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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 new subsections to read:

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

(1) A restriction that the applicant may operate only a designated 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. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the

1 Division of Purchase and Contract in the Department of Administration  
2 to ensure that potential vendors are not discriminated against.

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

5 (g4) The restrictions set forth in subsection (g3) of this section do not apply to a  
6 motor vehicle that meets all of the following requirements:

7 (1) Is owned by the applicant's employer.

8 (2) Is operated by the applicant solely for work-related purposes.

9 (3) Its owner has filed with the court a written document authorizing the  
10 applicant to drive the vehicle, for work-related purposes, under the  
11 authority of a limited driving privilege."

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

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

15 "(b) Eligibility. —

16 (1) A person convicted of the offense of impaired driving under G.S. 20-  
17 138.1 is eligible for a limited driving privilege if:

18 a. At the time of the offense he held either a valid driver's license or  
19 a license that had been expired for less than one year;

20 b. At the time of the offense he had not within the  
21 preceding seven years been convicted of an offense involving  
22 impaired driving;

23 c. Punishment Level Three, Four, or Five was imposed for the  
24 offense of impaired driving; ~~and~~

25 d. Subsequent to the offense he has not been convicted of, or had an  
26 unresolved charge lodged against him for, an offense involving  
27 impaired ~~driving~~-driving; ~~and~~

28 e. The person has obtained and filed with the court a substance  
29 abuse assessment of the type specified in G.S. 20-179(m).

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

36 (2) Any person whose licensing privileges are forfeited pursuant to G.S.  
37 15A-1331A is eligible for a limited driving privilege if the court finds  
38 that at the time of the forfeiture, the person held either a valid drivers  
39 license or a drivers license that had been expired for less than one year  
40 and

41 a. The person is supporting existing dependents or must have a  
42 drivers license to be gainfully employed; or

1           b.     The person has an existing dependent who requires serious  
2                 medical treatment and the defendant is the only person able to  
3                 provide transportation to the dependent to the health care facility  
4                 where the dependent can receive the needed medical treatment.

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

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

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

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

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

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

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

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

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

33 **"§ 20-138.3. Driving by ~~provisional licensee~~ person less than 21 years old after**  
34 **consuming alcohol or drugs.**

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

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

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

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

12 (1) Is 18, 19, or 20 years old on the date of the offense.

13 (2) Has not previously been convicted of a violation of this section.

14 The judge may issue the limited driving privilege only if the person meets the eligibility  
15 requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. 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. G.S. 20-179.3, rather than this subsection, governs the  
18 issuance of a limited driving privilege to a person who is convicted of violating  
19 subsection (a) of this section and of driving while impaired as a result of the same  
20 transaction."

21 PART IV.—PROHIBITING AN OPEN CONTAINER OF ALCOHOLIC BEVERAGE  
22 IN A MOTOR VEHICLE WHEN A DRIVER HAS BEEN DRINKING.

23 Sec. 7. G.S. 20-17 reads as rewritten:

24 "**§ 20-17. Mandatory revocation of license by Division.**

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

27 (1) Manslaughter (or negligent homicide) resulting from the operation of a  
28 motor vehicle.

29 (2) Either of the following impaired driving offenses:

30 a. Impaired driving under G.S. 20-138.1.

31 b. Impaired driving under G.S. 20-138.2 when the person convicted  
32 did not take a chemical test at the time of the offense or the  
33 person took a chemical test at the time of the offense and the test  
34 revealed that the person had an alcohol concentration at any  
35 relevant time after driving of less than 0.04 or of 0.08 or more.

36 (3) Any felony in the commission of which a motor vehicle is used.

37 (4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).

38 (5) Perjury or the making of a false affidavit or statement under oath to the  
39 Division under this Article or under any other law relating to the  
40 ownership of motor vehicles.

41 (6) Conviction upon two charges of reckless driving committed within a  
42 period of 12 months.

- 1 (7) Conviction upon one charge of reckless driving while engaged in the  
2 illegal transportation of intoxicants for the purpose of sale.
- 3 (8) Conviction of using a false or fictitious name or giving a false or  
4 fictitious address in any application for a drivers license, or learner's  
5 permit, or any renewal or duplicate thereof, or knowingly making a false  
6 statement or knowingly concealing a material fact or otherwise  
7 committing a fraud in any such application or procuring or knowingly  
8 permitting or allowing another to commit any of the foregoing acts.
- 9 (9) Death by vehicle as defined in G.S. 20-141.4.
- 10 (10) Speeding in excess of 55 miles per hour and at least 15 miles per hour  
11 over the legal limit in violation of G.S. 20-141(j).
- 12 (11) Conviction of assault with a motor vehicle.
- 13 (12) A second or subsequent conviction of transporting an open container of  
14 alcoholic beverage under G.S. 20-138.7."

15 Sec. 8. G.S. 20-19 is amended by adding a new subsection to read:

16 "(g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of  
17 revocation is six months for conviction of a second offense and one year for conviction of  
18 a third or subsequent offense."

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

21 "**§ 20-138.7. Transporting an open container of alcoholic beverage after consuming**  
22 **alcohol.**

23 (a) Offense. – No person shall drive a motor vehicle on a highway or public  
24 vehicular area:

25 (1) While there is an alcoholic beverage other than in the unopened  
26 manufacturer's original container in the passenger area; and

27 (2) While the driver is consuming alcohol or while alcohol remains in the  
28 driver's body.

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

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

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

1 (e) Punishment; Effect When Impaired Driving Offense Also Charged. – Violation  
2 of this section shall be punished as an infraction in accordance with G.S. 14-3.1 with a  
3 fine of not more than five hundred dollars (\$500.00) for the first offense and shall be  
4 punished as a Class 2 misdemeanor for a second or subsequent offense. A fine imposed  
5 for a second or subsequent offense may not exceed one thousand dollars (\$1,000).  
6 Violation of this section is not a lesser included offense of impaired driving under G.S.  
7 20-138.1, but if a person is convicted under this section and of an offense involving  
8 impaired driving arising out of the same transaction, the punishment imposed by the court  
9 shall not exceed the maximum applicable to the offense involving impaired driving, and  
10 any minimum applicable punishment shall be imposed. A violation of this section shall  
11 be considered a moving violation for purposes of G.S. 20-16(c).

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

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

23 (h) Limited Driving Privilege. – A person who is convicted of violating subsection  
24 (a) of this section and whose drivers license is revoked solely based on that conviction  
25 may apply for a limited driving privilege as provided for in G.S. 20-179.3. The judge  
26 may issue the limited driving privilege only if the driver meets the eligibility  
27 requirements of G.S. 20-179.3, other than the requirement in G.S. 20-179.3(b)(1)c. G.S.  
28 20-179.3(e) shall not apply. All other terms, conditions, and restrictions provided for in  
29 G.S. 20-179.3 shall apply. G.S. 20-179.3, rather than this subsection, governs the  
30 issuance of a limited driving privilege to a person who is convicted of violating  
31 subsection (a) of this section and of driving while impaired as a result of the same  
32 transaction."

33 Sec. 10. G.S. 18B-401 reads as rewritten:

34 "**§ 18B-401. Manner of transportation.**

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

41 (b) Taxis. – It shall be unlawful for a person operating a for-hire passenger vehicle  
42 as defined in G.S. 20-4.01(27)b, to transport fortified wine or spirituous liquor unless the  
43 vehicle is transporting a paying passenger who owns the alcoholic beverage being

1 transported. Not more than eight liters of fortified wine or spirituous liquor, or  
2 combination of the two, may be transported by each passenger. A violation of this  
3 subsection shall not be grounds for suspension of the driver's license for illegal  
4 transportation of intoxicating liquors under G.S. 20-16(a)(8).

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

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

15 Sec. 11. 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 VI.—STANDARDIZING STATUTORY REGULATIONS REGARDING  
38 BLOOD ALCOHOL CONCENTRATION.

39 Sec. 12. 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. 13. 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. 14. 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. 15. 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 VII.—EFFECTIVE DATE.

26 Sec. 16. This act becomes effective September 15, 1995, and applies to  
27 offenses committed on or after that date and to limited driving privileges issued on or  
28 after that date. This act shall not be construed to abate or affect any charges or violations  
29 occurring before the effective date of this act.