

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 353\*  
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Short Title: Governor's Task Force on DWI/AB.

(Public)

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Sponsors:

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Referred to:

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March 6, 1995

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

4 The General Assembly of North Carolina enacts:

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

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

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

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

13 (2) A requirement that the designated motor vehicle be equipped with a  
14 functioning ignition interlock system of a type approved by the  
15 Commissioner; provided, the Commissioner shall not unreasonably  
16 withhold approval of this system and shall consult with the Division of  
17 Purchase and Contract in the Department of Administration to insure  
18 that potential vendors are not discriminated against; and

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

3 This restriction shall not apply to any motor vehicle:

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

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

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

13           "(b) Eligibility. —

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

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

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

1 provide transportation to the dependent to the health care facility  
2 where the dependent can receive the needed medical treatment.

3 The limited driving privilege granted under this subdivision must  
4 restrict the person to essential driving related to the purposes listed  
5 above, and any driving that is not related to those purposes is unlawful  
6 even though done at times and upon routes that may be authorized by  
7 the privilege."

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

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

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

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

17 "(c) If a person willfully refuses to submit to a chemical analysis pursuant to G.S.  
18 20-16.2 while he is a ~~provisional licensee, under the age of 21 years,~~ his license must be  
19 revoked under this section, in addition to any other revocation required or authorized by  
20 law. A revocation order entered under authority of this subsection becomes effective at  
21 the same time as a revocation order issued under G.S. 20-16.2 for the same willful  
22 refusal."

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

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

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

31 "**§ 20-138.3. Driving by ~~provisional licensee person~~ under age 21 after consuming**  
32 **alcohol or drugs.**

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

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

41 (c) Punishment; Effect When Impaired Driving Offense Also Charged. – The  
42 offense in this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser  
43 included offense of impaired driving under G.S. 20-138.1, but if a person is convicted

1 under this section and of an offense involving impaired driving arising out of the same  
2 transaction, the aggregate punishment imposed by the court may not exceed the  
3 maximum applicable to the offense involving impaired driving, and any minimum  
4 punishment applicable must be imposed.

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

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

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

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

13 The judge may issue the limited driving privilege only if the person meets the eligibility  
14 requirements of G.S. 20-179.3, except that requirement (b)(1)c. shall only apply if the  
15 driver was charged with driving while impaired arising out of the same transaction. G.S.  
16 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in  
17 G.S. 20-179.3 shall apply."

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

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

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

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

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

32 (2) Refusal to take any required test or tests will result in an immediate  
33 revocation of his driving privilege for at least 10 days and an additional  
34 12-month revocation by the Division of Motor Vehicles.

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

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

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

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

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

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

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

13 "(24a) Offense Involving Impaired Driving. – Any of the following  
14 offenses:

- 15 a. Impaired driving under G.S. 20-138.1.  
16 b. Death by vehicle under G.S. 20-141.4 when conviction is based  
17 upon impaired driving or a substantially equivalent offense under  
18 previous law.  
19 c. Second degree murder under G.S. 14-17 or involuntary  
20 manslaughter under G.S. 14-18 when conviction is based upon  
21 impaired driving or a substantially equivalent offense under  
22 previous law.  
23 d. An offense committed in another jurisdiction substantially  
24 equivalent to the offenses in subparagraphs a through c.  
25 e. A repealed or superseded offense substantially equivalent to  
26 impaired driving, including offenses under former G.S. 20-138 or  
27 G.S. 20-139.  
28 f. Impaired driving in a commercial motor vehicle under G.S. 20-  
29 138.2, except that convictions of impaired driving under G.S. 20-  
30 138.1 and G.S. 20-138.2 arising out of the same transaction shall  
31 be considered a single conviction of an offense involving  
32 impaired driving for any purpose under this Chapter.  
33 g. Transporting an open container under G.S. 20-138.7, except that  
34 convictions of impaired driving under G.S. 20-138.1 or G.S. 20-  
35 138.2 and transporting an open container under G.S. 20-138.7  
36 arising out of the same transaction shall be considered a single  
37 conviction of an offense involving impaired driving for any  
38 purpose under this Chapter.

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

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

42 "**§ 20-17. Mandatory revocation of license by Division.**

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

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

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

35 "**§ 20-138.7. Transporting an open container of alcoholic beverage after consuming**  
36 **alcohol.**

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

- 38 (1) On a highway or public vehicular area;  
39 (2) While there is an alcoholic beverage other than in the unopened  
40 manufacturer's original container in the passenger area; and  
41 (3) While the driver is consuming alcohol or while alcohol remains in the  
42 driver's body.

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

3       (c) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the  
4 driver is insufficient evidence to prove beyond a reasonable doubt that alcohol was  
5 remaining in the driver's body in violation of this section, unless the driver was offered an  
6 alcohol screening test or chemical analysis and refused to provide all required samples of  
7 breath or blood for analysis.

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

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

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

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

34       (h) Limited Driving Privilege. – A person convicted of violating subsection (a) of  
35 this section and whose drivers license is revoked solely based on that conviction may  
36 apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge may  
37 issue the limited driving privilege only if the driver meets the eligibility requirements of  
38 G.S. 20-179.3, except that requirement (b)(1)c. shall only apply if the driver was charged  
39 with driving while impaired arising out of the same transaction. The same terms,  
40 conditions, and restrictions provided for in G.S. 20-179.3 shall apply."

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

42       "**§ 18B-401. Manner of transportation.**

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

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

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

21 PART VI.—INCREASING THE REVOCATION PERIOD FOR PRETRIAL CIVIL  
22 REVOCATION FOR DRIVERS CHARGED WITH IMPAIRED DRIVING OFFENSES  
23 FROM TEN TO THIRTY DAYS.

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

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

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

- 36           (1) He has a right to refuse to be tested.
- 37           (2) Refusal to take any required test or tests will result in an immediate  
38           revocation of his driving privilege for at least ~~10~~30 days and an  
39           additional 12-month revocation by the Division of Motor Vehicles.
- 40           (3) The test results, or the fact of his refusal, will be admissible in  
41           evidence at trial on the offense charged.
- 42           (4) His driving privilege will be revoked immediately for at least ~~10~~30  
43           days if:



- 1                   a.     The test reveals an alcohol concentration of 0.08 or more;  
2                             or  
3                   b.     He was driving a commercial motor vehicle and the test  
4                             reveals an alcohol concentration of 0.04 or more.
- 5           (5)     He may have a qualified person of his own choosing administer a  
6                   chemical test or tests in addition to any test administered at the  
7                   direction of the charging officer.
- 8           (6)     He has the right to call an attorney and select a witness to view for  
9                   him the testing procedures, but the testing may not be delayed for  
10                   these purposes longer than 30 minutes from the time he is notified of  
11                   his rights.

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

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

17           "(i)   Right to Chemical Analysis before Arrest or Charge. – A person stopped or  
18 questioned by a law-enforcement officer who is investigating whether the person may  
19 have committed an implied-consent offense may request the administration of a chemical  
20 analysis before any arrest or other charge is made for the offense. Upon this request, the  
21 officer must afford the person the opportunity to have a chemical analysis of his breath, if  
22 available, in accordance with the procedures required by G.S. 20-139.1(b). The request  
23 constitutes the person's consent to be transported by the law-enforcement officer to the  
24 place where the chemical analysis is to be administered. Before the chemical analysis is  
25 made, the person must confirm his request in writing 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 ~~40~~30 days if:
- 29                   a.     The test reveals an alcohol concentration of 0.08 or more;  
30                             or  
31                   b.     He was driving a commercial motor vehicle and the test  
32                             results reveal an alcohol concentration of 0.04 or more.
- 33           (3)     That if he fails to comply fully with the test procedures, the officer  
34                   may charge him with any offense for which the officer has probable  
35                   cause, and if he is charged with an implied-consent offense, his  
36                   refusal to submit to the testing required as a result of that charge  
37                   would result in revocation of his driver's license. The results of the  
38                   chemical analysis are admissible in evidence in any proceeding in  
39                   which they are relevant."

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

41           "(e)   Procedure if Report Filed with Judicial Official When Person Is Present. – If a  
42 properly executed revocation report concerning a person is filed with a judicial official  
43 when the person is present before that official, the judicial official must, after completing

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

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

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

- 1           (1)     ~~Ten~~Thirty days from the time the person surrenders his license to  
2           the court, if the surrender occurs within five working days of the  
3           effective date of the order; or  
4           (2)     ~~Ten~~Thirty days after the person appears before the clerk and  
5           demonstrates that he is not currently licensed to drive, if the  
6           appearance occurs within five working days of the effective date of  
7           the revocation order; or  
8           (3)     ~~Thirty~~Ninety days from the time:  
9                 a.     The person's driver's license is picked up by a law-  
10                enforcement officer following service of a pick-up order;  
11                or  
12                b.     The person demonstrates to a law-enforcement officer  
13                who has a pick-up order for his license that he is not  
14                currently licensed; or  
15                c.     The person's driver's license is surrendered to the court if  
16                the surrender occurs more than five working days after the  
17                effective date of the revocation order; or  
18                d.     The person appears before the clerk to demonstrate that he  
19                is not currently licensed, if he appears more than five  
20                working days after the effective date of the revocation  
21                order.

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

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

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

38           Sec. 17. G.S. 20-28(a1) reads as rewritten:

39           "(a1) Driving Without Reclaiming License. – A person convicted under subsection  
40   (a) shall be punished as if he had been convicted of driving without a license under G.S.  
41   20-7 if he demonstrates to the court that:

- 42           (1)     At the time of the offense, his license was revoked solely under G.S.  
43           20-16.5; and

- 1           (2)           a.       The offense occurred more than ~~30~~90 days after the  
2                           effective date of a revocation order issued under G.S. 20-  
3                           16.5(f) and the period of revocation was ~~30~~90 days as  
4                           provided under subdivision (3) of that subsection; or  
5                           b.       The offense occurred more than ~~10~~30 days after the  
6                           effective date of the revocation order issued under any  
7                           other provision of G.S. 20-16.5.

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

12   PART VII.—CLARIFYING THE AUTHORITY OF LAW ENFORCEMENT  
13   OFFICERS TO ARREST WITHOUT A WARRANT FOR THE OFFENSE OF  
14   IMPAIRED DRIVING.

15       Sec. 18. G.S. 15A-401(b) reads as rewritten:

16       "(b) Arrest by Officer Without a Warrant. —

- 17           (1) Offense in Presence of Officer. — An officer may arrest without a  
18                           warrant any person who the officer has probable cause to believe has  
19                           committed a criminal offense in the officer's presence.  
20           (2) Offense Out of Presence of Officer. — An officer may arrest without  
21                           a warrant any person who the officer has probable cause to believe:  
22                           a.       Has committed a felony; or  
23                           b.       Has committed a misdemeanor, and:  
24                                1.      Will not be apprehended unless immediately  
25   arrested, or  
26                                2.      May cause physical injury to himself or others, or  
27   damage to property unless immediately arrested; or  
28                           c.       Has committed a misdemeanor under ~~G.S. 14-72.1 or G.S.~~  
29                           ~~14-134.3; G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2;~~  
30                           or  
31                           d.       Has committed a misdemeanor under G.S. 14-33(a), G.S.  
32                           14-33(b)(1), or G.S. 14-33(b)(2) when the offense was  
33                           committed by a person who is the spouse or former spouse  
34                           of the alleged victim or by a person with whom the  
35                           alleged victim is living or has lived as if married.

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

37   PART VIII.—STANDARDIZING STATUTORY REGULATIONS REGARDING  
38   BLOOD ALCOHOL CONCENTRATION.

39       Sec. 19. G.S. 20-179(d) reads as rewritten:

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

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

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

24 Sec. 20. 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 of  
28 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.

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

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

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

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

12 Sec. 21. G.S. 20-179(m) reads as rewritten:

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

16 The judge shall require the defendant to obtain the assessment from an area mental  
17 health agency, its designated agent, or a private facility licensed by the State for the  
18 treatment of alcoholism and substance abuse. Unless a different time limit is specified in  
19 the court's judgment, the defendant shall schedule the assessment within 30 days from the  
20 date of the judgment. Any agency performing assessments shall give written notification  
21 of its intention to do so to the area mental health authority in the catchment area in which  
22 it is located and to the Department of Human Resources. The Secretary of the  
23 Department of Human Resources may adopt rules to implement the provisions of this  
24 subsection, and these rules may include provisions to allow defendant to obtain  
25 assessments and treatment from agencies not located in North Carolina. The assessing  
26 agency shall give the client a standardized test capable of providing uniform research  
27 data, including, but not limited to, demographic information, defendant history,  
28 assessment results and recommended interventions, approved by the Department of  
29 Human Resources to determine chemical dependency. A clinical interview concerning  
30 the general status of the defendant with respect to chemical dependency shall be  
31 conducted by the assessing agency before making any recommendation for further  
32 treatment. A recommendation made by the assessing agency shall be signed by a  
33 'Certified Alcoholism, Drug Abuse or Substance Abuse Counselor', as defined by the  
34 Department of Human Resources.

35 If the assessing agency recommends that the defendant participate in a treatment  
36 program, the judge may require the defendant to do so, and he shall require the defendant  
37 to execute a Release of Information authorizing the treatment agency to report his  
38 progress to the court or the Department of Correction. The judge may order the  
39 defendant to participate in an appropriate treatment program at the time he is ordered to  
40 obtain an assessment, or he may order him to reappear in court when the assessment is  
41 completed to determine if a condition of probation requiring participation in treatment  
42 should be imposed. An order of the court shall not require the defendant to participate in  
43 any treatment program for more than 90 days unless a longer treatment program is

1 recommended by the assessing agency and his alcohol concentration was ~~15~~0.13 or  
2 greater as indicated by a chemical analysis taken when he was charged or this was a  
3 second or subsequent offense within five years. At the time of sentencing the judge shall  
4 require the defendant to pay one hundred twenty-five dollars (\$125.00). The payment of  
5 the fee of one hundred twenty-five dollars (\$125.00) shall be (i) fifty dollars (\$50.00) to  
6 the assessing agency and (ii) seventy-five dollars (\$75.00) to either a treatment facility or  
7 to an alcohol and drug education traffic school depending upon the recommendation  
8 made by the assessing agency. Fees received by the Area Mental Health, Developmental  
9 Disabilities, and Substance Abuse Authorities under this section shall be administered  
10 pursuant to G.S. 20-179.2(e), provided, however that the provisions of G.S. 20-179.2(c)  
11 shall not apply to monies received under this section. The operators of the local alcohol  
12 and drug education traffic school may change the length of time required to complete the  
13 school in accordance with administrative costs, provided, however that the length and the  
14 curriculum of the school shall be approved by the Commission for Mental Health,  
15 Developmental Disabilities, and Substance Abuse Services and in no event shall the  
16 school be less than five hours in length. If the defendant is treated by an area mental  
17 health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar (\$75.00) fee.  
18 If an area mental health facility or its contractor is providing treatment or education  
19 services to a defendant pursuant to this subsection, the area facility or its contractor may  
20 require that the defendant pay the fees prescribed by law for the services before it  
21 certifies that the defendant has completed the recommended treatment or educational  
22 program. Any determinations with regard to the defendant's ability to pay the assessment  
23 fee shall be made by the judge.

24 In those cases in which no substance abuse handicap is identified, that finding shall be  
25 filed with the court and the defendant shall be required to attend an alcohol and drug  
26 education traffic school. When treatment is required, the treatment agency's progress  
27 reports shall be filed with the court or the Department of Correction at intervals of no  
28 greater than six months until the termination of probation or the treatment agency  
29 determines and reports that no further treatment is appropriate. If the defendant is  
30 required to participate in a treatment program and he completes the recommended  
31 treatment, he does not have to attend the alcohol and drug education traffic school. Upon  
32 the completion of the court-ordered assessment and court-ordered treatment or school, the  
33 assessing or treatment agency or school shall give the Division of Motor Vehicles the  
34 original of the certificate of completion, shall provide the defendant with a copy of that  
35 certificate, and shall retain a copy of the certificate on file for a period of five years. The  
36 Division of Motor Vehicles shall not reissue the drivers license of a defendant ordered to  
37 obtain assessment, participate in a treatment program or school unless it has received the  
38 original certificate of completion from the assessing or treatment agency or school or a  
39 certificate of completion sent by the agency subsequent to a court order as hereinafter  
40 provided; provided, however that a defendant may be issued a limited driving privilege  
41 pursuant to G.S. 20-179.3. Unless the judge has waived the fee, no certificate shall be  
42 issued unless the agency or school has received the fifty dollar (\$50.00) fee and the  
43 seventy-five dollar (\$75.00) fee as appropriate. A defendant may within 90 days after an

1 agency decision to decline to certify, by filing a motion in the criminal case, request that  
2 a judge presiding in the court in which he was convicted review the decision of an  
3 assessment or treatment agency to decline to certify that the defendant has completed the  
4 assessment or treatment. The agency whose decision is being reviewed shall be notified  
5 at least 10 days prior to any hearing to review its decision. If the judge determines that  
6 the defendant has obtained an assessment, has completed the treatment, or has made an  
7 effort to do so that is reasonable under the circumstances, as the case may be, the judge  
8 shall order that the agency send a certificate of completion to the Division of Motor  
9 Vehicles.

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

14 Sec. 22. G.S. 75A-10(b1) reads as rewritten:

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

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

18 (2) After having consumed sufficient alcohol that he has, at any relevant  
19 time after the boating, an alcohol concentration of ~~0.10~~0.08 or more.

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

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

25 PART IX.—EFFECTIVE DATE.

26 Sec. 23. Sections 7 and 23 of this act are effective upon ratification. The  
27 remaining sections of this act become effective September 15, 1995, and apply to  
28 offenses committed on or after that date and to limited driving privileges issued on or  
29 after that date. Except for Section 7 of this act which applies to all pending matters, this  
30 act shall not be construed to abate or affect any charges or violations occurring before the  
31 effective dates of the sections of this act.