41 responsible for the fees at the approved program."

42 Sec 8. G.S. 20-179(g) reads as rewritten:

43 "(g) Level One Punishment. – A defendant subject to Level One punishment ~~may~~  
44 ~~be fined up to two thousand dollars (\$2,000)~~ shall be fined in an amount not less than three

1 thousand dollars (\$3,000) nor more than five thousand dollars (\$5,000) and must be  
2 sentenced to a term of imprisonment that includes a minimum term of not less than 14  
3 days and a maximum term of not more than 24 months. The term of imprisonment may  
4 be suspended only if a condition of special probation is imposed to require the  
5 defendant to serve a term of imprisonment of at least 14 days. If the defendant is placed  
6 on probation, the judge must, if required by subsections (l) or (m), impose the  
7 conditions relating to treatment and education described in those subsections. The judge  
8 may impose any other lawful condition of probation. If the judge does not place on  
9 probation a defendant who is otherwise subject to the mandatory assessment and  
10 treatment provisions of subsection (m), he must include in the record of the case his  
11 reasons for not doing so."

12           Sec. 9. G.S. 20-179(h) reads as rewritten:

13           "(h) Level Two Punishment. – A defendant subject to Level Two punishment ~~may~~  
14 ~~be fined up to one thousand dollars (\$1,000)~~ shall be fined an amount not less than two  
15 thousand dollars (\$2,000) nor more than four thousand dollars (\$4,000) and must be  
16 sentenced to a term of imprisonment that includes a minimum term of not less than  
17 seven days and a maximum term of not more than 12 months. The term of  
18 imprisonment may be suspended only if a condition of special probation is imposed to  
19 require the defendant to serve a term of imprisonment of at least seven days. If the  
20 defendant is placed on probation, the judge must, if required by subsections (l) or (m),  
21 impose the conditions relating to treatment and education described in those  
22 subsections. The judge may impose any other lawful condition of probation. If the  
23 judge does not place on probation a defendant who is otherwise subject to the  
24 mandatory assessment and treatment provisions of subsection (m), he must include in  
25 the record of the case his reasons for not doing so."

26           Sec. 10. G.S. 20-179(i) reads as rewritten:

27           "(i) Level Three Punishment. – A defendant subject to Level Three punishment  
28 ~~may be fined up to five hundred dollars (\$500.00)~~ shall be fined in an amount not less than  
29 one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500)  
30 and must be sentenced to a term of imprisonment that includes a minimum term of not  
31 less than 72 hours and a maximum term of not more than six months. The term of  
32 imprisonment must be suspended, on the condition that the defendant:

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

38 The judge in his discretion may impose any other lawful condition of probation and, if  
39 required by subsections (l) or (m), must impose the conditions relating to treatment and  
40 education described in those subsections. This subsection does not affect the right of a  
41 defendant to elect to serve the suspended sentence of imprisonment as provided in G.S.  
42 15A-1341(c)."

43           Sec. 11. G.S. 20-179(j) reads as rewritten:

1       "(j) Level Four Punishment. – A defendant subject to Level Four punishment ~~may~~  
2 ~~be fined up to two hundred fifty dollars (\$250.00)~~ shall be fined in an amount not less than  
3 five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000) and must be  
4 sentenced to a term of imprisonment that includes a minimum term of not less than 48  
5 hours and a maximum term of not more than 120 days. The term of imprisonment must  
6 be suspended, on the condition that the defendant:

7           (1) Be imprisoned for a term of 48 hours as a condition of special  
8 probation; or

9           (2) Perform community service for a term of 48 hours; or

10          (3) Not operate a motor vehicle for a term of 60 days; or

11          (4) Any combination of these conditions.

12 The judge in his discretion may impose any other lawful condition of probation and, if  
13 required by subsections (l) or (m), must impose the conditions relating to treatment and  
14 education described in those subsections. This subsection does not affect the right of a  
15 defendant to elect to serve the suspended sentence of imprisonment as provided in G.S.  
16 15A-1341(c)."

17       Sec. 12. G.S. 20-179(k) reads as rewritten:

18       "(k) Level Five Punishment. – A defendant subject to Level Five punishment ~~may~~  
19 ~~be fined up to one hundred dollars (\$100.00)~~ shall be fined in an amount not less than two  
20 hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00) and must  
21 be sentenced to a term of imprisonment that includes a minimum term of not less than  
22 24 hours and a maximum term of not more than 60 days. The term of imprisonment  
23 must be suspended, on the condition that the defendant:

24           (1) Be imprisoned for a term of 24 hours as a condition of special  
25 probation; or

26           (2) Perform community service for a term of 24 hours; or

27           (3) Not operate a motor vehicle for a term of 30 days; or

28           (4) Any combination of these conditions.

29 The judge may in his discretion impose any other lawful condition of probation and, if  
30 required by subsections (l) or (m), must impose the conditions relating to treatment and  
31 education described in those subsections. This subsection does not affect the right of a  
32 defendant to elect to serve the suspended sentence of imprisonment as provided in G.S.  
33 15A-1341(c)."

34       Sec. 13. G.S. 20-139.1(b3) reads as rewritten:

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

39           (1) A specification as to the minimum observation period before collection  
40 of the first breath sample and the time requirements as to collection of  
41 second and subsequent samples.

42           (2) That the test results may only be used to prove a person's particular  
43 alcohol concentration if:

- 1 a. The pair of readings employed are from consecutively  
 2 administered tests; and  
 3 b. The readings do not differ from each other by an alcohol  
 4 concentration greater than 0.02.

- 5 (3) That when a pair of analyses meets the requirements of subdivision  
 6 (2), only the lower of the two readings may be used by the State as  
 7 proof of a person's alcohol concentration in any court or administrative  
 8 proceeding.

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

11 A person's willful refusal to give the second sequential breath sample will make the  
 12 results of the first breath test admissible at trial. The results of the chemical analysis of  
 13 all breath samples provided by the person shall be forwarded to the trial court."

14 Sec. 14. G.S. 18B-401(a) reads as rewritten:

15 "(a) Opened Containers.—It shall be unlawful for a person to transport and/or  
 16 possess fortified wine or spirituous liquor alcoholic beverages in the passenger area of a  
 17 motor vehicle in other than the manufacturer's unopened original container. This  
 18 subsection shall not apply to passengers on a bus that transports 15 or more people. It  
 19 shall be unlawful for a person who is driving a motor vehicle on a highway or public vehicular  
 20 area to consume in the passenger area of that vehicle any malt beverage or unfortified wine.  
 21 Violation of this subsection shall constitute a misdemeanor punishable by a fine of  
 22 twenty-five dollars (\$25.00) to five hundred dollars (\$500.00), ~~imprisonment for not more~~  
 23 ~~than 30 days~~ community service of not more than 24 hours, or both."

24 Sec. 15. G.S. 20-179(k) reads as rewritten:

25 "(k) Level Five Punishment.—A defendant subject to Level Five punishment may  
 26 be fined up to one hundred dollars (\$100.00) and must be sentenced to a term of  
 27 imprisonment that includes a minimum term of not less than 24 hours and a maximum  
 28 term of not more than ~~60~~ 61 days. The term of imprisonment must be suspended, on the  
 29 condition that the defendant:

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

35 The judge may in his discretion impose any other lawful condition of probation and, if  
 36 required by subsections (l) or (m), must impose the conditions relating to treatment and  
 37 education described in those subsections. This subsection does not affect the right of a  
 38 defendant to elect to serve the suspended sentence of imprisonment as provided in G.S.  
 39 15A-1341(c)."

40 Sec. 16. G.S. 20-13.2(d) reads as rewritten:

41 "(d) ~~A~~ The length of revocation under this section continues until shall be equal to  
 42 the number of days from the date of the charge to the provisional licensee's 18th  
 43 birthday reaches 18 years of age or 45 days have elapsed, whichever occurs last is longer.  
 44 Revocations under this section run concurrently with any other revocations, but a

1 limited driving privilege issued pursuant to law does not authorize a provisional licensee  
2 to drive if his license is revoked under this section."

3 Sec. 17. G.S. 20-17 reads as rewritten:

4 **"§ 20-17. Mandatory revocation of license by Division.**

5 The Division shall forthwith revoke the license of any driver upon receiving a record of  
6 such driver's conviction for any of the following offenses when such conviction has  
7 become final:

- 8 (1) ~~Manslaughter (or negligent homicide) resulting~~ Homicide when the  
9 offense results from the operation of a motor vehicle.
- 10 (2) Impaired driving under G.S. 20-138.1.
- 11 (3) Any felony in the commission of which a motor vehicle is used.
- 12 (4) Failure to stop and render aid as required under the laws of this State  
13 in the event of a motor vehicle accident.
- 14 (5) Perjury or the making of a false affidavit or statement under oath to the  
15 Division under this Article or under any other law relating to the  
16 ownership of motor vehicles.
- 17 (6) Conviction, or forfeiture of bail not vacated, upon two charges of  
18 reckless driving committed within a period of 12 months.
- 19 (7) Conviction, or forfeiture of bail not vacated, upon one charge of  
20 reckless driving while engaged in the illegal transportation of  
21 intoxicants for the purpose of sale.
- 22 (8) Conviction of using a false or fictitious name or giving a false or  
23 fictitious address in any application for a driver's license, or learner's  
24 permit, or any renewal or duplicate thereof, or knowingly making a  
25 false statement or knowingly concealing a material fact or otherwise  
26 committing a fraud in any such application or procuring or knowingly  
27 permitting or allowing another to commit any of the foregoing acts.
- 28 (9) Death by vehicle as defined in G.S. 20-141.4.
- 29 (10) Speeding in excess of 55 miles per hour and at least 15 miles per hour  
30 over the legal limit in violation of G.S. 20-141(j).
- 31 (11) Conviction of assault with a motor vehicle."

32 Sec. 18. G.S. 20-141.4(a1) reads as rewritten:

33 "(a1) **Felony Death by Vehicle.**—A person commits the offense of felony death by  
34 vehicle if he unintentionally causes the death of another person while engaged in the  
35 offense of impaired driving under G.S. 20-138.1 and commission of that offense is the  
36 proximate cause of the death. Involuntary manslaughter under G.S. 14-18 is a lesser  
37 included offense."

38 Sec. 19. G.S. 20-141.4(b) reads as rewritten:

39 "(b) **Punishments.**—Felony death by vehicle is a Class ~~F~~G felony. Misdemeanor  
40 death by vehicle is a misdemeanor punishable by a fine of not more than five hundred  
41 dollars (\$500.00), imprisonment for not more than two years, or both, in the discretion  
42 of the court."

43 Sec. 20. G.S. 20-16.2(a1) reads as rewritten:



1       "(a1) Meaning of Terms. – Under this section, an ‘implied-consent offense’ is an  
2 offense involving impaired driving or an alcohol-related offense made subject to the  
3 procedures of this section. A person is ‘charged’ with an offense if he is arrested for it,  
4 ~~or if~~ criminal process for the offense has been issued, or, if the person is a juvenile, he  
5 would have been arrested or criminal process would have been issued if he were an  
6 adult. A ‘charging officer’ is a law-enforcement officer who arrests the person charged,  
7 lodges the charges, takes the juvenile into protective custody, or assists the officer who  
8 arrested the person, ~~or~~ lodged the charge, or took the juvenile into protective custody by  
9 assuming custody of the person to make the request required by subsection (c) and, if  
10 necessary, to present the person to a judicial official for an initial appearance."

11       Sec. 21. G.S. 20-4.01 is amended by adding a new subdivision to read:

12       "(3c) ‘Commercial Motor Vehicle.’ A vehicle: (a) which requires the driver to  
13 possess a valid Class ‘A’ or Class ‘B’ drivers license, or a similar drivers license issued  
14 by another state; or (b) which is a school bus, school activity bus, church bus, farm bus,  
15 ambulance, volunteer transportation vehicle, activity bus operated for a nonprofit  
16 organization when the activity bus is operated for a nonprofit purpose, or a fire-fighting  
17 vehicle or combination of vehicles when operated by any volunteer member of a  
18 municipal or rural fire department in the performance of his duty."

19       Sec. 22. G.S. 20-4.01 is amended by adding a new subdivision to read:

20       "(12a) Gross Vehicle Weight.–The gross vehicle weight is the registered or declared  
21 weight of the vehicle. If no weight is registered or declared, then the gross vehicle  
22 weight is the actual weight of the vehicle."

23       Sec. 23. G.S. 20-4.01(24a) reads as rewritten:

24       "(24a) Offense Involving Impaired Driving. – Any of the following offenses:

- 25       a. Impaired driving under G.S. 20-138.1.
- 26       b. Death by vehicle under G.S. 20-141.4 when conviction is based upon  
27 impaired driving or a substantially equivalent offense under previous  
28 law.
- 29       c. Second degree murder under G.S. 14-17 or involuntary manslaughter  
30 under G.S. 14-18 when conviction is based upon impaired driving or a  
31 substantially equivalent offense under previous law.
- 32       d. An offense committed in another jurisdiction substantially equivalent  
33 to the offenses in subparagraphs a through c.
- 34       e. A repealed or superseded offense substantially equivalent to impaired  
35 driving, including offenses under former G.S. 20-138 or G.S. 20-139.
- 36       f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2,  
37 except that convictions of impaired driving under G.S. 20-138.1 and  
38 G.S. 20-138.2 arising out of the same transaction shall be considered a  
39 single conviction of an offense involving impaired driving for any  
40 purpose under this Chapter.

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

43       Sec. 24. G.S. 20-7(a) reads as rewritten:

1       "(a) Except as otherwise provided in this Article, no person shall operate a motor  
2 vehicle on a highway unless such person has first been licensed by the Division under  
3 the provisions of this Article for the type or class of vehicle being driven. Drivers'  
4 licenses shall be classified as follows:

- 5           (1) Class 'A' which entitles a licensee to drive any vehicle or combination  
6 of vehicles, except motorcycles, including all vehicles under Classes  
7 'B' or 'C.'
- 8           (2) Class 'B' which entitles a licensee to drive a single vehicle weighing  
9 over ~~30,000~~26,000 pounds gross vehicle weight, any such vehicle  
10 towing a vehicle weighing 10,000 pounds gross vehicle weight or less,  
11 a single vehicle designed to carry more than 12 passengers and all  
12 vehicles under Class 'C.' A Class 'B' license does not entitle the  
13 licensee to drive a motorcycle.
- 14           (3) Class 'C' which entitles a licensee to drive a single vehicle weighing  
15 ~~30,000~~26,000 pounds gross vehicle weight or less; any such vehicle  
16 towing a vehicle weighing 10,000 pounds gross vehicle weight or less;  
17 a church bus, farm bus, volunteer transportation vehicle, or activity bus  
18 operated for a nonprofit organization when the activity bus is operated  
19 for a nonprofit purpose; and a fire-fighting vehicle or combination of  
20 vehicles (regardless of gross vehicle weight) when operated by any  
21 volunteer member of a municipal or rural fire department in the  
22 performance of his duty. A Class 'C' license does not entitle the  
23 licensee to drive a motorcycle. A Class 'C' license does not entitle the  
24 licensee to drive a vehicle designed to carry more than ~~42~~15  
25 passengers unless this subsection or G.S. 20-218(a) specifically  
26 entitles him to do so.

27       The driver of any vehicle transporting hazardous materials as determined by Sec.  
28 103 of The Hazardous Material Transportation Act, as amended, must possess a Class  
29 'A' or a Class 'B' drivers license.

30       Any unusual vehicle shall be assigned by the Commissioner to the most appropriate  
31 class with suitable special restrictions if they appear to be necessary.

32       Any person who takes up residence in this State on a permanent basis is exempt  
33 from the provisions of this subsection for 30 days from the date that residence is  
34 established, if he is properly licensed in the jurisdiction of which he is a former  
35 resident."

36       Sec. 25. G.S. 20-7(i) reads as rewritten:

37       "(i) The fee for issuance or reissuance of a Class 'C' license is ten dollars  
38 (\$10.00). The fee for issuance or reissuance of a Class 'B' or Class 'A' license is ~~fifteen~~  
39 ~~dollars (\$15.00)~~twenty dollars (\$20.00). A person receiving at the same time a driver's  
40 license and an endorsement pursuant to G.S. 20-7(a1) shall be charged only the fee  
41 required for the class of driver's license he is receiving."

42       Sec. 26. G.S. 20-16.2(a)(4) reads as rewritten:

43       "~~(4) If any test reveals an alcohol concentration of 0.10 or more, h~~His driving  
44 privilege will be revoked immediately for at least 10 days~~-if~~."

- 1           a.     The test reveals an alcohol concentration of 0.10 or more, or  
 2           b.     He was driving a commercial motor vehicle and the test reveals an  
 3                 alcohol concentration of 0.02 or more in his blood."

4           Sec. 27. G.S. 20-16.2(i)(2) reads as rewritten:

5        "(2) That his license will be revoked for at least 10 days if:

- 6           a.     The test reveals an alcohol concentration of 0.10 or more; ~~and or~~  
 7           b.     He was driving a commercial motor vehicle and the test results reveal  
 8                 any alcohol in his blood."

9           Sec. 28. The catch line of G.S. 20-16.5(b) reads as rewritten:

10        "Revocations for Persons Who Refuse Chemical Analyses or Have Alcohol  
 11        Concentrations of 0.10 or More After Driving a Motor Vehicle or 0.02 in Their Blood  
 12        After Driving a Commercial Vehicle.–"

13        Sec. 29. G.S. 20-16.5(b)(4) reads as rewritten:

14        "(4) The person:

- 15           a.     Willfully refuses to submit to the chemical analysis; or  
 16           b.     Has an alcohol concentration of 0.10 or more within a relevant time  
 17                 after the driving; ~~;~~ or  
 18           c.     Has an alcohol concentration of 0.02 or more within a relevant time  
 19                 after the driving of a commercial motor vehicle; and".

20        Sec. 30. G.S. 20-16.5(b1)(2) reads as rewritten:

21        "(2) He has, ~~at any relevant time after the driving, a:~~

- 22           a.     An alcohol concentration of 0.10 or more at any relevant time after the  
 23                 driving; or  
 24           b.     An alcohol concentration of 0.02 or more at any relevant time after the  
 25                 driving of a commercial motor vehicle; and".

26        Sec. 31. G.S. 20-16.5(j) reads as rewritten:

27        "(j) Costs.–Unless the magistrate or judge orders the revocation rescinded, a  
 28        person whose license is revoked under this section must pay a fee of twenty-five dollars  
 29        (\$25.00) as costs for the action before his license may be returned under subsection (h)-  
 30        ; provided, however, if the revocation is pursuant to G.S. 20-16.5(b)(4)c. or G.S. 20-  
 31        16.5(b1)(2)b., the fee shall be fifty dollars (\$50.00). The costs collected under this  
 32        section go to the State."

33        Sec. 32. Article 2 of Chapter 20 of the General Statutes is amended by  
 34        adding a new section to read:

35        "**§ 20-17.4. Mandatory Revocation of a Class A or Class B License.**

36        The Division shall forthwith revoke the Class 'A' or Class 'B' license of any driver  
 37        upon receiving a record of a final conviction of such driver for impaired driving in a  
 38        commercial vehicle under G.S. 20-138.2. Under this section only, a final conviction of  
 39        any driver for violating G.S. 20-138.1 shall not be grounds for revoking the license of  
 40        such driver."

41        Sec. 33. G.S. 20-19 is amended by adding a new subsection to read:

42        "(c2) When a license is revoked under G.S. 20-17.4, the period of suspension shall  
 43        be for one year for the first conviction of G.S. 20-138.2, 10 years for the second  
 44        conviction of G.S. 20-138.2, and for life for a third or subsequent conviction of G.S. 20-

1 138.2. This period of suspension applies only to a Class 'A' or Class 'B' license and not  
2 to a Class 'C' license."

3 Sec. 34. G.S. 20-26 is amended by adding a new subsection to read:

4 "(b1) The registered or declared weight set forth on the vehicle registration card or  
5 a certified copy of the Division record sent by the Police Information Network or  
6 otherwise is admissible in any judicial or administrative proceeding and shall be prima  
7 facie evidence of the registered or declared weight."

8 Sec. 35. Chapter 20 of the General Statutes is amended by adding a new  
9 section to read:

10 "**§ 20-138.2. Impaired driving in commercial vehicle.**

11 (a) Offense.—A person commits the offense of impaired driving in a commercial  
12 motor vehicle if he drives a commercial motor vehicle upon any highway, any street, or  
13 any public vehicular area within the State:

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

15 (2) After having consumed sufficient alcohol that he has, at any relevant  
16 time after the driving, 0.02 percent by weight of alcohol in his blood.

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

20 (c) Pleading.—To charge a violation of this section, the pleading is sufficient if  
21 it states the time and place of the alleged offense in the usual form and charges the  
22 defendant drove a commercial motor vehicle on a highway, street, or public vehicular  
23 area while subject to an impairing substance.

24 (d) Implied Consent Offense.—An offense under this section is an implied  
25 consent offense subject to the provisions of G.S. 20-16.2.

26 (e) Punishment; Effect When Impaired Driving Offense Also Charged.—The  
27 offense in this section is a misdemeanor punishable by a fine of not less than one  
28 hundred dollars (\$100.00), up to two years imprisonment, or both. This offense is not a  
29 lesser included offense of impaired driving under G.S. 20-138.1, but if a person is  
30 convicted under this section and of an offense involving impaired driving under G.S.  
31 20-138.1 arising out of the same transaction, the aggregate punishment imposed by the  
32 court may not exceed the maximum punishment applicable to the offense involving  
33 impaired driving under G.S. 20-138.1.

34 (f) Limited Driving Privilege.—A person convicted of the offense of impaired  
35 driving under this section is eligible for a limited driving privilege if:

36 (1) At the time of the offense he held either a valid drivers license or a  
37 license that had been expired for less than one year;

38 (2) At the time of the offense he had not within the preceding seven years  
39 been convicted of an offense involving impaired driving;

40 (3) Subsequent to the offense he has not been convicted of, or had an  
41 unresolved charge lodged against him for, an offense involving  
42 impaired driving;

1           (4) The court finds slight impairment of the defendant's faculties, and an  
2           alcohol concentration that did not exceed .10 at any relevant time after  
3           the driving.

4           The limited driving privilege under this section shall be issued for the purposes  
5           specified in G.S. 20-179.3(a) and according to the procedure in G.S. 20-179.3(d) and  
6           G.S. 20-179.3(f)-(k).

7           (g) The provisions of G.S. 20-139.1 shall apply to the offense of impaired  
8           driving in a commercial motor vehicle."

9           Sec. 36. G.S. 20-138.4 reads as rewritten:

10       **"§ 20-138.4. Requirement that prosecutor explain reduction or dismissal of charge**  
11       **involving impaired driving.**

12       In any case in which a person is charged with an offense involving impaired driving,  
13       ~~Any~~ prosecutor must enter detailed facts in the record ~~of any case involving impaired~~  
14       ~~driving~~ explaining the reasons for his action if he:

- 15       (1) Enters a voluntary dismissal; or  
16       (2) Accepts a plea of guilty or no contest to a lesser included offense; or  
17       (3) Substitutes another charge, by statement of charges or otherwise, if the  
18       substitute charge carries a lesser mandatory minimum punishment or is not an offense  
19       involving impaired driving; or  
20       (4) Otherwise takes a discretionary action that effectively dismisses or reduces  
21       the original charge in the case involving impaired driving.

22       General explanations such as 'interests of justice' or 'insufficient evidence' are not  
23       sufficiently detailed to meet the requirements of this section."

24       Sec. 37. G.S. 20-179(e) reads as rewritten:

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

- 29       (1) Slight impairment of the defendant's faculties resulting solely from  
30       alcohol, and an alcohol concentration that did not exceed ~~0.11~~ 0.09 at  
31       any relevant time after the driving.  
32       (2) Slight impairment of the defendant's faculties, resulting solely from  
33       alcohol, with no chemical analysis having been available to the  
34       defendant.  
35       (3) Driving at the time of the offense that was safe and lawful except for  
36       the impairment of the defendant's faculties.  
37       (4) A safe driving record, with the defendant's having no conviction for  
38       any motor vehicle offense for which at least four points are assigned  
39       under G.S. 20-16 or for which the person's license is subject to  
40       revocation within five years of the date of the offense for which the  
41       defendant is being sentenced.  
42       (5) Impairment of the defendant's faculties caused primarily by  
43       a lawfully prescribed drug for an existing medical condition, and the  
44       amount of the drug taken was within the prescribed dosage.

1 (6) The defendant's voluntary submission to a mental health facility for  
2 assessment after he was charged with the impaired driving offense for  
3 which he is being sentenced, and, if recommended by the facility, his  
4 voluntary participation in the recommended treatment.

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

6 Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the  
7 mitigating factor must occur during the same transaction or occurrence as the impaired  
8 driving offense."

9 Sec. 38. G.S. 20-179(c) reads as rewritten:

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

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

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

24 (3) Serious injury to another person caused by the defendant's impaired  
25 driving at the time of the offense.

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

32 A conviction for another offense involving impaired driving, for which the  
33 conviction occurs after the date of the offense for which the defendant is presently being  
34 sentenced, but prior to or contemporaneously with the present sentencing, shall also  
35 constitute a prior conviction involving impaired driving for aggravation purposes of this  
36 subsection."

37 Sec. 39. This act shall become effective October 1, 1989.