

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 353\*  
Committee Substitute Favorable 3/22/95

Short Title: Governor's Task Force on DWI/AB.

(Public)

Sponsors:

Referred to:

March 6, 1995

A BILL TO BE ENTITLED  
AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S  
TASK FORCE ON DRIVING WHILE IMPAIRED.

The General Assembly of North Carolina enacts:

PART I.—ALLOWING JUDGES TO ORDER AN IGNITION INTERLOCK SYSTEM  
INSTALLED ON ANY VEHICLE DRIVEN AS A CONDITION OF A LIMITED  
DRIVING PRIVILEGE IN ORDER TO PREVENT DRIVING AFTER DRINKING.

Section 1. G.S. 20-179.3 is amended by adding a new subsection to read:

"(g3) Ignition Interlock Allowed. – A judge may include in a limited driving  
privilege order:

(1) A restriction that the applicant may operate only a particular motor  
vehicle;

(2) A requirement that the designated motor vehicle be equipped with a  
functioning ignition interlock system of a type approved by the  
Commissioner; and

(3) A requirement that the applicant personally activate the ignition  
interlock system before driving the motor vehicle.

This restriction shall not apply to any motor vehicle:

(1) Which is owned by the applicant's employer;

- 1           (2) Which is operated by the applicant solely for work-related purposes;  
2           and  
3           (3) For which the owner has filed with the court a written document  
4           authorizing the applicant to drive, for work-related purposes, under the  
5           authority of a limited driving privilege."

6 PART II.—REQUIRING ALL PERSONS TO OBTAIN A SUBSTANCE ABUSE  
7 ASSESSMENT PRIOR TO BEING GRANTED A LIMITED DRIVING PRIVILEGE.

8           Sec. 2. G.S. 20-179.3(b) reads as rewritten:

9           "(b) Eligibility. —

- 10           (1) A person convicted of the offense of impaired driving under G.S. 20-  
11           138.1 is eligible for a limited driving privilege if:  
12           a. At the time of the offense he held either a valid driver's license or  
13           a license that had been expired for less than one year;  
14           b. At the time of the offense he had not within the  
15           preceding seven years been convicted of an offense involving  
16           impaired driving;  
17           c. Punishment Level Three, Four, or Five was imposed for the  
18           offense of impaired driving; ~~and~~  
19           d. Subsequent to the offense he has not been convicted of, or had an  
20           unresolved charge lodged against him for, an offense involving  
21           impaired ~~driving-~~driving; and  
22           e. Has obtained and filed with the court a substance abuse  
23           assessment of the type specified in G.S. 20-179(m).

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

- 30           (2) Any person whose licensing privileges are forfeited pursuant to G.S.  
31           15A-1331A is eligible for a limited driving privilege if the court finds  
32           that at the time of the forfeiture, the person held either a valid drivers  
33           license or a drivers license that had been expired for less than one year  
34           and  
35           a. The person is supporting existing dependents or must have a  
36           drivers license to be gainfully employed; or  
37           b. The person has an existing dependent who requires serious  
38           medical treatment and the defendant is the only person able to  
39           provide transportation to the dependent to the health care facility  
40           where the dependent can receive the needed medical treatment.

41           The limited driving privilege granted under this subdivision must  
42           restrict the person to essential driving related to the purposes listed  
43           above, and any driving that is not related to those purposes is unlawful

1 even though done at times and upon routes that may be authorized by  
2 the privilege."

3 PART III.—RAISING TO AGE 21 THE PROHIBITION AGAINST DRIVING AFTER  
4 DRINKING ANY AMOUNT OF ALCOHOL AND MAKING CORRESPONDING  
5 CHANGES TO THE REVOCATION STATUTES.

6 Sec. 3. G.S. 20-13.2(b) reads as rewritten:

7 "(b) If a person is convicted of an offense involving impaired driving and the  
8 offense occurs while he is a ~~provisional licensee~~, under the age of 21 years, his license  
9 must be revoked under this section in addition to any other revocation required or  
10 authorized by law."

11 Sec. 4. G.S. 20-13.2(c) reads as rewritten:

12 "(c) If a person willfully refuses to submit to a chemical analysis pursuant to G.S.  
13 20-16.2 while he is a ~~provisional licensee~~, under the age of 21 years, his license must be  
14 revoked under this section, in addition to any other revocation required or authorized by  
15 law. A revocation order entered under authority of this subsection becomes effective at  
16 the same time as a revocation order issued under G.S. 20-16.2 for the same willful  
17 refusal."

18 Sec. 5. G.S. 20-13.2(d) reads as rewritten:

19 "(d) The length of revocation under this section shall be ~~equal to the number of~~  
20 ~~days from the date of the charge to the provisional licensee's eighteenth birthday or 45~~  
21 ~~days whichever is longer.~~ one year. Revocations under this section run concurrently with  
22 any other revocations, but a limited driving privilege issued pursuant to law does not  
23 authorize a ~~provisional licensee person~~ to drive if his license is revoked under this  
24 section."

25 Sec. 6. G.S. 20-138.3 reads as rewritten:

26 "**§ 20-138.3. Driving by ~~provisional licensee person~~ under age 21 after consuming**  
27 **alcohol or drugs.**

28 (a) Offense. – It is unlawful for a ~~provisional licensee person~~ under the age of 21  
29 years to drive a motor vehicle on a highway or public vehicular area while consuming  
30 alcohol or at any time while he has remaining in his body any alcohol or in his blood a  
31 controlled substance previously consumed, but a ~~provisional licensee person~~ under the age  
32 of 21 years does not violate this section if he drives with a controlled substance in his  
33 blood which was lawfully obtained and taken in therapeutically appropriate amounts.

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

36 (c) Punishment; Effect When Impaired Driving Offense Also Charged. – The  
37 offense in this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser  
38 included offense of impaired driving under G.S. 20-138.1, but if a person is convicted  
39 under this section and of an offense involving impaired driving arising out of the same  
40 transaction, the aggregate punishment imposed by the court may not exceed the  
41 maximum applicable to the offense involving impaired driving, and any minimum  
42 punishment applicable must be imposed.

1       (d) Limited Driving Privilege. – A person convicted of violating subsection (a) of  
2 this section and whose drivers license is revoked solely based on that conviction may  
3 apply for a limited driving privilege as provided in G.S. 20-179.3. This subsection shall  
4 apply only if the person:

5           (1) Is 18, 19, or 20 years of age on the date of the offense;

6           (2) Has an alcohol concentration at any relevant time after the driving of  
7 less than 0.08; and

8           (3) Has not previously been convicted of a violation of this section.

9 The judge may issue the limited driving privilege only if the person meets the eligibility  
10 requirements of G.S. 20-179.3, except that requirement (b)(3) shall only apply if the  
11 driver was charged with driving while impaired arising out of the same transaction. The  
12 terms, conditions, and restrictions provided for in G.S. 20-179.3 shall apply."

13 PART IV.—CLARIFYING THAT ONLY ONE OFFICER IS REQUIRED TO  
14 ADMINISTER A CHEMICAL ANALYSIS OF THE BREATH.

15       Sec. 7. G.S. 20-16.2(a) reads as rewritten:

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

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

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

27           (2) Refusal to take any required test or tests will result in an immediate  
28 revocation of his driving privilege for at least 10 days and an additional  
29 12-month revocation by the Division of Motor Vehicles.

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

32           (4) His driving privilege will be revoked immediately for at least 10 days if:  
33           a. The test reveals an alcohol concentration of 0.08 or more; or  
34           b. He was driving a commercial motor vehicle and the test reveals  
35 an alcohol concentration of 0.04 or more.

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

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

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

6 PART V.—PROHIBITING AN OPEN CONTAINER OF ALCOHOLIC BEVERAGE  
7 IN A MOTOR VEHICLE WHEN A DRIVER HAS BEEN DRINKING.

8 Sec. 8. G.S. 20-4.01(24a) reads as rewritten:

9 "(24a) Offense Involving Impaired Driving. – Any of the following  
10 offenses:

- 11 a. Impaired driving under G.S. 20-138.1.
- 12 b. Death by vehicle under G.S. 20-141.4 when conviction is based  
13 upon impaired driving or a substantially equivalent offense under  
14 previous law.
- 15 c. Second degree murder under G.S. 14-17 or involuntary  
16 manslaughter under G.S. 14-18 when conviction is based upon  
17 impaired driving or a substantially equivalent offense under  
18 previous law.
- 19 d. An offense committed in another jurisdiction substantially  
20 equivalent to the offenses in subparagraphs a through c.
- 21 e. A repealed or superseded offense substantially equivalent to  
22 impaired driving, including offenses under former G.S. 20-138 or  
23 G.S. 20-139.
- 24 f. Impaired driving in a commercial motor vehicle under G.S. 20-  
25 138.2, except that convictions of impaired driving under G.S. 20-  
26 138.1 and G.S. 20-138.2 arising out of the same transaction shall  
27 be considered a single conviction of an offense involving  
28 impaired driving for any purpose under this Chapter.
- 29 g. Transporting an open container under G.S. 20-138.7, except that  
30 convictions of impaired driving under G.S. 20-138.1 or G.S. 20-  
31 138.2 and transporting an open container under G.S. 20-138.7  
32 arising out of the same transaction shall be considered a single  
33 conviction of an offense involving impaired driving for any  
34 purpose under this Chapter.

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

37 Sec. 9. G.S. 20-17 reads as rewritten:

38 "**§ 20-17. Mandatory revocation of license by Division.**

39 The Division shall forthwith revoke the license of any driver upon receiving a record  
40 of the driver's conviction for any of the following offenses:

- 41 (1) Manslaughter (or negligent homicide) resulting from the operation of a  
42 motor vehicle.
- 43 (2) Either of the following impaired driving offenses:

- 1 a. Impaired driving under G.S. 20-138.1.  
2 b. Impaired driving under G.S. 20-138.2 when the person convicted  
3 did not take a chemical test at the time of the offense or the  
4 person took a chemical test at the time of the offense and the test  
5 revealed that the person had an alcohol concentration at any  
6 relevant time after driving of less than 0.04 or of 0.08 or more.  
7 c. Transporting an open container of alcoholic beverage under G.S.  
8 20-138.7.  
9 (3) Any felony in the commission of which a motor vehicle is used.  
10 (4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).  
11 (5) Perjury or the making of a false affidavit or statement under oath to the  
12 Division under this Article or under any other law relating to the  
13 ownership of motor vehicles.  
14 (6) Conviction upon two charges of reckless driving committed within a  
15 period of 12 months.  
16 (7) Conviction upon one charge of reckless driving while engaged in the  
17 illegal transportation of intoxicants for the purpose of sale.  
18 (8) Conviction of using a false or fictitious name or giving a false or  
19 fictitious address in any application for a drivers license, or learner's  
20 permit, or any renewal or duplicate thereof, or knowingly making a false  
21 statement or knowingly concealing a material fact or otherwise  
22 committing a fraud in any such application or procuring or knowingly  
23 permitting or allowing another to commit any of the foregoing acts.  
24 (9) Death by vehicle as defined in G.S. 20-141.4.  
25 (10) Speeding in excess of 55 miles per hour and at least 15 miles per hour  
26 over the legal limit in violation of G.S. 20-141(j).  
27 (11) Conviction of assault with a motor vehicle."

28 Sec. 10. Chapter 20 of the General Statutes is amended by adding a new  
29 section to read:

30 "**§ 20-138.7. Transporting an open container of alcoholic beverage after consuming**  
31 **alcohol.**

32 (a) Offense. – No person shall drive a motor vehicle:

33 (1) On a highway or public vehicular area;

34 (2) While there is an alcoholic beverage other than in the unopened  
35 manufacturer's original container in the passenger area; and

36 (3) While the driver is consuming alcohol or while alcohol remains in the  
37 driver's body.

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

40 (c) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the  
41 driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was  
42 remaining in the driver's body in violation of this section, unless the driver was offered an

1 alcohol screening test or chemical analysis and refused to provide all required samples of  
2 breath or blood for analysis.

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

11 (e) Punishment; Effect When Impaired Driving Offense Also Charged. – Violation  
12 of this section is a Class 3 misdemeanor. Violation of this section is not a lesser included  
13 offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this  
14 section and of an offense involving impaired driving arising out of the same transaction,  
15 the punishment imposed by the court shall not exceed the maximum applicable to the  
16 offense involving impaired driving, and any minimum applicable punishment shall be  
17 imposed.

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

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

29 (h) Limited Driving Privilege. – A person convicted of violating subsection (a) of  
30 this section and whose drivers license is revoked solely based on that conviction may  
31 apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may  
32 issue the limited driving privilege only if the driver meets the eligibility requirements of  
33 G.S. 20-179.3, except that requirement (b)(3) shall only apply if the driver was charged  
34 with driving while impaired arising out of the same transaction. The same terms,  
35 conditions, and restrictions provided for in G.S. 20-179.3 shall apply."

36 Sec. 11. G.S. 18B-401 reads as rewritten:

37 **"§ 18B-401. Manner of transportation.**

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

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

8 (c) Definitions. – The definitions in Chapter 20 of the General Statutes apply in  
9 interpreting this section. ~~If the seal on a container of alcoholic beverages has been~~  
10 ~~broken, it is opened within the meaning of this section. For purposes of this section,~~  
11 ~~"passenger area of a motor vehicle" means the area designed to seat the driver and~~  
12 ~~passengers and any area within the reach of a seated driver or passenger, including the~~  
13 ~~glove compartment. In the case of a station wagon, hatchback or similar vehicle, the area~~  
14 ~~behind the last upright back seat shall not be considered part of the passenger area."~~

15 PART VI.—INCREASING THE REVOCATION PERIOD FOR PRETRIAL CIVIL  
16 REVOCATION FOR DRIVERS CHARGED WITH IMPAIRED DRIVING OFFENSES  
17 FROM TEN TO THIRTY DAYS.

18 Sec. 12. G.S. 20-16.2(a), as rewritten by Section 7 of this act, reads as  
19 rewritten:

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

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

- 30 (1) He has a right to refuse to be tested.  
31 (2) Refusal to take any required test or tests will result in an immediate  
32 revocation of his driving privilege for at least ~~10~~30 days and an  
33 additional 12-month revocation by the Division of Motor Vehicles.  
34 (3) The test results, or the fact of his refusal, will be admissible in  
35 evidence at trial on the offense charged.  
36 (4) His driving privilege will be revoked immediately for at least ~~10~~30  
37 days if:  
38 a. The test reveals an alcohol concentration of 0.08 or more;  
39 or  
40 b. He was driving a commercial motor vehicle and the test  
41 reveals an alcohol concentration of 0.04 or more.



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

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

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

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

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

22 (1) That the test results will be admissible in evidence and may be used  
23 against him in any implied-consent offense that may arise;

24 (2) That his license will be revoked for at least ~~40~~ 30 days if:

25 a. The test reveals an alcohol concentration of 0.08 or more;  
26 or

27 b. He was driving a commercial motor vehicle and the test  
28 results reveal an alcohol concentration of 0.04 or more.

29 (3) That if he fails to comply fully with the test procedures, the officer  
30 may charge him with any offense for which the officer has probable  
31 cause, and if he is charged with an implied-consent offense, his  
32 refusal to submit to the testing required as a result of that charge  
33 would result in revocation of his driver's license. The results of the  
34 chemical analysis are admissible in evidence in any proceeding in  
35 which they are relevant."

36 Sec. 14. G.S. 20-16.5(e) reads as rewritten:

37 "(e) Procedure if Report Filed with Judicial Official When Person Is Present. – If a  
38 properly executed revocation report concerning a person is filed with a judicial official  
39 when the person is present before that official, the judicial official must, after completing  
40 any other proceedings involving the person, determine whether there is probable cause to  
41 believe that each of the conditions of subsection (b) has been met. If he determines that  
42 there is such probable cause, he must enter an order revoking the person's driver's license  
43 for the period required in this subsection. The judicial official must order the person to

1 surrender his license and if necessary may order a law-enforcement officer to seize the  
2 license. The judicial official must give the person a copy of the revocation order. In  
3 addition to setting it out in the order the judicial official must personally inform the  
4 person of his right to a hearing as specified in subsection (g), and that his license remains  
5 revoked pending the hearing. Unless the person is not currently licensed, the revocation  
6 under this subsection begins at the time the revocation order is issued and continues until  
7 the person's license has been surrendered for ~~40~~30 days and the person has paid the  
8 applicable costs. If the person is not currently licensed, the revocation continues until ~~40~~  
9 30 days from the date the revocation order is issued and the person has paid the  
10 applicable costs. If within five working days of the effective date of the order, the person  
11 does not surrender his license or demonstrate that he is not currently licensed, the clerk  
12 must immediately issue a pick-up order. The pick-up order must be issued to a member  
13 of a local law-enforcement agency if the charging officer was employed by the agency at  
14 the time of the charge and the person resides in or is present in the agency's territorial  
15 jurisdiction. In all other cases, the pick-up order must be issued to an officer or inspector  
16 of the Division. A pick-up order issued pursuant to this section is to be served in  
17 accordance with G.S. 20-29 as if the order had been issued by the Division."

18 Sec. 15. G.S. 20-16.5(f) reads as rewritten:

19 "(f) Procedure if Report Filed with Clerk of Court When Person Not Present. –  
20 When a clerk receives a properly executed report under subdivision (d)(3) and the person  
21 named in the revocation report is not present before the clerk, the clerk must determine  
22 whether there is probable cause to believe that each of the conditions of subsection (b)  
23 has been met. If he determines that there is such probable cause, he must mail to the  
24 person a revocation order by first-class mail. The order must direct that the person on or  
25 before the effective date of the order either surrender his license to the clerk or appear  
26 before the clerk and demonstrate that he is not currently licensed, and the order must  
27 inform the person of the time and effective date of the revocation and of its duration, of  
28 his right to a hearing as specified in subsection (g), and that the revocation remains in  
29 effect pending the hearing. Revocation orders mailed under this subsection become  
30 effective on the fourth day after the order is deposited in the United States mail. If within  
31 five working days of the effective date of the order, the person does not surrender his  
32 license to the clerk or appear before the clerk to demonstrate that he is not currently  
33 licensed, the clerk must immediately issue a pick-up order. The pick-up order must be  
34 issued and served in the same manner as specified in subsection (e) for pick-up orders  
35 issued pursuant to that subsection. A revocation under this subsection begins at the date  
36 specified in the order and continues until the person's license has been revoked for the  
37 period specified in this subsection and the person has paid the applicable costs. The  
38 period of revocation under this subsection is:

- 39 (1) ~~Ten~~Thirty days from the time the person surrenders his license to  
40 the court, if the surrender occurs within five working days of the  
41 effective date of the order; or  
42 (2) ~~Ten~~Thirty days after the person appears before the clerk and  
43 demonstrates that he is not currently licensed to drive, if the

1 appearance occurs within five working days of the effective date of  
2 the revocation order; or

3 (3) ~~Thirty~~ Ninety days from the time:

- 4 a. The person's driver's license is picked up by a law-  
5 enforcement officer following service of a pick-up order;  
6 or  
7 b. The person demonstrates to a law-enforcement officer  
8 who has a pick-up order for his license that he is not  
9 currently licensed; or  
10 c. The person's driver's license is surrendered to the court if  
11 the surrender occurs more than five working days after the  
12 effective date of the revocation order; or  
13 d. The person appears before the clerk to demonstrate that he  
14 is not currently licensed, if he appears more than five  
15 working days after the effective date of the revocation  
16 order.

17 When a pick-up order is issued, it must inform the person of his right to a hearing as  
18 specified in subsection (g), and that the revocation remains in effect pending the hearing.  
19 An officer serving a pick-up order under this subsection must return the order to the court  
20 indicating the date it was served or that he was unable to serve the order. If the license  
21 was surrendered, the officer serving the order must deposit it with the clerk within three  
22 days of the surrender."

23 Sec. 16. G.S. 20-16.5(k) reads as rewritten:

24 "(k) Report to Division. – Except as provided below, the clerk must mail a report to  
25 the Division within 10 working days of the return of a license under this section or of the  
26 termination of a revocation of the driving privilege of a person not currently licensed.  
27 The report must identify the person whose license has been revoked and specify the dates  
28 on which his license was revoked. No report need be made to the Division, however, if  
29 there was a surrender of the driver's license issued by the Division, a ~~ten-day~~ 30-day  
30 minimum revocation was imposed, and the license was properly returned to the person  
31 under subsection (h) within five working days after the ~~10-day~~ 30-day period had  
32 elapsed."

33 PART VII.—CLARIFYING THE AUTHORITY OF LAW ENFORCEMENT  
34 OFFICERS TO ARREST WITHOUT A WARRANT FOR THE OFFENSE OF  
35 IMPAIRED DRIVING.

36 Sec. 17. G.S. 15A-401(b) reads as rewritten:

37 "(b) Arrest by Officer Without a Warrant. –

- 38 (1) Offense in Presence of Officer. – An officer may arrest without a  
39 warrant any person who the officer has probable cause to believe has  
40 committed a criminal offense in the officer's presence.  
41 (2) Offense Out of Presence of Officer. – An officer may arrest without  
42 a warrant any person who the officer has probable cause to believe:  
43 a. Has committed a felony; or

- 1                   b.\_ Has committed a misdemeanor, and:  
2                   1.\_ Will not be apprehended unless immediately  
3                   arrested, or  
4                   2.\_ May cause physical injury to himself or others, or  
5                   damage to property unless immediately arrested; or  
6                   c. Has committed a misdemeanor under ~~G.S. 14-72.1 or G.S.~~  
7                   ~~14-134.3;~~ G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2;  
8                   or  
9                   d. Has committed a misdemeanor under G.S. 14-33(a), G.S.  
10                   14-33(b)(1), or G.S. 14-33(b)(2) when the offense was  
11                   committed by a person who is the spouse or former spouse  
12                   of the alleged victim or by a person with whom the  
13                   alleged victim is living or has lived as if married.

14                   (3) Repealed by Session Laws 1991, c. 150."

15 PART VIII.—STANDARDIZING STATUTORY REGULATIONS REGARDING  
16 BLOOD ALCOHOL CONCENTRATION.

17                   Sec. 18. G.S. 20-179(d) reads as rewritten:

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

- 22                   (1) Gross impairment of the defendant's faculties while driving or an  
23                   alcohol concentration of ~~0.20~~ 0.16 or more within a relevant time  
24                   after the driving.  
25                   (2) Especially reckless or dangerous driving.  
26                   (3) Negligent driving that led to an accident causing property damage in  
27                   excess of five hundred dollars (\$500.00) or personal injury.  
28                   (4) Driving by the defendant while his driver's license was revoked.  
29                   (5) Two or more prior convictions of a motor vehicle offense not  
30                   involving impaired driving for which at least three points are  
31                   assigned under G.S. 20-16 or for which the convicted person's  
32                   license is subject to revocation, if the convictions occurred within  
33                   five years of the date of the offense for which the defendant is being  
34                   sentenced, or one or more prior convictions of an offense involving  
35                   impaired driving that occurred more than seven years before the date  
36                   of the offense for which the defendant is being sentenced.  
37                   (6) Conviction under G.S. 20-141(j) of speeding by the defendant while  
38                   fleeing or attempting to elude apprehension.  
39                   (7) Conviction under G.S. 20-141 of speeding by the defendant by at  
40                   least 30 miles per hour over the legal limit.  
41                   (8) Passing a stopped school bus in violation of G.S. 20-217.  
42                   (9) Any other factor that aggravates the seriousness of the offense.

1 Except for the factor in subdivision (5) the conduct constituting the aggravating factor  
2 must occur during the same transaction or occurrence as the impaired driving offense."

3 Sec. 19. G.S. 20-179(e) reads as rewritten:

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

- 8 (1) Slight impairment of the defendant's faculties resulting solely from  
9 alcohol, and an alcohol concentration that did not exceed ~~0.11~~0.09 at  
10 any relevant time after the driving.
- 11 (2) Slight impairment of the defendant's faculties, resulting solely from  
12 alcohol, with no chemical analysis having been available to the  
13 defendant.
- 14 (3) Driving at the time of the offense that was safe and lawful except for  
15 the impairment of the defendant's faculties.
- 16 (4) A safe driving record, with the defendant's having no conviction for  
17 any motor vehicle offense for which at least four points are assigned  
18 under G.S. 20-16 or for which the person's license is subject to  
19 revocation within five years of the date of the offense for which the  
20 defendant is being sentenced.
- 21 (5) Impairment of the defendant's faculties caused primarily by a  
22 lawfully prescribed drug for an existing medical condition, and the  
23 amount of the drug taken was within the prescribed dosage.
- 24 (6) The defendant's voluntary submission to a mental health facility for  
25 assessment after he was charged with the impaired driving offense  
26 for which he is being sentenced, and, if recommended by the facility,  
27 his voluntary participation in the recommended treatment.
- 28 (7) Any other factor that mitigates the seriousness of the offense.

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

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

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

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

1 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 capable of providing uniform research  
4 data, including, but not limited to, demographic information, defendant history,  
5 assessment results and recommended interventions, approved by the Department of  
6 Human Resources to determine chemical dependency. A clinical interview concerning  
7 the general status of the defendant with respect to chemical dependency shall be  
8 conducted by the assessing agency before making any recommendation for further  
9 treatment. A recommendation made by the assessing agency shall be signed by a  
10 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the  
11 Department of Human Resources.

12 If the assessing agency recommends that the defendant participate in a treatment  
13 program, the judge may require the defendant to do so, and he shall require the defendant  
14 to execute a Release of Information authorizing the treatment agency to report his  
15 progress to the court or the Department of Correction. The judge may order the  
16 defendant to participate in an appropriate treatment program at the time he is ordered to  
17 obtain an assessment, or he may order him to reappear in court when the assessment is  
18 completed to determine if a condition of probation requiring participation in treatment  
19 should be imposed. An order of the court shall not require the defendant to participate in  
20 any treatment program for more than 90 days unless a longer treatment program is  
21 recommended by the assessing agency and his alcohol concentration was ~~.15~~0.13 or  
22 greater as indicated by a chemical analysis taken when he was charged or this was a  
23 second or subsequent offense within five years. At the time of sentencing the judge shall  
24 require the defendant to pay one hundred twenty-five dollars (\$125.00). The payment of  
25 the fee of one hundred twenty-five dollars (\$125.00) shall be (i) fifty dollars (\$50.00) to  
26 the assessing agency and (ii) seventy-five dollars (\$75.00) to either a treatment facility or  
27 to an alcohol and drug education traffic school depending upon the recommendation  
28 made by the assessing agency. Fees received by the Area Mental Health, Developmental  
29 Disabilities, and Substance Abuse Authorities under this section shall be administered  
30 pursuant to G.S. 20-179.2(e), provided, however that the provisions of G.S. 20-179.2(c)  
31 shall not apply to monies received under this section. The operators of the local alcohol  
32 and drug education traffic school may change the length of time required to complete the  
33 school in accordance with administrative costs, provided, however that the length and the  
34 curriculum of the school shall be approved by the Commission for Mental Health,  
35 Developmental Disabilities, and Substance Abuse Services and in no event shall the  
36 school be less than five hours in length. If the defendant is treated by an area mental  
37 health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar (\$75.00) fee.  
38 If an area mental health facility or its contractor is providing treatment or education  
39 services to a defendant pursuant to this subsection, the area facility or its contractor may  
40 require that the defendant pay the fees prescribed by law for the services before it  
41 certifies that the defendant has completed the recommended treatment or educational  
42 program. Any determinations with regard to the defendant's ability to pay the assessment  
43 fee shall be made by the judge.

1 In those cases in which no substance abuse handicap is identified, that finding shall be  
2 filed with the court and the defendant shall be required to attend an alcohol and drug  
3 education traffic school. When treatment is required, the treatment agency's progress  
4 reports shall be filed with the court or the Department of Correction at intervals of no  
5 greater than six months until the termination of probation or the treatment agency  
6 determines and reports that no further treatment is appropriate. If the defendant is  
7 required to participate in a treatment program and he completes the recommended  
8 treatment, he does not have to attend the alcohol and drug education traffic school. Upon  
9 the completion of the court-ordered assessment and court-ordered treatment or school, the  
10 assessing or treatment agency or school shall give the Division of Motor Vehicles the  
11 original of the certificate of completion, shall provide the defendant with a copy of that  
12 certificate, and shall retain a copy of the certificate on file for a period of five years. The  
13 Division of Motor Vehicles shall not reissue the drivers license of a defendant ordered to  
14 obtain assessment, participate in a treatment program or school unless it has received the  
15 original certificate of completion from the assessing or treatment agency or school or a  
16 certificate of completion sent by the agency subsequent to a court order as hereinafter  
17 provided; provided, however that a defendant may be issued a limited driving privilege  
18 pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no certificate shall be  
19 issued unless the agency or school has received the fifty dollar (\$50.00) fee and the  
20 seventy-five dollar (\$75.00) fee as appropriate. A defendant may within 90 days after an  
21 agency decision to decline to certify, by filing a motion in the criminal case, request that  
22 a judge presiding in the court in which he was convicted review the decision of an  
23 assessment or treatment agency to decline to certify that the defendant has completed the  
24 assessment or treatment. The agency whose decision is being reviewed shall be notified  
25 at least 10 days prior to any hearing to review its decision. If the judge determines that  
26 the defendant has obtained an assessment, has completed the treatment, or has made an  
27 effort to do so that is reasonable under the circumstances, as the case may be, the judge  
28 shall order that the agency send a certificate of completion to the Division of Motor  
29 Vehicles.

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

34 Sec. 21. G.S. 75A-10(b1) reads as rewritten:

35 "(b1) No person shall operate any motorboat or motor vessel while underway on the  
36 waters of this State:

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

38 (2) After having consumed sufficient alcohol that he has, at any relevant  
39 time after the boating, an alcohol concentration of ~~0-10~~0.08 or more.

40 The fact that a person charged with violating this subsection is or has been legally  
41 entitled to use alcohol or a drug is not a defense to a charge under this subsection or  
42 subsection (b) above.

1       The relevant definitions contained in G.S. 20-4.01 shall apply to this subsection and  
2 subsection (b)       above."

3 **PART IX.—EFFECTIVE DATE.**

4       Sec. 22. Sections 7 and 22 of this act are effective upon ratification. The  
5 remaining sections of this act become effective October 1, 1995, and apply to offenses  
6 committed on or after that date and to limited driving privileges issued on or after that  
7 date. Except for Section 7 of this act which applies to all pending matters, this act shall  
8 not be construed to abate or affect any charges or violations occurring before the effective  
9 dates of the sections of this act.