

# THE GENERAL STATUTES OF NORTH CAROLINA

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1965 CUMULATIVE SUPPLEMENT

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Completely Annotated, under the Supervision of the Department  
of Justice, by the Editorial Staff of the Publishers

UNDER THE DIRECTION OF  
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Volume 1C

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## Preface

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This Cumulative Supplement to Recompiled Volume 1C contains the general laws of a permanent nature enacted at the 1953, 1955, 1956, 1957, 1959, 1961, 1963 and 1965 Sessions of the General Assembly, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the changes effected by the amendatory acts.

Chapter analyses show new sections and also old sections with changed captions. An index to all statutes codified herein prior to 1961 appears in Replacement Volumes 4B and 4C. The Cumulative Supplements to such volumes contain an index to statutes codified as a result of the 1961, 1963 and 1965 legislative sessions.

A majority of the Session Laws are made effective upon ratification but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after thirty days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement, and any suggestions they may have for improving the General Statutes, to the Division of Legislative Drafting and Codification of Statutes of the Department of Justice, or to The Michie Company, Law Publishers, Charlottesville, Virginia.



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# Scope of Volume

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## **Statutes:**

Permanent portions of the general laws enacted at the 1953, 1955, 1956, 1957, 1959, 1961, 1963 and 1965 Sessions of the General Assembly affecting Chapters 15 through 27 of the General Statutes.

## **Annotations:**

### Sources of the annotations:

- North Carolina Reports volumes 233 (p. 313)-265 (p. 217).
- Federal Reporter 2nd Series volumes 186 (p. 745)-347 (p. 320).
- Federal Supplement volumes 95 (p. 249)-242 (p. 512).
- United States Reports volumes 340 (p. 367)-381 (p. 531).
- Supreme Court Reporter volumes 71 (p. 474)-85.
- North Carolina Law Review volumes 29 (p. 227)-43 (p. 665).



# The General Statutes of North Carolina 1965 Cumulative Supplement

## VOLUME 1C

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**ARTICLE 1.***General Provisions.***§ 15-1. Statute of limitations for misdemeanors.**

A violation of § 14-353 is not a malicious misdemeanor. *State v. Brewer*, 258 N. C. 533, 129 S. E. (2d) 262 (1963).

A conspiracy to commit a misdemeanor is a misdemeanor. *State v. Brewer*, 258 N. C. 533, 129 S. E. (2d) 262 (1963).

**And Each Overt Act Tolls Statute.**—A conspiracy is a continuing offense so that the statute of limitations is tolled as to the original conspiracy each time an overt act is committed in furtherance of the purpose and design of the conspiracy. *State v. Brewer*, 258 N. C. 533, 129 S. E. (2d) 262 (1963).

Where a count and the indictment alleged that a conspiracy continued from time to time with the commission of overt acts by the alleged conspirators in furtherance of conspiracy and to effectuate its unlawful purpose within two years of the finding of the indictment, the trial court correctly overruled defendants' mo-

tion to quash the first count in the indictment on the ground that a prosecution on such count was barred by this section. *State v. Brewer*, 258 N. C. 533, 129 S. E. (2d) 262 (1963).

**Date on Which Statute Is Tolled.**—In all misdemeanor cases, where there has been a conviction in an inferior court that had final jurisdiction of the offense charged, upon appeal to the superior court the accused may be tried upon the original warrant and the statute of limitations is tolled from the date of the issuance of the warrant. *State v. Underwood*, 244 N. C. 68, 92 S. E. (2d) 461 (1956).

In criminal cases where an indictment or presentment is required, the date on which the indictment or presentment has been brought or found by the grand jury marks the beginning of the criminal proceeding and arrests the statute of limitations. *State v. Underwood*, 244 N. C. 68, 92 S. E. (2d) 461 (1956).

**§ 15-4. Accused entitled to counsel.**

**Editor's Note.** — For note on the right of counsel, see 32 N. C. Law Rev. 331.

Cited in *Hammond v. North Carolina*, 227 F. Supp. 1 (E.D.N.C. 1964).

**§ 15-4.1. Appointment of counsel for indigent defendants; plea of guilty by defendant without counsel; trial transcript and records for appeal by indigent defendant.**—When a defendant charged with a felony is not represented by counsel, before he is required to plead the judge of the superior court shall advise the defendant that he is entitled to counsel. If the judge finds that the defendant is indigent and unable to employ counsel, he shall appoint counsel for the defendant but the defendant may waive the right to



counsel in all cases except a capital felony by a written waiver executed by the defendant, signed by the presiding judge and filed in the record in the case. The judge may in his discretion appoint counsel for an indigent defendant charged with a misdemeanor if in the opinion of the judge such appointment is warranted unless the defendant executes a written waiver of counsel as above specified. A defendant with or without counsel may plead guilty but if the defendant is without counsel, the judge shall inform the accused of the nature of the charge and the possible consequences of his plea, and as a condition of accepting the plea of guilty the judge shall examine the defendant and shall ascertain that the plea was freely, understandably and voluntarily made, without undue influence, compulsion or duress, and without promise of leniency, but a defendant without counsel cannot plead guilty to an indictment charging a capital felony. Unless the judge determines that the plea of guilty was so made, it shall not be accepted. In case of an appeal to the Supreme Court the judge shall appoint counsel for such appeal or continue the services of counsel already appointed for the trial. The judge shall appoint counsel as soon as possible and practicable to the end that counsel so appointed may have adequate notice and sufficient time to prepare for a defense.

When an appeal is taken under this section the county shall make available trial transcript and records required for an adequate and effective appellate review. (1949, c. 112; 1963, c. 1080, s. 1.)

**Editor's Note.—**

The 1963 amendment rewrote this section.

For comment on indigent defendants, see 42 N.C.L. Rev. 322 (1964).

**Section Implements Constitutional Provision.**—This section implements Article 1, § 11 of the State Constitution. *State v. Simpson*, 243 N. C. 436, 90 S. E. (2d) 708 (1956).

**When Appointment of Counsel Mandatory.**—Counsel must be appointed for person accused of first degree murder who is unable to employ counsel, although the State, after arraignment and plea, elects to press only for second degree murder. And it is immaterial whether accused requested the appointment. *State v. Simpson*, 243 N. C. 436, 90 S. E. (2d) 708 (1956).

**An indigent defendant must accept counsel appointed by the court**, in the absence of any substantial reason for replacement of court-appointed counsel. *State v. McNeil*, 263 N.C. 260, 139 S.E.2d 667 (1965).

An indigent defendant in a criminal action, in the absence of statute, has no right to select counsel of his own choice to defend him, and there is no statute in North Carolina that gives him the right to select counsel. *State v. McNeil*, 263 N.C. 260, 139 S.E.2d 667 (1965).

**Unless He Desires to Present His Own Defense.**—See *State v. McNeil*, 263 N.C. 260, 139 S.E.2d 667 (1965).

**Plea of Nolo Contendere Treated as Plea of Guilty.**—A plea of nolo contendere, although not strictly a confession of guilt,

nevertheless will support the same punishment as a plea of guilty. The rule of strict construction in favor of an accused, therefore, requires that a plea of nolo contendere be treated as a plea of guilty insofar as the right to be examined by the judge and to be informed as to the consequences of such plea. *State v. Payne*, 263 N.C. 77, 138 S.E.2d 765 (1964).

**Defendant can waive his right to counsel without signing a written waiver** in a criminal action in North Carolina. *State v. McNeil*, 263 N.C. 260, 139 S.E.2d 667 (1965).

This section does not say defendant must sign a written waiver. *State v. McNeil*, 263 N.C. 260, 139 S.E.2d 667 (1965).

**Section Held Inapplicable to Interrogation of Defendant Prior to Formal Charge.**

—See *State v. Elam*, 263 N.C. 273, 139 S.E.2d 601 (1965).

**Trial without Counsel Held Not Error.**

—Where the record shows that the trial court was careful to advise defendant of the charges against him and the permissible punishment in case of conviction, and that defendant, experienced by a number of prior prosecutions, with full understanding waived appointment of counsel, it is not error for the trial court to permit the defendant to begin trial without counsel. *State v. Bines*, 263 N.C. 48, 138 S.E.2d 797 (1964).

**Noncapital Cases Prior to 1963 Amendment.**—See *State v. Davis*, 248 N. C. 318, 103 S. E. (2d) 289 (1958).

Applied in *State v. Roux*, 263 N.C. 149,

139 S.E.2d 189 (1964); State v. Chamberlain, 263 N.C. 406, 139 S.E.2d 620 (1965); State v. Wilson, 264 N.C. 595, 142 S.E.2d 180 (1965).

230, 81 S. E. (2d) 778 (1954); State v. Graves, 251 N. C. 550, 112 S. E. (2d) 85 (1960); State v. Arnold, 258 N. C. 563, 129 S. E. (2d) 229 (1963); State v. Vines, 262 N.C. 747, 138 S.E.2d 630 (1964).

Cited in State v. Hackney, 240 N. C.

**§ 15-5. Fees allowed counsel assigned to indigent defendant.—**

Whenever an attorney is appointed by the court to defend an indigent defendant, he shall receive a fee for performing such service to be fixed by the court which shall be reasonable and commensurate with the time consumed, the nature of the case, the amount of fees usually charged for such cases in the county or locality. The fee so allowed shall be entered as a judgment against the defendant, signed by the court, and docketed in the judgment docket in the office of the clerk of the superior court and shall constitute a lien as provided by the general law of the State pertaining to judgments. Any funds collected by reason of said judgment shall be deposited in the State Treasury. All costs necessary for the administration of this section shall be paid by the State of North Carolina except regular and ordinary court costs which shall be paid by the county as now provided by law. (1917, c. 247; C. S., s. 4516; 1937, c. 226; 1963, c. 1080, s. 2.)

**Local Modification.** — Craven: 1955, c. 349.

By virtue of Session Laws 1955, c. 260, delete from bound volume "Wayne: 1941, c. 33."

**Editor's Note.—**

The 1963 amendment rewrote this section.

Applied in State v. Roux, 263 N.C. 149, 139 S.E.2d 189 (1964).

**§ 15-5.1. Rules and regulations of State Bar Council relating to counsel for indigent defendants.—**The North Carolina State Bar Council shall have authority to make rules and regulations for the implementation of §§ 15-4.1 to 15-5.3 relating to the manner and method of assigning counsel, the practice of the courts with respect to determination of indigency, the waiver of counsel and related matters, the adoption and approval of plans by any district bar regarding the method of assignment of counsel among the licensed attorneys of said district and such other matters as shall provide for the protection of the constitutional rights of all indigent persons charged with crime and the reasonable allocation of responsibility for the defense of indigent defendants among the licensed attorneys of this State: Provided, however, that no such rules and regulations shall become effective until certified to and approved by the Supreme Court of North Carolina. (1963, c. 1080, s. 3.)

**Cross Reference.**—For rules and regulations issued pursuant to this section, see Volume 4A, Appendix VI-A.

**§ 15-5.2. Additional costs in criminal cases to assist in appropriations required to provide counsel for indigent defendants.** — In all criminal cases in the superior courts of this State there shall be taxed against the defendant the sum of four dollars (\$4.00) to be paid into the State Treasury for the purpose of assisting in the appropriation required under Session Laws 1963, Chapter 1080 and a sum of one dollar (\$1.00) to be taxed against each defendant as aforesaid to be paid into the general fund of the county wherein the case is tried to assist counties with the appropriations that will be required as the result of Session Laws 1963, chapter 1080. (1963, c. 1080, s. 4.)

**§ 15-5.3. False affirmation in regard to question of indigence.** — Any defendant making a false affirmation in regard to the question of indigence under §§ 15-4.1 to 15-5.3 shall be guilty of perjury and punished as provided in G. S. 14-209. (1963, c. 1080, s. 4.)

**§ 15-6. Imprisonment to be in county jail.**

**Cited in State v. Stephenson, 247 N. C. 231, 100 S. E. (2d) 327 (1957).**

**§ 15-6.1. Changing place of confinement of prisoner committing offense.**—In all cases where a defendant has been convicted in a court inferior to the superior court and sentenced to a term in the county jail or to serve in some county institution other than under the supervision of the State Highway Commission, and such defendant is subsequently brought before such court for an offense committed prior to the expiration of the term to be served in such county institution, upon conviction, plea of guilty or nolo contendere, the judge shall have the power and authority to change the place of confinement of the prisoner and commit such defendant to work under the supervision of the State Highway Commission. This provision shall apply whether or not the terms of the new sentence are to run concurrently with or consecutive to the remaining portion of the old sentence. (1953, c. 778; 1957, c. 65, s. 11.)

**Editor's Note.** — The 1957 amendment for "State Highway and Public Works substituted "State Highway Commission" Commission."

**§ 15-6.2. Concurrent sentences for offenses of different grades or to be served in different places.**—When by a judgment of a court or by operation of law a prison sentence runs concurrently with any other sentence a prisoner shall not be required to serve any additional time in prison solely because the concurrent sentences are for different grades of offenses or that it is required that they be served in different places of confinement. (1955, c 57.)

**Editor's Note.** — For comment on this section, see 35 N. C. Law Rev. 112.

**§ 15-10. Speedy trial or discharge on commitment for felony.**

This section is for the protection of persons held without bail. State v. Lowry, 263 N.C. 536, 139 S.E.2d 870 (1965). S.E.2d 891 (1963); State v. Lowry, 263 N.C. 536, 139 S.E.2d 870 (1965).

It requires simply that under certain circumstances the prisoner be discharged from custody. State v. Patton, 260 N.C. 359, 132 S.E.2d 891 (1963); State v. Lowry, 263 N.C. 536, 139 S.E.2d 870 (1965).

**And not that he go quit of further prosecution.** State v. Patton, 260 N.C. 359, 132 S.E.2d 891 (1963); State v. Lowry, 263 N.C. 536, 139 S.E.2d 870 (1965).

**§ 15-10.1. Detainer; purpose; manner of use.**—Any person confined in the State prison of North Carolina, subject to the authority and control of the State Prison Department, or any person confined in any other prison of North Carolina, may be held to account for any other charge pending against him only upon a written order from the clerk or judge of the court in which the charge originated upon a case regularly docketed, directing that such person be held to answer the charge pending in such court; and in no event shall the prison authorities hold any person to answer any charge upon a warrant or notice when the charge has not been regularly docketed in the court in which the warrant or charge has been issued: Provided, that this section shall not apply to any State agency exercising supervision over such person or prisoner by virtue of a judgment, order of court or statutory authority. (1949, c. 303; 1953, c. 603; 1957, c. 349, s. 10.)

**Editor's Note.**—The 1953 amendment struck out "court" from line five and inserted in lieu thereof the words "clerk or judge of the court" in lines five and six. The 1957 amendment substituted "State Prison Department" for "State Highway and Public Works Commission."

**§ 15-10.2. Mandatory disposition of detainees—Request for final disposition of charges; continuance; information to be furnished prisoner.**—(a) Any prisoner serving a sentence or sentences within the State prison system who during his term of imprisonment shall have lodged against him a detainer to answer to any criminal charge pending against him in any court with-

in the State, shall be brought to trial within eight (8) months after he shall have caused to be sent to the solicitor of the court in which said criminal charge is pending, by registered mail, written notice of his place of confinement and request for a final disposition of the criminal charge against him; said request shall be accompanied by a certificate from the Director of Prisons stating the term of the sentence or sentences under which the prisoner is being held, the date he was received, and the time remaining to be served; provided that, for good cause shown in open court, the prisoner or his counsel being present, the court may grant any necessary and reasonable continuance.

(b) The Director of Prisons shall, upon request by the prisoner, inform the prisoner in writing of the source and contents of any charge for which a detainer shall have been lodged against such prisoner as shown by said detainer, and furnished the prisoner with the certificate referred to in paragraph (a). (1957, c. 1067, s. 1.)

**§ 15-10.3. Same—Procedure; return of prisoner after trial.**—The solicitor, upon receipt of the written notice and request for a final disposition as hereinbefore specified, shall make application to the court in which said charge is pending for a writ of habeas corpus ad prosequendum and the court upon such application shall issue such writ to the Director of Prisons requiring the prisoner to be delivered to said court to answer the pending charge and to stand trial on said charge within the time hereinbefore provided; upon completion of said trial, the prisoner shall be returned to the State prison system to complete service of the sentence or sentences under which he was held at the time said writ was issued. (1957, c. 1067, s. 2.)

**§ 15-10.4. Same—Exception as to prisoners who are mentally ill.**—The provisions of §§ 15-10.2 and 15-10.3 shall not apply to any prisoner who has been transferred and assigned for observation or treatment to any unit of the prison system which is maintained for those prisoners who are mentally ill or are suffering from mental disorders. (1957, c. 1067, s. 3.)

## ARTICLE 2.

### *Record and Disposition of Seized, etc., Articles.*

**§ 15-12. Publication of notice of unclaimed property; advertisement and sale of unclaimed bicycles.**—Unless otherwise provided herein, whenever such articles in the possession of any sheriff, police department or constable have remained unclaimed by the person who may be entitled thereto for a period of one hundred eighty (180) days after such seizure, confiscation, or receipt thereof in any other manner, by such sheriff, police department or constable, the said sheriff, police department or constable in whose possession said articles are may cause to be published one time in some newspaper published in said county a notice to the effect that such articles are in the custody of such officer or department, and requiring all persons who may have or claim any interest therein to make and establish such claim or interest not later than thirty (30) days from the date of the publication of such notice or in default thereof, such articles will be sold and disposed of. Such notice shall contain a brief description of the said articles and such other information as the said officer or department may consider necessary or advisable to reasonably inform the public as to the kind and nature of the article about which the notice relates. Provided, however, when bicycles which are in the possession of any sheriff, police department or constable, as provided for in this article, have remained unclaimed by the person who may be entitled thereto for a period of thirty days after such seizure, confiscation or receipt thereof, the said sheriff, police department or constable who

has possession of any such bicycle may proceed to advertise and sell such bicycles as provided by this article. (1939, c. 195, s. 2; 1965, c. 807, s. 1.)

**Editor's Note.** — The 1965 amendment added the last sentence. Section 2 1/2 of the amendatory act provides: "This act shall not apply to Alamance, Cherokee, Cleveland, Columbus, Gaston, Haywood, Henderson, Hoke, Mitchell, Moore, Northampton, Pender, Scotland, Wilson counties."

ARTICLE 3.

*Warrants.*

§ 15-18. Who may issue warrant.

**Local Modification.**—City of Durham: 1963, c. 1200.

**Cross Reference.** — As to issuance of warrants and receipts by justices of the peace, see § 7-134.1 et seq.

**Warrant Must Be Signed by Judicial Officer.**—Police officers were without authority to arrest defendant where the warrant was signed by a police officer, since the warrant must be signed by a judicial officer. *State v. McGowan*, 243 N. C. 431, 90 S. E. (2d) 703 (1956).

**This section does not confer upon police sergeants the power to issue warrants.** *State v. Blackwell*, 246 N. C. 642, 99 S. E. (2d) 867 (1957).

§ 15-19. Complainant examined on oath.

**This section vests discretionary power in officials authorized to issue warrants.** *State v. Furrage*, 250 N. C. 616, 109 S. E. (2d) 563 (1959).

**Issuance of Warrants by Solicitors.**—See *State v. Furrage*, 250 N. C. 616, 109 S. E. (2d) 563 (1959), holding a public-local law authorizing solicitors to issue warrants of arrest does not conflict with the provisions of N. C. Const., Art. I, § 8, as to separation of powers.

**Applied in** *State v. Bennett*, 237 N. C. 749, 76 S. E. (2d) 42 (1953); *State v. Doughtie*, 238 N. C. 228, 77 S. E. (2d) 642 (1953).

**Stated in** *State v. McHone*, 243 N. C. 231, 90 S. E. (2d) 536 (1955).

**Cited in** *State v. McHone*, 243 N. C. 231, 90 S. E. (2d) 536 (1955); *State v. McGowan*, 243 N. C. 431, 90 S. E. (2d) 703 (1956).

§ 15-20. Warrant issued; contents; summons instead of warrant in misdemeanor cases.—If it shall appear from such examination that any criminal offense has been committed, the magistrate shall issue a proper warrant under his hand, with or without seal, reciting the accusation, and commanding the officer to whom it is directed forthwith to take the person accused of having committed the offense, and bring him before a magistrate, to be dealt with according to law. A justice of the peace or a chief officer of a city or town shall direct his warrant to the sheriff or other lawful officer of his county.

In all cases of misdemeanors any officer authorized by law to issue warrants in criminal actions may issue a summons instead of a warrant of arrest when he has reasonable ground to believe that the person accused will appear in response to the same. The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate or some officer having the jurisdiction of a magistrate, at a stated time and place. If any person summoned fail, without good cause, to appear as commanded by the summons, he may be punished by a fine of not more than twenty-five dollars (\$25.00). Upon such failure to appear the said officer shall issue a warrant of arrest. If after issuing a summons the said officer becomes satisfied that the person summoned will not appear as commanded by the summons he may at once issue a warrant of arrest. In all proceedings held pursuant to said summons the hearing and trial shall be upon the summons in the same manner and with the same effect as if the hearing and trial were on a warrant. (1868-<sup>9</sup>, c. 178, subc. 3, s. 3; Code, s. 1134; 1901, c. 668; Rev., s. 3158; C. S., s. 4524; 1955, c. 332.)

**Editor's Note.**—The 1955 amendment added the second paragraph.

This section vests discretionary power in officials authorized to issue warrants. *State v. Furrage*, 250 N. C. 616, 109 S. E. (2d) 563 (1959).

**Justice of Peace, Who Is Also a Police Officer, May Issue Warrant.**—A justice of the peace, who is also an officer on the police force of a town, may lawfully as justice of the peace take the oath of an-

other police officer to an affidavit on which a criminal warrant is to be issued, and then as justice of the peace may lawfully issue a warrant thereon, addressed to the chief of police or any other lawful officer of the town or county, returnable for trial before the judge of the recorder's court of the town, who tries the case. *State v. McHone*, 243 N. C. 231, 90 S. E. (2d) 536 (1955).

**Cited in** *State v. Johnson*, 247 N. C. 240, 100 S. E. (2d) 494 (1957).

**§ 15-21. Where warrant may be executed; noting day of delivery to officer; copy to each defendant.**—Warrants issued by any justice of the Supreme Court, or by any judge of the superior court, or of a criminal court, may be executed in any part of this State; warrants issued by a justice of the peace, or by the chief officer of any city or incorporated town, may be executed in any part of the county of such justice, or in which such city or town is situated, and on any river, bay or sound forming the boundary between that and some other county, and not elsewhere, unless indorsed as prescribed in § 15-22.

The officer to whom the warrant is addressed shall note on it the day of its delivery to him and deliver a copy thereof to each of the defendants. A failure to comply shall not invalidate the arrest. (1868-9, c. 178, subc. 3, s. 4; Code, s. 1135; Rev., s. 3159; C. S., s. 4525; 1957, c. 346.)

**Local Modification.**—City court of Raleigh: 1959, c. 837.

**Editor's Note.**—The 1957 amendment added the second paragraph.

**§ 15-22. Warrant indorsed or certified and served in another county.**

**Cited in** *State v. Honeycutt*, 237 N. C. 595, 75 S. E. (2d) 525 (1953).

**§ 15-24. Before what magistrate a warrant returned.**—Persons arrested under any warrant issued for any offense where no provision is otherwise made, shall be brought before the magistrate who issued the warrant; or, if he be absent or from any cause unable to try the case, before the nearest magistrate in the same county; provided, however, that a magistrate may make such warrant returnable before any other magistrate or any court inferior to the superior court having jurisdiction within the same county, and the warrant by virtue of which the arrest shall have been made with a proper return endorsed thereon and signed by the officer or person making the arrest shall be delivered to such magistrate or to the court within the same county as may be directed in the warrant. (1868-9, c. 178, subc. 3, s. 12; Code, s. 1143; Rev., s. 3162; C. S., s. 4528; 1953, c. 141, s. 1.)

**Editor's Note.**—The 1953 amendment inserted the provision making warrants returnable before any other magistrate, etc., within the same county, and added at the end of the section the words "or to the court within the same county as may

be directed in the warrant."

For comment on 1953 amendment, see 31 N. C. Law Rev. 406.

**Cited in** *State v. McHone*, 243 N. C. 231, 90 S. E. (2d) 536 (1955).

**§ 15-24.1. Amendment of warrant to show ownership of property.**—Any criminal warrant may be amended in the superior court, before or during the trial, when there shall appear to be any variance between the allegations in the warrant and the evidence in setting forth the ownership of property if, in the opinion of the court, such amendment will not prejudice the defendant. This section shall be construed as enlarging and not limiting the conditions and situations under which a warrant may be amended. (1965, c. 285.)

## ARTICLE 4.

*Search Warrants.*

§ 15-25. **In what cases issued, and where executed.**—If any credible witness shall prove, upon oath, before any justice of the peace, or mayor of any city, or chief magistrate of any incorporated town, or the clerk of any court inferior to the superior court, that there is a reasonable cause to suspect that any person has in his possession, or on his premises, any narcotic drugs as defined in article 5 of chapter 90 of the General Statutes, any property stolen, or any and all personal property and all tickets, books, papers and documents used in connection with and operation of lotteries or any gaming or gambling, or any false or counterfeit coin resembling, or apparently intended to resemble, or pass for, any current coin of the United States, or of any other state, province or country, or any instrument, tool or engine whatsoever, adapted or intended for the counterfeiting of any such coin; or any false and counterfeit notes, bills or bonds of the United States, or of the State of North Carolina, or of any other state or country, or of any county, city or incorporated town; or any instrument, tool or engine whatsoever, adapted or intended for the counterfeiting of such note, bill or bond, it shall be lawful for such justice, mayor or chief magistrate of any incorporated town to grant a warrant, to be executed within the limits of his county or of the county in which such city or incorporated town is situated, and for the clerk of any court inferior to the superior court to grant a warrant, to be executed within the territorial jurisdiction of such court, all such warrants to be directed to any proper officer, authorizing him to search for such property, and to seize the same, and to arrest the person having in possession or on whose premises may be found such narcotic drugs, stolen property, or any and all personal property and all tickets, books, papers and documents used in connection with and operation of lotteries or any gaming or gambling, counterfeit coin, counterfeit notes, bills or bonds, or the instruments, tools or engines for making the same, and to bring them before any magistrate of competent jurisdiction, to be dealt with according to law. (1868-9, c. 178, subc. 3, s. 38; Code, s. 1171; Rev., s. 3163; C. S., s. 4529; 1941, c. 53; 1949, c. 1179; 1955, c. 7.)

**Editor's Note.**—The 1955 amendment inserted the references to narcotic drugs. the commission of a felony, see 32 N. C. Law Rev. 114.

For note as to the possible extension of this section to include issuance of search warrants to search for property used in **Stated in State v. Mock, 259 N. C. 501, 130 S. E. (2d) 863 (1963).**

§ 15-25.1. **Search warrants for barbiturate and stimulant drugs.**—  
(a) A search warrant authorizing an officer to search a person or place for barbiturate drugs or stimulant drugs may be issued by any judge of any court of record, any clerk or assistant clerk of any court of record, or any justice of the peace under the conditions set forth in this section. When such warrant is issued by a judge or clerk or assistant clerk of the superior court or a justice of the peace, it may be executed anywhere in the county in which it is issued. When such warrant is issued by a judge or clerk or assistant clerk of any court inferior to the superior court, it may be executed only within the territorial jurisdiction of such inferior court. Such warrant shall be directed to any proper peace officer and shall authorize him to search for such barbiturate or stimulant drugs, to seize the same, and to make return thereof to any court of competent jurisdiction, to be dealt with according to law.

Such warrant shall be issued only if it is established that there is a reason to suspect that some person has in his possession any barbiturate or stimulant drugs for sale, disposition or other purpose, such sale, disposition or other purpose being unlawful.

A warrant shall issue only on affidavit sworn to before a judge or a clerk or

assistant clerk of a court of record or a justice of the peace, establishing the grounds for issuing the warrant. If such judge, justice of the peace, or clerk or assistant clerk is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the drugs and naming or describing the person or place to be searched. The warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for the property specified. No warrant shall be issued in any case upon an affidavit stating nothing more than "information and belief".

(b) The term "barbiturate drug" means:

- (1) Barbituric acid, the salts and derivatives of barbituric acid, or compounds, preparations or mixtures thereof; and
- (2) Drugs, compounds, preparations or mixtures which have a hypnotic or somnifacient effect on the body of a human or animal, to be found by the State Board of Pharmacy and duly promulgated by rule or regulation; except that the term "barbiturate drug" shall not include any drug the manufacture or delivery of which is regulated by the narcotic drug laws of this State; provided, however, that the term "barbiturate drug" shall not include compounds, mixtures, or preparations containing barbituric acid, salts or derivatives of barbituric acid, when such compounds, mixtures, or preparations contain a sufficient quantity of another drug or drugs, in addition to such acid, salts or derivatives, to cause the resultant product to produce an action other than its hypnotic or somnifacient action.

(c) The term "stimulant drug" means any drug consisting of amphetamine, desoxyephedrine (methamphetamine), mephentermine, pipradol, phenmetrazine, methylphenidate, or any salt, mixture or optical isomer of any of them, which drug, salt, mixture or optical isomer has a stimulating effect on the central nervous system, but shall not include preparations containing any of the aforementioned drugs, salts, mixtures or optical isomers thereof which is compounded, mixed or prepared with another drug so as to cause the resultant product to produce an action other than that of predominantly stimulating the central nervous system. (1955, c. 815; 1961, c. 453.)

Editor's Note. — The 1961 amendment, effective Nov. 1, 1961, rewrote this section and made it applicable to stimulant drugs.

Stated in *State v. Mock*, 259 N. C. 501, 130 S. E. (2d) 863 (1963).

**§ 15-25.2. Search warrants for articles used in or constituting evidence of commission of felony.**—If any credible witness shall prove, under oath, before any justice of the peace, magistrate, judge of any court of record, the clerk or assistant clerk of any court of record that there is reasonable cause to suspect that any person has in his possession, or on his premises, or in his vehicle, or other conveyance, any instrument, article or thing which has been used in the commission of, or which may constitute evidence of the commission of any felony, it shall be lawful for such justice, magistrate, judge of any court of record, clerk or assistant clerk of court of record to issue a warrant, which shall describe the person, place or vehicle to be searched and the things to be seized, to be directed to any proper peace officer authorizing him to search the person, place, vehicle, or other conveyance, for such property, to seize the same, and to make return thereof to any court of competent jurisdiction to be dealt with according to law.

When such search warrant is issued by a judge or a clerk or an assistant clerk of the superior court, by a judge or a clerk or an assistant clerk of the district court, by a judge or a clerk or an assistant clerk of any other court of record inferior to the superior court which has territorial jurisdiction of a full county, or by a justice of the peace or a magistrate, it may be executed anywhere in the



county in which it is issued. When such search warrant is issued by a judge or a clerk or an assistant clerk of a court of record inferior to the superior court, and when such inferior court has, territorial jurisdiction less than a full county, it may be executed only within the territorial jurisdiction of such inferior court.

Such a search warrant shall issue only on affidavit establishing the grounds for issuing the warrant and only if such justice, judge of a court of record, clerk or assistant clerk of a court of record before whom such affidavit is made is satisfied that grounds for the application exist or that there is probable cause to believe that they exist. The warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. No warrant shall be issued in any case upon an affidavit stating nothing more than "information and belief." (1965, c. 377.)

**§ 15-26. Nature and contents of warrant and procedure thereon.**  
 —Such search warrant shall describe the article to be searched for with reasonable certainty, and by whom the complaint is made, and in whose possession the article to be searched for is supposed to be; the person issuing the warrant shall note on the face thereof, over his signature, the date and hour of the day or night when the warrant was issued and the name or names of the witnesses examined; it shall be made returnable as other criminal process is by law required to be, and the proceedings thereupon shall be as required in other cases of criminal complaint. (1868-9, c. 178, subc. 3, s. 39; Code, s. 1172; Rev., s. 3164; C. S., s. 4530; 1961, c. 1069.)

**Editor's Note.**—The 1961 amendment required a search warrant to show on its face the date and hour issued and the name or names of the witnesses examined.

**Application to Search Warrants Obtained under § 18-13.**—The effect of § 15-

27.1 was to make the requirements of this section and § 15-27 applicable to search warrants obtained under § 18-13. *State v. Mock*, 259 N. C. 501, 130 S. E. (2d) 863 (1963).

**§ 15-27. Warrant issued without affidavit and examination of complainant or other person; evidence discovered thereunder incompetent.**

**Editor's Note.**—

For comment on 1951 amendment, see 29 N. C. Law Rev. 396. For note on search of motor vehicles without warrant, see 30 N. C. Law Rev. 421. For comment on this section since the 1951 amendment, see 32 N. C. Law Rev. 114. For note as to search of private dwelling incident to arrest outside, see 34 N. C. Law Rev. 230. For note on the requisites for a valid warrant to search for unlawfully possessed liquor, see 35 N. C. Law Rev. 424.

The purpose of this section and § 15-27.1 was to change the law of evidence in North Carolina, and not the substantive law as to what constitutes legal or illegal search. *State v. Coffey*, 255 N. C. 293, 121 S. E. (2d) 736 (1961); *State v. Stevens*, 264 N.C. 737, 142 S.E.2d 588 (1965).

A search that was legal without a warrant before the enactment of this section is still legal, and evidence so obtained is still competent. *State v. Coffey*, 255 N. C. 293, 121 S. E. (2d) 736 (1961); *State v. Stevens*, 264 N.C. 737, 142 S.E.2d 588 (1965).

**Section Contemplates Situations Where Warrant Is Not Necessary.** — This section

by its express terms contemplates situations in which a search warrant is not necessary to conduct a legal search. Such a situation is presented by the express provisions of § 18-6 where "the officer sees or has absolute personal knowledge" that there is intoxicating liquor in an automobile under investigation. *State v. Ferguson*, 238 N. C. 656, 78 S. E. (2d) 911 (1953), affirming denial of defendants' motion to suppress evidence obtained without a warrant.

**And Does Not Render Incompetent Evidence Obtained under Duly Issued Warrant.**—This section does not make incompetent facts discovered or evidence obtained in the course of a search authorized by a duly issued search warrant. *State v. Smith*, 251 N. C. 328, 111 S. E. (2d) 188 (1959).

**Application to Search Warrants Obtained under § 18-13.**—See note to § 15-26.

**Consent of Owner to Search Dispenses with Necessity of Warrant.**—A search warrant is not required to search the premises of the owner if he consents to the search. It is generally held that the owner or occupant of premises, or the one

in charge thereof, may consent to a search of such premises, and such consent will render competent evidence thus obtained. Consent to the search dispenses with the necessity of a search warrant altogether. *State v. Moore*, 240 N. C. 749, 83 S. E. (2d) 912 (1954).

The owner or occupant of premises, or one in charge thereof, may consent to a search of such premises, and such consent will render competent evidence thus obtained. Consent to the search dispenses with the necessity of a search warrant altogether. *State v. Hamilton*, 264 N.C. 277, 141 S.E.2d 506 (1965).

**Evidence Obtained by Search without Warrant.**—The proviso in this section has no application to pending litigation or to evidence obtained by search prior to April 9, 1951, the effective date of the 1951 amendment, which added the proviso. *State v. Jenkins*, 234 N. C. 112, 66 S. E. 819 (1951).

Under this section, evidence obtained by an illegal search without a search warrant is inadmissible. *State v. Smith*, 242 N. C. 297, 87 S. E. (2d) 593 (1955).

The admission in evidence of intoxicating liquor discovered as a result of an unlawful search of defendant's premises, is prejudicial error. *State v. Mills*, 246 N. C. 237, 98 S. E. (2d) 329 (1957).

**Proof of Issuance of Search Warrant.**—Where a search is made under conditions requiring the issuance of a search warrant, and it is attempted, over objection, to justify the search and seizure by the possession of a valid search warrant in the hands of the searchers, the State must produce the search warrant, or, if it has been lost, the State must prove such fact and then introduce evidence to show its contents and regularity on its face, unless the production of the warrant is waived by the accused. *State v. McMilliam*, 243 N. C. 771, 92 S. E. (2d) 202 (1956).

**The Warrant Need Not Aver, etc.**—

Where the warrant and supporting affidavit are set out in the record and it appears that they comply with the requirements of this section and § 18-13, it is presumed that the issuing officer properly examined the complainant and otherwise observed the requirements of the section. *State v. Rhodes*, 233 N. C. 453, 64 S. E. (2d) 287 (1951).

**Absence of Required Affidavit.**—Where there was no affidavit in the record to support the issuance of a search warrant, and it did not appear that the complainant signed an affidavit under oath, the search warrant was not issued in accordance with

this section, and the evidence discovered by reason thereof was not admissible. This is true notwithstanding the complainant testified he was sworn by the justice of the peace in whose name the warrant was issued, and that he stated to him under oath his information and the location of the premises. *State v. White*, 244 N. C. 73, 92 S. E. (2d) 404 (1956).

**Affidavit Based on Oral Information Given before Taking Oath.**—Where the peace officer duly swears to and signs the complaint-affidavit made out on his information, the fact that the oral information upon which it is based was given prior to the taking of the oath is not an irregularity, but is in accordance with statutory procedure. *State v. Rainey*, 236 N. C. 738, 74 S. E. (2d) 39 (1953).

**A search warrant is no part of the record proper in a prosecution based on evidence obtained in the course of a search made under it, and therefore the absence of a search warrant in the record proper does not show that search was made without a warrant, but to the contrary, it will be presumed that the search was legally made under a proper warrant, and therefore, in such instance, defendants' contention that their conviction was based on evidence rendered incompetent by this section asserted for the first time on appeal, is untenable.** *State v. Gaston*, 236 N. C. 499, 73 S. E. (2d) 311 (1952).

**Liquor Found Near Defendant's Premises but on Land of Another.**—Evidence of the finding of nontax-paid liquor near defendant's premises but actually on the land of another is not rendered incompetent because not discovered under authority of a search warrant, since a warrant is not necessary for its seizure. *State v. Harrison*, 239 N. C. 659, 80 S. E. (2d) 481 (1954).

**Section Not Applicable to Facts of Case.**—See *State v. McLamb*, 235 N. C. 251, 69 S. E. (2d) 537 (1952).

Where an undercover officer knocks on defendant's door, enters upon invitation, and buys whiskey from defendant, his testimony as to what he saw is competent, since, in the absence of fraud or deceit on the part of the officer, his actions do not amount to an illegal entry so as to render his testimony incompetent under this section. *State v. Smith*, 242 N. C. 297, 87 S. E. (2d) 593 (1955).

**Search of Automobile.**—Search of defendant's car by an officer without a warrant did not prevent the admission in evidence of implements of housebreaking and narcotic drugs found in such search, where

defendant consented thereto. *State v. McPeak*, 243 N. C. 243, 90 S. E. (2d) 501 (1955).

Evidence held to support finding that owner consented to search of car. *State v. McPeak*, 243 N. C. 243, 90 S. E. (2d) 501 (1955).

**Same—Right of Passenger to Object.**—A passenger or guest in an automobile has no ground for objection to a search of the car by peace officers. *State v. McPeak*, 243

N. C. 243, 90 S. E. (2d) 501 (1955); *State v. Hamilton*, 264 N.C. 277, 141 S.E.2d 506 (1965).

Applied in *State v. Brady*, 238 N. C. 404, 78 S. E. (2d) 126 (1953).

Quoted in *State v. Giles* 254 N. C. 499, 119 S. E. (2d) 394 (1961).

Cited in *State v. Stallings*, 234 N. C. 265, 66 S. E. (2d) 822 (1951); *State v. Brady*, 238 N. C. 407, 78 S. E. (2d) 129 (1953).

**§ 15-27.1. Article applies to all search warrants; competency of evidence obtained by illegal search.**—The provision of this article shall apply to search warrants issued for any purpose including those issued pursuant to the provisions of G. S. 18-13. No facts discovered or evidence obtained by reason of the issuance of an illegal search warrant or without a legal search warrant in the course of any search, made under conditions requiring a search warrant, shall be competent as evidence in the trial of any action. (1957, c. 496)

**Editor's Note.**—For a discussion of the exclusionary rule, see 39 N. C. Law Rev. 193.

The purpose of this section was to change the law of evidence in North Carolina, and not the substantive law as to what constitutes legal or illegal search. *State v. Coffey*, 255 N. C. 293, 121 S. E. (2d) 736 (1961); *State v. Stevens*, 264 N.C. 737, 142 S.E.2d 588 (1965).

A search that was legal without a warrant before the enactment of this section is still legal, and evidence so obtained still competent. *State v. Coffey*, 255 N. C. 293, 121 S. E. (2d) 736 (1961); *State v. Stevens*, 264 N.C. 737, 142 S.E.2d 588 (1965).

This section makes this article applicable to all search warrants with specific reference to those issued under § 18-13. *State v. Mock*, 259 N. C. 501, 130 S. E. (2d) 863 (1963).

**It Does Not Nullify § 18-13.**—This section did not nullify § 18-13, indeed, it recognizes it as specifically applying to intoxicants. *State v. Mock*, 259 N. C. 501, 130 S. E. (2d) 863 (1963).

**But Makes §§ 15-26 and 15-27 Applicable to Warrants Issued Thereunder.** —

Prior to the enactment of this section search warrants for illegal liquor were governed by § 18-13 and § 15-27 was not applicable. The effect of this section was to make the requirements of §§ 15-26 and 15-27, applicable to search warrants obtained under § 18-13. *State v. Mock*, 259 N. C. 501, 130 S. E. (2d) 863 (1963).

**When Evidence Incompetent.**—To render evidence incompetent under this section, it must have been obtained (1) in the course of search, (2) under conditions requiring a search warrant, and (3) without a legal search warrant. *State v. Coffey*, 255 N. C. 293, 121 S. E. (2d) 736 (1961); *State v. Stevens*, 264 N.C. 737, 142 S.E.2d 588 (1965).

Where there was no evidence that defendant consented to or invited a search of his home and no evidence that the search was incident to a lawful arrest, the search of defendant's home by the three officers without a search warrant was made under conditions requiring a search warrant, and consequently the facts discovered and the evidence obtained were rendered incompetent and improperly admitted in evidence. *State v. Stevens*, 264 N.C. 737, 142 S.E.2d 588 (1965).

## ARTICLE 6.

### *Arrest.*

#### § 15-39. Persons present may arrest for breach of peace.

##### **Editor's Note.**—

For an article on arrest without warrant in misdemeanor cases, see 33 N. C. Law Rev. 17.

In this State the power of arrest without warrant is defined and limited entirely by legislative enactments. And the rule is that

where the right and power of arrest without warrant is regulated by statute, an arrest without warrant except as authorized by statute is illegal. *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

**Article Is Mainly Declaratory of Common Law.**—This article clarifies, in some

particulars modifies, and in other ways extends, the pre-existing rules of the common law governing arrest without warrant, but in the main the article is declaratory of the common law. *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

This section follows in the main the pre-existing principles of the common law *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

**Power of Arrest under This Section Is Referable Entirely to Question of Breach of Peace.**—This section confers no power of arrest without warrant in misdemeanor cases, as such. The power of arrest without warrant is referable entirely to the question of breach of the peace. The test is not whether the offense is a misdemeanor, but, rather, whether an arrest is necessary in order to “suppress and prevent” a breach of the peace. The fact that an offense arrestable under this section as a breach of the peace is also a misdemeanor is purely coincidental. *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

**What Constitutes Breach of Peace.**—As to what constitutes a breach of the peace within the meaning of the rules which authorize an arrest without warrant in such cases, the better reasoned authorities emphasize the essentiality of showing as an element of the offense a disturbance of public order and tranquillity by act or conduct not merely amounting to unlawfulness but tending also to create public tumult and incite others to break the peace. *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

**When Arrest Necessary to “Suppress and Prevent” Breach of Peace.**—An arrest without warrant may be made under the provisions of this section by anyone when it is necessary to “suppress and prevent” a breach of the peace. This means that either a peace officer or a private person may arrest anyone who in his presence is (1) actually committing or (2) threaten-

ing to commit a breach of the peace. To justify an arrest on the ground of necessity in order to “suppress” a breach of the peace, the conduct of the person arrested must amount to an actual breach of the peace in the presence of the person making the arrest. To justify an arrest in order to “prevent” a breach of the peace, ordinarily there must be at least a threat of a breach of the peace, together with some overt act in attempted execution of the threat. *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

**When Breach of Peace Is Threatened.**—A breach of the peace is threatened within the meaning of this section if the offending person’s conduct under the surrounding facts and circumstances is such as reasonably justifies a belief that the perpetration of an offense amounting to a breach of the peace is imminent. *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

**Reasonable Ground for Belief Does Not Justify Arrest under This Section.**—This section contains no provisions, comparable to those in § 15-41 dealing with felony cases, which justify arrest when the facts furnish reasonable ground to believe an offense covered by this section is being committed. Therefore, a person making an arrest under the authority of this section must determine, at his peril, preliminary to proceeding without warrant, whether an offense arrestable under this section is being committed. *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

**Mere Drunkenness Will Not Justify Arrest Without Warrant.**—In applying this section it is manifest that mere drunkenness, unaccompanied by language or conduct which creates, or is reasonably calculated to create, public excitement and disorder amounting to a breach of the peace, will not justify arrest without warrant. *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

### § 15-40. Arrest for felony, without warrant.

**Editor’s Note.** — For an article on arrest without warrant in misdemeanor cases, see 33 N. C. Law Rev. 17.

#### **Right of Private Person to Arrest.**—

This section confers on a private citizen the right of arrest only when a felony is actually committed in his presence. Thus, if it turns out that the supposed offense is not a felony, then the arresting private citizen may not, under the terms of this section, justify taking the suspect into custody. However, if a felony actually has

been committed in his presence, then the private person making the arrest has the protective benefits of this section if he arrest either (1) the guilty person or (2) the person he has reasonable ground to believe is guilty of the offense, although perchance the person arrested may be innocent. *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

When the victim in an assault and robbery charge pointed out the defendant to an officer as being one of his assailants,

the officer not only had the right but the duty to arrest the defendant under this section and § 15-41. *State v. Grant*, 248 N. C. 341, 103 S. E. (2d) 339 (1958).

**§ 15-41. When officer may arrest without warrant.**—A peace officer may without warrant arrest a person:

(a) When the person to be arrested has committed a felony or misdemeanor in the presence of the officer, or when the officer has reasonable ground to believe that the person to be arrested has committed a felony or misdemeanor in his presence;

(b) When the officer has reasonable ground to believe that the person to be arrested has committed a felony and will evade arrest if not immediately taken into custody. (1868-9, c. 178, subc. 1, s. 3; Code, s. 1126; Rev., s. 3178; C. S., s. 4544; 1955, c. 58.)

**Cross References.**—

See note to § 15-40.

**Editor's Note.**—The 1955 amendment rewrote this section.

For an article and note on arrest without warrant in misdemeanor cases, see 33 N. C. Law Rev. 17; 35 N. C. Law Rev. 290.

It is an essential of jurisdiction that a criminal offense shall be sufficiently charged in a warrant or indictment. *State v. Green*, 251 N. C. 40, 110 S. E. (2d) 609 (1959).

But it is not an essential of jurisdiction that a warrant be issued prior to arrest and that the defendant be initially arrested thereunder. *State v. Green*, 251 N. C. 40, 110 S. E. (2d) 609 (1959).

Section authorizes sheriff to arrest anyone committing crime of trespass in his presence. *State v. Brown*, 264 N.C. 191, 141 S.E.2d 311 (1965).

But the authority to call for assistance was withdrawn by the 1955 amendment. *State v. Brown*, 264 N.C. 191, 141 S.E.2d 311 (1965).

The legislature, in striking from this section in 1955 the authority of an officer in a simple misdemeanor to call for assistance in making an arrest, was mindful of the changes which have taken place in law enforcement since the remote time when the peace officer needed authority to assemble a posse comitatus to aid in keeping the peace and in pursuing and arresting felons. *State v. Brown*, 264 N.C. 191, 141 S.E.2d 311 (1965).

**Reasonable Ground for Belief Excuses Officer.**—Under this section the significant features are that the felony or dangerous wound need not necessarily be committed or inflicted in the presence of the officer. Indeed, in order to justify the arrest it is not essential that any such serious offense be shown to have been actually committed. It is only necessary that the officer have reasonable ground to believe such offense has been committed. More-

over, in the instances enumerated an arresting officer is protected by this section against consequences of an erroneous arrest based on mistaken identity of the offender. *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

There is nothing in this section that makes it mandatory or permissible for an officer to arrest a felon without a warrant when the felony was not committed in his presence, unless he has reasonable ground to believe such felony had been committed and that the accused would evade arrest if not immediately taken into custody. *State v. Hucks*, 264 N.C. 160, 141 S.E.2d 299 (1965).

**Burden.**—It was incumbent upon the State to satisfy the jury from the evidence beyond a reasonable doubt that defendant violated § 14-335 in the presence of the officer, or that the officer had reasonable grounds to believe the defendant had done so, in order to establish the authority and duty of the officer to make the arrest without a warrant. *State v. Fenner*, 263 N.C. 694, 140 S.E.2d 349 (1965).

**Reasonableness of Grounds a Jury Question.**—In an action for wrongful death growing out of the mortal wounding of intestate in a scuffle while a police officer was attempting to arrest him, the court should have instructed the jury that the jury and not the officer must be the judge of the reasonableness of the grounds on which the officer acted. *Perry v. Gibson*, 247 N. C. 212, 100 S. E. (2d) 341 (1957).

**Defendant Found at Still Engaged in Manufacture of Whiskey.**—An alcoholic beverage control officer who saw defendant at a still unlawfully engaged in the manufacture of whiskey had a lawful right to arrest defendant there without a warrant. *State v. Taft*, 256 N. C. 441, 124 S. E. (2d) 169 (1962).

Applied in *State v. Clyburn*, 247 N. C. 455, 101 S. E. (2d) 295 (1958); *State v. Avent*, 253 N. C. 580, 118 S. E. (2d) 47

(1961); *State v. Haney*, 263 N.C. 816, 140 S.E.2d 544 (1965); *State v. Hamilton*, 264 N.C. 277, 141 S.E.2d 506 (1965); *State v. Egerton*, 264 N.C. 328, 141 S.E.2d 515 (1965).

Cited in *Daniels v. Crawford*, 99 F. Supp. 208 (1951); *State v. Furmage*, 250 N. C. 616, 109 S. E. (2d) 563 (1959); *Greer v. Skyway Broadcasting Co.*, 256 N. C. 382, 124 S. E. (2d) 98 (1962).

**§ 15-43. House broken open to prevent felony.**

Cited in *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

**§ 15-44. When officer may break and enter houses.**

Cited in *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

**§ 15-45. Persons summoned to assist in arrest.**

This section and § 15-47 do not prescribe mandatory procedures affecting the validity of a trial. *State v. Hargett*, 255 N. C. 412, 121 S. E. (2d) 589 (1961).

Trespass is not within the authorized offenses embraced in this section. *State v. Brown*, 264 N.C. 191, 141 S.E.2d 311 (1965).

Hence, a sheriff, neither by statute nor by common law, could lawfully command the defendant to assist him in arresting for trespass. *State v. Brown*, 264 N.C. 191, 141 S.E.2d 311 (1965).

Cited in *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

**§ 15-46. Procedure on arrest without warrant.**

The object of a preliminary hearing under this section is to effect a release for one who is held in violation of his rights. *State v. Chamberlain*, 263 N.C. 406, 139 S.E.2d 620 (1965).

charged, such failure must be given great weight in a hearing under the Post-Conviction Act (§ 15-217 et seq.). *State v. Graves*, 251 N. C. 550, 112 S. E. (2d) 85 (1960).

Quoted in *Davis v. North Carolina*, 196 F. Supp. 488 (1961), cert. denied 365 U. S. 855, 81 S. Ct. 816, 5 L. Ed. (2d) 819 (1961).

Cited in *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

**Failure to Observe Provisions of Section.**—While there are circumstances under which a failure to observe the provisions of this section and § 15-47 may not affect constitutional rights, yet where an offense as serious as robbery with firearms is

**§ 15-47. Arresting officer to inform offender of charge, allow bail except in capital cases, and permit communication with counsel or friends.**—Upon the arrest, detention, or deprivation of the liberties of any person by an officer in this State, with or without warrant, it shall be the duty of the officer making the arrest to immediately inform the person arrested of the charge against him, and it shall further be the duty of the officer making said arrest, except in capital cases, to have bail fixed in a reasonable sum, and the person so arrested shall be permitted to give bail bond; and it shall be the duty of the officer making the arrest to permit the person so arrested to communicate with counsel and friends immediately, and the right of such persons to communicate with counsel and friends shall not be denied. Provided that in no event shall the prisoner be kept in custody for a longer period than twelve hours without a warrant.

Any officer who shall violate the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court (1937, c. 257, ss. 1, 2; 1955, c. 889.)

**Cross Reference.**—

As to failure to observe provisions of this section, see note to § 15-46.

**Editor's Note.**—The 1955 amendment added the proviso at the end of the first paragraph.

For brief comment on the 1955 amendment, see 33 N. C. Law Rev. 543. For note

on right to counsel in pre-trial situations see 38 N.C.L. Rev. 630 (1960).

This section and § 15-45 do not prescribe mandatory procedures affecting the validity of a trial. *State v. Hargett*, 255 N. C. 412, 121 S. E. (2d) 589 (1961).

The rights of communication go with a man into jail, and reasonable opportunity

to exercise them must be afforded by the restraining authorities. The denial of the opportunity to exercise that right is a denial of the right. *State v. Wheeler*, 249 N. C. 187, 105 S. E. (2d) 615 (1958).

119 S. E. (2d) 876 (1961); *Davis v. North Carolina*, 196 F. Supp. 488 (1961), cert. denied 365 U. S. 855, 81 S. Ct. 816, 5 L. Ed. (2d) 819 (1961).

Cited in *State v. Green*, 251 N. C. 40, 110 S. E. (2d) 609 (1959).

Quoted in *State v. Reel*, 254 N. C. 778,

ARTICLE 7.

*Fugitives from Justice.*

§ 15-48. **Outlawry for felony.**

Editor's Note.—For note on outlawry, another "gothic column" in North Carolina, see 41 N. C. Law Rev. 634.

ARTICLE 8.

*Extradition.*

§ 15-78. **Costs and expenses.**—Subject to the requirements, restrictions and conditions hereinafter set forth in this section, if the crime shall be a felony, the reimbursements for expenses shall be paid out of the State treasury on the certificate of the Governor and warrant of the Auditor, as provided by this section. In all other cases, such expenses or reimbursements shall be paid out of the county treasury of the county wherein the crime is alleged to have been committed according to such regulations as the board of county commissioners may promulgate. In all cases, the expenses, for which repayment or reimbursement may be claimed, shall consist of the reasonable and necessary travel expense and subsistence costs of the extradition agent or fugitive officer, as well as the fugitive, together with such legal fees as were paid to the officials of the State on whose Governor the requisition is made. The person or persons designated to return the fugitive shall not be allowed, paid or reimbursed for any expenses in connection with any requisition or extradition proceeding unless the expenses are itemized, the statement of same be sworn to under oath, and shall not then be paid or reimbursed unless a receipt is obtained showing the amount, the purpose for which said item or sum was expended, the place, date and to whom paid, and said receipt or receipts attached to said sworn statement and filed with the Governor. The Governor shall have the authority, upon investigation, to increase or decrease any item or expenses shown in said sworn statement, or to include items of expenses omitted by mistake or inadvertence. The decision or determination of the Governor as to the correct amount to be paid for such expenses or reimbursements shall be final. When it is deemed necessary for more than one agent, extradition agent, fugitive officer or person, to be designated to return a fugitive from another state to this State, the solicitor or prosecuting officer shall file with his written application to the Governor of this State an affidavit setting forth in detail the grounds or reasons why it is necessary to have more than one extradition agent, fugitive officer or person to be so designated. Among other things, and not by way of limitation, the affidavit shall set forth whether or not the alleged fugitive is a dangerous person, his previous criminal record, if any, and any record of said fugitive on file with the Federal Bureau of Investigation or with the prison authorities of this State. As a further ground or reason for more than one extradition agent or fugitive officer to be designated, it may be shown in said affidavit the number of fugitives to be returned to this State and any other grounds or reasons for which more than one extradition agent or fugitive officer is desired. If the Governor finds or determines from his own investigation and from the information made available to him that more than one extradition agent or fugitive officer is necessary for the return of a

fugitive or fugitives to this State, he may designate more than one extradition agent or fugitive officer for such purpose. All travel for which expenses or reimbursements are paid or allowed under this section shall be by the nearest, direct, convenient route of travel. If the extradition agent or agents or person or persons designated to return a fugitive or fugitives from another state to this State shall elect to travel by automobile, a sum not exceeding seven cents (7c) per mile may be allowed in lieu of all travel expense, and which shall be paid upon a basis of mileage for the complete trip. The Governor may promulgate executive orders, rules and regulations governing travel, forms of statements, receipts or any other matter or objective provided for in this section. The Governor may delegate any or all of the duties, powers and responsibilities conferred upon him by this section to any executive agent or executive clerk on his staff or in his office, and such executive agent or executive clerk, when properly authorized, may perform any or all of the duties, powers and responsibilities conferred upon the Governor. Provided that if the fugitive from justice is an alleged felon, and he be returned without the service of extradition papers by the sheriff or the agent of the sheriff of the county in which the felony was alleged to have been committed, the expense of said return shall be borne by the State of North Carolina under the rules and regulations made and promulgated by the Governor of North Carolina or the executive agent or the executive clerk to whom the said Governor may have delegated his duties under this section. (1937, c. 273, s. 24; 1953, c. 1203; 1955, c. 289.)

**Editor's Note.**—The 1953 amendment rewrote this section, and the 1955 amendment added the proviso at the end of the section.

**§ 15-79. Immunity from service of process in certain civil actions.**

**In General.**—Persons who are in this State as defendants in a criminal prosecution sequent to their arrest in another state and waiver of extradition, are immune to service of process in a civil action arising out of the same facts as the criminal proceeding. *Reverie Lingerie, Inc. v. McCain*, 258 N. C. 353, 128 S. E. (2d) 835 (1963).

**Defendant Who Voluntarily Came into State Is Not Immune.**—A defendant who

was not arrested outside of North Carolina and therefore was not brought into this State by or after waiving extradition, but voluntarily came into North Carolina and posted bond for his appearance at the criminal term was not immune from civil process in an action growing out of the same facts as the criminal proceeding in which he was a defendant. *Reverie Lingerie, Inc. v. McCain*, 258 N. C. 353, 128 S. E. (2d) 835 (1963).

**§ 15-80. Written waiver of extradition proceedings.**— Any person arrested in this State charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in §§ 15-61 and 15-62 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this State or a clerk of the superior court a writing which states that he consents to return to the demanding state: Provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge or clerk of superior court to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in § 15-64.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the Governor of this State and filed therein. The judge or clerk of superior court shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: Provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure



be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this State. (1937, c. 273, s. 25a; 1959, c. 271.)

**Editor's Note.** — The 1959 amendment provides that waiver of extradition by any person may be before a clerk of superior court.

ARTICLE 9.

*Preliminary Examination.*

§ 15-85. **Waiver of examination.**

This section and § 15-87 do not prescribe mandatory procedures affecting the validity of a trial. *State v. Hargett*, 255 N. C. 412, 121 S. E. (2d) 589 (1961).

A preliminary hearing is not an essential prerequisite to the finding of an indictment in this jurisdiction. *State v. Hargett*, 255 N. C. 412, 121 S. E. (2d) 589 (1961).

§ 15-86. **Procedure, when justice has not final jurisdiction.**

Cited in *State v. Broadway*, 256 N. C. 608, 124 S. E. (2d) 568 (1962).

§ 15-87. **Duty of examining magistrate.**

This section and § 15-85 do not prescribe mandatory procedures affecting the validity of a trial. *State v. Hargett*, 255 N. C. 412, 121 S. E. (2d) 589 (1961).

Cited in *State v. Hackney*, 240 N. C. 230, 81 S. E. (2d) 778 (1954).

§ 15-89. **Prisoner examined; advised of rights.**

Distinction between Examination under This Section, etc.—*Sheffield*, 251 N. C. 309, 111 S. E. (2d) 195 (1959).

In accord with original. See *State v.*

§ 15-94. **When prisoner discharged.**

Cited in *State v. Broadway*, 256 N. C. 608, 124 S. E. (2d) 568 (1962).

§ 15-95. **When prisoner held to answer charge.**

Cited in *State v. Broadway*, 256 N. C. 608, 124 S. E. (2d) 568 (1962).

ARTICLE 10.

*Bail.*

§ 15-102. **Officers authorized to take bail, before imprisonment.**—Officers before whom person charged with crime, but who have not been committed to prison by an authorized magistrate, may be brought, have power to fix and take bail as follows:

- (1) Any justice of the Supreme Court, or a judge of a superior court, in all cases.
- (2) Any clerk of the superior court, any justice of the peace, any chief magistrate of any incorporated city or town, or any person authorized to issue warrants of arrest, in all cases of misdemeanor, and in all cases of felony not capital. (1868-9, c. 178, subc. 3, s. 29; 1871-2, c. 37; Code, s. 1160; Rev., s. 3209; C. S., s. 4574; 1951, c. 85; 1963, c. 1099, s. 1.)

**Cross References.**— and regulation of bail bondsmen and runners, see §§ 85A-1 to 85A-34.  
As to undertakings of bail bondsmen

**Editor's Note.—**

Session Laws 1953, c. 550, made this section applicable to Alamance County, and the reference thereto in the recompiled volume should be deleted.

The 1963 amendment inserted the words "fix and" in the opening paragraph and inserted in subdivision (2) the reference to "any person authorized to issue warrants of arrest."

**§ 15-103. Officers authorized to take bail, after imprisonment. —** Any justice of the Supreme Court or any judge of a superior court has power to fix and take bail for persons committed to prison charged with crime in all cases; any justice of the peace, any chief magistrate of any incorporated city or town, or any person authorized to issue warrants of arrest has the same power in all cases where the punishment is not capital. (1868-9, c. 178, subc. 3, s. 30; Code, s. 1161; Rev., s. 3210; C. S., s. 4575; 1963, c. 1099, s. 2.)

**Editor's Note.—**The 1963 amendment inserted the words "fix and take" near the beginning of the section. It also made the

section applicable to "any person authorized to issue warrants of arrest."

**§ 15-107. Sheriff or deputy may take bail.**

No sheriff, deputy sheriff, constable, jailer or assistant jailer or the wife of any sheriff, deputy sheriff, constable, jailer or assistant jailer shall in any case become bail for any prisoner for money or property; nor shall any sheriff, deputy sheriff, constable, jailer or assistant jailer, or their wives become bail as agents for any bonding company or professional bondsmen. Any violation of this paragraph shall constitute a misdemeanor punishable by a fine or by imprisonment in the discretion of the court, or by both such fine and imprisonment; provided that the provisions of this paragraph shall not apply to Caswell, Currituck, Dare, Granville, Greene, Halifax, Hertford, Hyde, Lenoir, Martin, Moore, Nash, Pamlico, Perquimans, Person, Pitt, Rockingham, Stokes, Transylvania and Warren counties. (1797, c. 474, s. 4, P. R.; R. C., c. 35, s. 11; Code, s. 1180; Rev., s. 3208; C. S., s. 4579; 1939, c. 47; 1955, c. 194.)

**Editor's Note.—**

The 1955 amendment inserted "Halifax" in the list of counties in the second para-

graph. As the first paragraph was not changed it is not set out.

**§ 15-107.1. Justice of the peace or spouse, secretary, stenographer or employee not to become bail or agent for bonding company, etc.—**No justice of the peace of this State, or the spouse or secretary, stenographer or employee of any justice of the peace, shall in any case become bail for any prisoner for money or property. No justice of the peace, or the spouse or secretary, stenographer or employee of any justice of the peace, shall become bail or agents for any bonding company or professional bondsman. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, in the discretion of the court. (1957, c. 782; 1963, c. 118.)

**Editor's Note.—**The 1963 amendment inserted the words "or secretary, stenog-

rapher or employee" at two places in the section.

ARTICLE 11.

*Forfeiture of Bail.*

**§ 15-110. In recognizance to keep the peace.**

**Cross References.—**

As to undertakings of bail bondsmen

and regulation of bail bondsmen and runners, see §§ 85A-1 to 85A-34.

**§ 15-113. Notice of judgment nisi before execution.—**No execution shall issue upon a forfeited recognizance, or to collect a fine imposed nisi, until a notice has issued against the person who has forfeited his recognizance or upon whom the fine has been imposed, and his sureties. The clerk shall issue a writ of scire facias directed to the process officer of the court and of the county

of residence of the defendant and of his sureties or bail, under seal if out of his county, with copies of same for each, which writ shall be returnable, the next term of court, commencing thirty (30) days after the service of same, as herein provided. The defendant and the sureties may file answer as in civil actions, prior to the return date and same shall stand for trial at said term. Provided, where the defendant deposits cash in lieu of bond or recognizance, upon his failure to appear for trial in accordance with the requirements of such cash bond then judgment nisi on the cash bond shall be entered and the defendant shall be charged with legal notice thereof without issuance or service of a scire facias or other notice and after thirty days or at the next term, whichever is later, judgment absolute forfeiting and condemning the cash bond shall be entered if the defendant then fails to appear or upon appearance fails to show legal excuse or other satisfactory explanation of his nonappearance at the term when judgment nisi was entered. (1777, c. 115, s. 48, P. R.; R. C., c. 35, s. 43; Code, s. 1208; Rev., s. 3217; C. S., s. 4585; 1953, c. 177; 1957, c. 332.)

**Editor's Note.**—The 1953 amendment added the proviso. For comment on amendment, see 31 N. C. Law Rev. 404. The 1957 amendment inserted the second and third sentences.

**§ 15-116. Judges may remit forfeited recognizances.**

**Petition after Final Judgment.**—

In accord with 1st paragraph in original. See *State v. Dew*, 240 N. C. 595, 83 S. E. (2d) 482 (1954).

Where judgment absolute has been entered against the surety on an appearance bond, the surety is entitled upon the later apprehension and delivery of the defendant to the authorities of that county for trial, to be heard under the provisions of this section upon its motion to modify or vacate the judgment absolute. *State v. Dew*, 240 N. C. 595, 83 S. E. (2d) 482 (1954).

Where the surety's answer to a scire facias amounts to nothing more than a plea for additional time, without allegation of facts disclosing excusable neglect or constituting a legal defense or appealing to the conscience and sense of fair play, the surety is not entitled to a hearing under this section as a matter of right and judgment absolute against the surety is proper. *State v. Dew*, 240 N. C. 595, 83 S. E. (2d) 482 (1954).

**§ 15-122. Right of bail to surrender principal.**

Provided, further, that if the defendant is in legal custody or imprisoned in the State of North Carolina or in any other state or territory of the United States at the time such defendant is bonded to appear in court, then the hearing on the writ of scire facias shall be continued for not less than ninety (90) days in order to give the surety an opportunity to produce the defendant. (1777, c. 115, s. 20, P. R.; 1848, c. 7; R. C., c. 11, s. 5; Code, s. 1230; Rev., s. 3226; C. S., s. 4594; 1955, c. 873.)

**Editor's Note.**—The 1955 amendment added the above proviso at the end of this section. As the rest of the section was not changed it is not set out.

ARTICLE 13.

*Venue.*

**§ 15-134. Improper venue met by plea in abatement; procedure.**

Applied in *State v. Johnson*, 247 N. C. 240, 100 S. E. (2d) 494 (1957).

ARTICLE 14.

*Presentment.*

**§ 15-137. No arrest or trial on presentment.**

**Purpose and Effect of Section.**—The experience of early days proved the practice of trying criminal cases upon the presentments of grand jurors to be wholly impracticable. As a consequence, the General Assembly of 1797 outlawed the prac-

tice by a statute, which has been retained to this day in slightly changed phraseology, and which now appears in this section. Since the adoption of the act of 1797, a presentment is regarded as nothing more than an instruction by the grand jury to the public prosecuting attorney for framing a bill of indictment for submission to them. *State v. Thomas*, 236 N. C. 454, 73 S. E. (2d) 283 (1952).

**Person Charged with Misdemeanor Cannot Be Tried Initially in Superior Court Except upon Indictment.**—Under this section and N. C. Const., Art. 1, § 12, a per-

son charged with the commission of a misdemeanor cannot be tried initially in the superior court except upon an indictment found by a grand jury, unless he waives indictment in accordance with regulations prescribed by the legislature. *State v. Norman*, 237 N. C. 205, 74 S. E. (2d) 602 (1953).

**Trial in the superior court upon the original warrant** is a nullity where there has been no conviction by an inferior court having jurisdiction. *State v. Evans*, 262 N.C. 492, 137 S.E.2d 811 (1964).

## ARTICLE 15.

### *Indictment.*

#### § 15-140. Waiver of indictment in misdemeanor cases.

**Trial in the superior court upon the original warrant** is a nullity where there has been no conviction by an inferior court having jurisdiction. *State v. Evans*, 262 N.C. 492, 137 S.E.2d 811 (1964).

**A plea of guilty waives any defect in a warrant charging a misdemeanor.** *State v. Daughtry*, 236 N. C. 316, 72 S. E. (2d) 658 (1952).

**A plea of nolo contendere waives any irregularity in a warrant for a misde-**

meanor. *State v. Tripp*, 236 N. C. 320, 72 S. E. (2d) 660 (1952).

**Applied in** *State v. Searcy* 251 N. C. 320, 111 S. E. (2d) 190 (1959).

**Quoted in** *State v. Thomas*, 236 N. C. 454, 73 S. E. (2d) 283 (1952).

**Cited in** *State v. Alston*, 236 N. C. 299, 72 S. E. (2d) 686 (1952); *State v. Jernigan*, 255 N. C. 732, 122 S. E. (2d) 711 (1961).

#### § 15-140.1. Waiver of indictment in noncapital felony cases.

**Prerequisites for Waiver.**—Under this section a defendant can waive a bill of indictment in a felony case only when represented by counsel and when both the defendant and his counsel sign a written waiver of indictment. *State v. Hayes*, 261 N.C. 648, 135 S.E.2d 653 (1964).

**"Represented by Counsel."**—The provision that a defendant can waive a bill of indictment in a felony case only when represented by counsel, and when both defendant and his counsel sign a written

waiver of indictment, presupposes counsel selected and employed by the defendant himself or assigned to him by the judge, and certainly does not include counsel assigned by the prosecuting attorney. *State v. Hayes*, 261 N.C. 648, 135 S.E.2d 653 (1964).

**Applied in** *State v. Hardison*, 257 N. C. 661, 127 S. E. (2d) 244 (1962).

**Quoted in** *State v. Thomas*, 236 N. C. 454, 73 S. E. (2d) 283 (1952).

#### § 15-141. Bills returned by foreman except in capital cases.

**Cited in** *State v. Stephenson*, 247 N. C. 232, 100 S. E. (2d) 326 (1957).

#### § 15-143. Bill of particulars.

**When Section Applies.**—This section applies only when further information not required to be set out in the indictment is desired. *State v. Thornton* 251 N. C. 658, 111 S. E. (2d) 901 (1960).

**The function of a bill of particulars** under this section is to provide "further information not required to be set out" in the bill of indictment, but never to supply matter required to be charged as an essential ingredient of the offense. *State v.*

*Gibbs*, 234 N. C. 259, 66 S. E. (2d) 883 (1951).

Unless the exact time and place of the alleged occurrence are essential elements of the offense itself, a defendant may obtain further information in respect thereto by motion for a bill of particulars. *State v. Eason*, 242 N. C. 59, 86 S. E. (2d) 774 (1955).

**State Confined, etc.**—

When a bill of particulars is furnished,

it limits the evidence to the transactions or items therein stated. *State v. Knight*, 261 N.C. 17, 134 S.E.2d 101 (1964).

The "particulars" authorized are not a part of the indictment. *State v. Thornton*, 251 N. C. 658, 111 S. E. (2d) 901 (1960).

**When Denial of Motion for Bill of Particulars Not Prejudicial.**—The defendant was in no way prejudiced by the denial of his motion for a bill of particulars where his statements to the officers as to how, when, and under what circumstances he killed the deceased were in accord with the theory of the trial in the court below. *State v. Scales*, 242 N. C. 400, 87 S. E. (2d) 916 (1955).

The defendant was in effect furnished a bill of particulars where the warrant or indictment described the liquor as "non-tax-paid liquor" since the descriptive words identified the liquor. *State v. Tillery*, 243 N. C. 706, 92 S. E. (2d) 64 (1956).

**What Bill Will Not Supply.**—

In accord with 1st paragraph in original. See *State v. Thornton*, 251 N. C. 658, 111 S. E. (2d) 901 (1960); *State v. Banks*, 263 N.C. 784, 140 S.E.2d 318 (1965).

In accord with 2nd paragraph in origi-

**§ 15-144. Essentials of bill for homicide.**

**Variance between Allegata and Probata.**—

In accord with original. See *State v. Grayson*, 239 N. C. 453, 80 S. E. (2d) 387 (1954); *State v. Scales*, 242 N. C. 400, 87 S. E. (2d) 916 (1955).

An indictment for homicide in the language of this section is sufficient and proof that the murder was committed in the perpetration of a felony constitutes no variance. *State v. Crawford*, 260 N.C. 548, 133 S.E.2d 232 (1963).

**State May Show Homicide in Perpetration of Rape.**—Under an indictment for murder in the first degree in the usual form under this section, the State is entitled to introduce evidence that defendant committed the homicide in the perpetration of, or attempt to perpetrate rape, it being incumbent upon defendant if he desires more definite information to request

**§ 15-145. Form of bill for perjury.**

**In General.**—

The effect of this section is not to change in any respect the constituent elements of perjury nor the nature or mode of proof. It only relieves the State from charging in the indictment the details, or rather the definition of the offense, and makes it sufficient to allege that the defendant unlawfully committed perjury.

See *State v. Cox*, 244 N. C. 57, 92 S. E. (2d) 413 (1956).

A defect in a warrant is not cured by a bill of particulars. *State v. Banks*, 263 N.C. 784, 140 S.E.2d 318 (1965).

A fatal defect in an indictment is not cured by this section, which enables the defendant to call for a bill of particulars. The "particulars" authorized are not a part of the indictment. A bill of particulars will not supply any matter which the indictment must contain. *State v. Greer*, 238 N. C. 325, 77 S. E. (2d) 917 (1953).

**Granting Order Is within Court's Discretion.**—

In accord with 1st paragraph in original. See *State v. Scales*, 242 N. C. 400, 87 S. E. (2d) 916 (1955).

A request for a bill of particulars is addressed to the discretion of the court. *State v. Thornton*, 251 N. C. 658, 111 S. E. (2d) 901 (1960); *State v. Banks*, 263 N.C. 784, 140 S.E.2d 318 (1965).

**Motion to Quash Not Proper Remedy.**—

In accord with original. See *State v. Knight*, 261 N.C. 17, 134 S.E.2d 101 (1964).

Cited in *State v. Grayson*, 239 N. C. 453, 80 S. E. (2d) 387 (1954).

a bill of particulars. *State v. Grayson*, 239 N. C. 453, 80 S. E. (2d) 387 (1954); *State v. Scales*, 242 N. C. 400, 87 S. E. (2d) 916 (1955).

Applied in *State v. Horner*, 248 N. C. 342, 103 S. E. (2d) 694 (1958); *State v. Bailey*, 254 N. C. 380, 119 S. E. (2d) 165 (1961); *State v. Johnson*, 256 N. C. 449, 124 S. E. (2d) 126 (1962); *State v. Arnold*, 258 N. C. 563, 129 S. E. (2d) 229 (1963); *State v. McGirt*, 263 N.C. 527, 139 S.E.2d 640 (1965).

Cited in *State v. Roman*, 235 N. C. 627, 70 S. E. (2d) 857 (1952); *State v. Gay*, 251 N. C. 78, 110 S. E. (2d) 458 (1959); *State v. Jones*, 254 N. C. 450, 119 S. E. (2d) 213 (1961); *State v. Foust*, 258 N. C. 453, 128 S. E. (2d) 889 (1963); *State v. Shaw*, 263 N.C. 99, 138 S.E.2d 772 (1964); *State v. Todd*, 264 N.C. 524, 142 S.E.2d 154 (1965).

charging the name of the action and of the court in which committed, setting out the matter alleged to have been falsely sworn and averring further that the defendant knew such to be false, or that he was ignorant whether or not it was true. *State v. Lucas*, 244 N. C. 53, 92 S. E. (2d) 401 (1956).

**Section Read with § 15-146.**—Since the

commission of perjury by another is the basic element in the crime of subornation of perjury, it is appropriate to read this section and § 15-146 together. *State v. Lucas*, 244 N. C. 53, 92 S. E. (2d) 401

(1956); *State v. Lucas*, 247 N. C. 208, 100 S. E. (2d) 366 (1957).

Cited in *State v. Watkins*, 256 N. C. 606, 124 S. E. (2d) 570 (1962).

**§ 15-146. Bill for subornation of perjury.**

**Form Required to Be Followed.**—Since the commission of the crime of perjury is the basic element in the crime of subornation of perjury, it is appropriate to read this section and § 15-145 in reference to each other. And if it be essential to charge the offense of perjury in conformity to the form of indictment prescribed in § 15-145, it would seem equally clear that in an indictment charging subornation of perjury the crime of perjury constituting the basis therefor is required to be set forth in conformity to the form of indictment so prescribed. *State v. Lucas*, 244 N. C. 53, 92 S. E. (2d) 401 (1956); *State v. Lucas*, 247 N. C. 208, 100 S. E. (2d) 366 (1957).

of perjury should charge that the defendant did unlawfully, willfully, and feloniously procure another to willfully and corruptly commit perjury. *State v. Watkins*, 256 N. C. 606, 124 S. E. (2d) 570 (1962).

An indictment under this section should designate the court and the nature of the case wherein the alleged perjury occurred, and set out either the false statement or statements defendant is alleged to have procured another to make, or that the defendant knew said statement or statements to be false, or that he was ignorant as to whether or not such statement or statements were true. *State v. Watkins*, 256 N. C. 606, 124 S. E. (2d) 570 (1962).

**Allegations Required.**—This section requires that an indictment for subornation

**§ 15-147. Former conviction alleged in bill for second offense.**

**Necessity for Alleging That Offense Charged Is Second or Subsequent Offense.** — Where a statute prescribes a higher penalty in case of repeated convictions for similar offenses, an indictment for a subsequent offense must allege facts showing that the offense charged is a second or subsequent crime within the contemplation of the statute in order to subject the accused to the higher penalty. *State v. Miller*, 237 N. C. 427, 75 S. E. (2d) 242 (1953); *State v. Stone*, 245 N. C. 42, 95 S. E. (2d) 77 (1956).

In addition, time and place of conviction of prior offense must be alleged. *State v. Lawrence*, 264 N.C. 220, 141 S.E.2d 264 (1965).

**Admission of Defendant May Not Be Assumed.**—The admission of the authenticity of the record of an inferior court introduced by the solicitor is not an admission by the defendant that he had been theretofore convicted of a similar offense, even though the record shows a conviction of a similar offense, there being no admission by defendant that he was the person referred to in the record, and an instruction assuming that defendant had made such admission must be held for error. *State v. Powell*, 254 N. C. 231, 118 S. E. (2d) 617 (1961).

Applied in *State v. Painter*, 261 N.C. 332, 134 S.E.2d 638 (1964); *State v. Morgan*, 263 N.C. 400, 139 S.E.2d 708 (1965).

Cited in *State v. Cole*, 241 N. C. 576, 86 S. E. (2d) 203 (1955).

A felony conviction for a second or subsequent offense is not permissible, and punishment therefor may not be imposed, unless the indictment alleges facts showing that the offense charged is a second offense. *State v. Lawrence*, 264 N.C. 220, 141 S.E.2d 264 (1965).

The mere words "second offense" are not sufficient allegation of facts to charge the felony. *State v. Lawrence*, 264 N.C. 220, 141 S.E.2d 264 (1965).

**§ 15-151. Intent to defraud; larceny and receiving.**

This section modifies the common law. It is not now necessary to name the injured party where prosecution is based on forgery or other fraud. It is, however, nec-

essary to allege and prove the evil intent when fraud is the foundation for the prosecution. *State v. Bissette*, 250 N. C. 514, 108 S. E. (2d) 858 (1959).

**§ 15-152. Separate counts; consolidation.**

Editor's Note.—

For note as to general verdict rendered

on indictment charging mutually exclusive crimes, see 36 N. C. Law Rev. 84.

**In General.**—The court is expressly authorized by statute in this State to order the consolidation for trial of two or more indictments in which the defendant or defendants are charged with crimes of the same class, which are so connected in time or place that evidence at the trial of one of the indictments will be competent and admissible at the trial of the others. *State v. White*, 256 N. C. 244, 123 S. E. (2d) 483 (1962); *State v. Hamilton*, 264 N.C. 277, 141 S.E.2d 506 (1965).

**Consolidation of Separate Indictments.**—Where separate indictments against the same defendant are consolidated, the counts in the separate bills will be treated as separate counts in one bill. *State v. White*, 256 N. C. 244, 123 S. E. (2d) 483 (1962).

**Time for Making Order of Consolidation.**—It is provided by this section that where there are several charges against any person for the same act or for two or more transactions connected together, or for two or more transactions of the same class of offenses, which may be properly joined, the court will order them to be consolidated. This means, however, that the order of consolidation will be made in such cases when seasonably brought to the court's attention, and not at a time when the validity of the whole trial might seriously be threatened by the consolidation. *State v. Dunston*, 256 N. C. 203, 123 S. E. (2d) 480 (1962).

Where the record justifies the conclusion that after the jury had been impaneled and prosecution begun upon one bill of indictment other bills of indictment were consolidated for trial therewith, a new trial will be awarded even though the indictments might have been properly consolidated initially, since the defendant must be afforded opportunity to plead to the counts consolidated and to pass upon the impartiality of the jury upon such counts. *State v. Dunston*, 256 N. C. 203, 123 S. E. (2d) 480 (1962).

**Exercise of Discretion by Court.**—Where a defendant is indicted in separate bills "for two or more transactions of the same class of crimes or offenses" the court may in its discretion consolidate the indictments for trial. In exercising discretion the presiding judge should consider whether the offenses alleged are so separate in time or place and so distinct in circumstances as to render a consolidation unjust and prejudicial to defendant. To save the time of the court is not

taken alone, sufficient predicate for consolidation. *State v. White*, 256 N. C. 244, 123 S. E. (2d) 483 (1962).

**General Verdict Covers Several Counts.**—

Where there are several counts in a bill, and a general verdict of guilty is returned, if the verdict on any count is free from valid objection and has evidence tending to support it, the conviction and sentence for that offense will be upheld. *State v. Austin*, 241 N. C. 548, 85 S. E. (2d) 924 (1955).

**Entering Judgment on Each Offense upon General Verdict of Guilty.**—

In accord with 2nd paragraph in original. See *State v. Austin*, 241 N. C. 548, 85 S. E. (2d) 924 (1955).

Where cases are consolidated for trial and there is a conviction or plea of guilty on several counts, the court may enter a judgment on each count and have the judgments run concurrently or consecutively as it may direct. But the court is not authorized by law to enter a judgment in gross in excess of the greatest statutory penalty applicable to any of the counts upon which there has been a conviction or plea of guilty. *State v. Austin*, 241 N. C. 548, 85 S. E. (2d) 924 (1955).

**Larceny and Receiving Stolen Goods.**—See annotation to § 14-71.

**Housebreaking and Larceny.**—

In accord with original. See *State v. Spencer*, 239 N. C. 604, 80 S. E. (2d) 670 (1954).

**Rape and Armed Robbery.**—An indictment charging defendants with rape and an indictment charging defendants with armed robbery may be consolidated for trial when it appears that defendants stopped the car in which husband and wife were riding, forced them into the woods where each raped the wife while the other held a pistol on the husband, and that one of them committed robbery from the person of the husband while he was being held at the point of the pistol, since the crimes are so connected in time and place that the evidence on the trial of the one is competent and admissible on the trial of the other. *State v. Morrow*, 262 N.C. 592, 138 S.E.2d 245 (1964).

**Unlawful Possession of Liquor and Reckless Driving and Speeding.**—Where the evidence tended to show that defendant, the discovery of liquor on his premises being imminent, sped away in his car, leading the officers a chase at an illegal speed, the court properly consolidated for trial a bill of indictment charging unlawful possession of nontaxpaid liquor and

unlawful possession of such liquor for the purpose of sale with an indictment charging reckless driving and speeding. *State v. Brown*, 250 N. C. 209, 108 S. E. (2d) 233 (1959).

**Indictment Held Not to Violate Rule against Duplicity.**—See *State v. Gibson*, 233 N. C. 691, 65 S. E. (2d) 508 (1951).

**Consolidation of Indictments Charging Defendants with Murder of Same Person on Same Date.**—Indictment was returned against one defendant charging him with murder in the first degree of a named person and another indictment was returned against two other defendants charging them with murder in the first degree of the same person and on the same date. Since the State was relying upon the same set of facts at the same place and time as against each of the defendants, the trial court had authority to consolidate the indictments for trial. *State v. Spencer*, 239 N. C. 604, 80 S. E. (2d) 670 (1954).

**Indictments Relating to Receiving of**

## § 15-153. Bill or warrant not quashed for informality.

### I. NATURE AND PURPOSE.

**Editor's Note.** — For note on the sufficiency of indictments in statutory language, see 35 N. C. Law Rev. 118.

**Approved Forms Should Be Followed.**—

In accord with original. See *State v. Hammonds*, 241 N. C. 226, 85 S. E. (2d) 133 (1954).

Applied in *State v. Teeter*, 264 N.C. 162, 141 S.E.2d 253 (1965).

### II. GENERAL EFFECT.

**Liberal Construction.**—

This section has received a very liberal construction. *State v. Greer*, 238 N. C. 325, 77 S. E. (2d) 917 (1953).

This section does not dispense with requirement that essential elements of offense must be charged. *State v. Gibbs*, 234 N. C. 259, 66 S. E. (2d) 883 (1951); *State v. Nugent*, 243 N. C. 100, 89 S. E. (2d) 781 (1955); *State v. Sossamon*, 259 N. C. 374, 130 S. E. (2d) 638 (1963).

**Plain, Intelligible and Explicit Charge Sufficient.**—

All that is required in a warrant or bill of indictment, since the adoption of this section, is that it be sufficient in form to express the charge against the defendant in a plain, intelligible, and explicit manner, and to contain sufficient matter to enable the court to proceed to judgment and thus bar another prosecution for the same offense. *State v. Hammonds*, 241 N. C. 226,

**Stolen Goods Separately by Defendants at Different Times and Places.**—Where two persons are charged in separate bills of indictment with receiving stolen goods knowing them to have been stolen, and there is no evidence tending to show there was a conspiracy between them, or between them and other parties, but the indictments relate to the receiving of goods separately by each defendant at different times and places, the consolidation of indictments for trial over objection of appealing defendant is prejudicial error. *State v. Dyer*, 239 N. C. 713, 80 S. E. (2d) 769 (1954).

Applied in *State v. Meshaw*, 246 N. C. 205, 98 S. E. (2d) 13 (1957); *State v. Grundler*, 251 N. C. 177, 111 S. E. (2d) 1 (1959); *State v. Cruse*, 253 N. C. 456, 117 S. E. (2d) 49 (1960); *State v. Egerton*, 264 N.C. 328, 141 S.E.2d 515 (1965).

Cited in *State v. Brewer*, 258 N. C. 533, 129 S. E. (2d) 262 (1963).

85 S. E. (2d) 133 (1954); *State v. Anderson*, 259 N. C. 499, 130 S. E. (2d) 857 (1963).

An indictment following substantially the language of the statute is sufficient only when it thereby charges the essential elements of the offense in a plain, intelligible and explicit manner, and if the statutory words fail to do this, they must be supplemented in the indictment by other allegations which explicitly and accurately set forth every essential element of the offense with such exactitude as to leave no doubt in the minds of the accused and the court as to the specific offense intended to be charged. *State v. Eason*, 242 N. C. 59, 86 S. E. (2d) 774 (1955); *State v. Jordan*, 247 N. C. 253, 100 S. E. (2d) 497 (1957); *State v. Sossamon*, 259 N. C. 374, 130 S. E. (2d) 638 (1963).

A bill of indictment that charges "in plain, intelligible and explicit manner," under this section, the criminal offense the accused is "put to answer," affords the protection guaranteed by N. C. Const., art. I, §§ 11, 12. *State v. Helms*, 247 N. C. 740, 102 S. E. (2d) 241 (1958).

A warrant sufficient to inform a person of the offense with which he is charged and adequate to protect him against further prosecution for that offense is sufficient. *State v. Daniel*, 255 N. C. 717, 122 S. E. (2d) 704 (1961).



Merely charging in general terms a breach of the statute and referring to it in the indictment is not sufficient. *State v. Sossamon*, 259 N. C. 374, 130 S. E. (2d) 638 (1963).

**Same—Describing Property.—**

The Supreme Court on its own motion directed an arrest in judgment where indictments for larceny and receiving stolen property merely used the word "meat" in describing property taken, since the description was fatally defective. *State v. Nugent*, 243 N. C. 100, 89 S. E. (2d) 781 (1955).

**Following Words of Statute.—**

If a warrant avers facts which constitute every element of an offense, it is not necessary that it be couched in the language of the statute. *State v. Anderson*, 259 N. C. 499, 130 S. E. (2d) 857 (1963).

An indictment for an offense created by statute must be framed upon the statute, and this fact must distinctly appear upon the face of the indictment itself; and in order that it shall so appear, the bill must either charge the offense in the language of the act, or specifically set forth the facts constituting the same. *State v. Gibbs*, 234 N. C. 259, 66 S. E. (2d) 883 (1951).

**Offense Not Charged in Alternative.—**

An indictment charging that defendant did unlawfully and wilfully build or install a septic tank, without procuring a permit and having the tank inspected as required by law, should not be quashed on the ground that the offense charged is alleged in the alternative, since the words "build" and "install" in the sense in which they were used in the ordinance, the violation of which is alleged in the indictment, are synonymous. *State v. Jones*, 242 N. C. 563, 89 S. E. (2d) 129 (1955).

**Motion in Arrest of Judgment.—**

A judgment may be arrested only for some error or defect appearing on the face of the record. *State v. Eason*, 242 N. C. 59, 86 S. E. (2d) 774 (1955).

A motion in arrest of judgment should have been granted where indictment for resisting a public officer failed to identify the public officer and did not point out even in a general way the manner in which the defendant resisted. *State v. Eason*, 242 N. C. 59, 86 S. E. (2d) 774 (1955).

A motion in arrest of judgment was properly denied where the indictment charged substantially in the language of the statute that the defendant drove a motor vehicle without lights during the pe-

riod from a half hour after sunset to a half hour before sunrise, and further charged the essential elements of the offense in a plain, intelligible, and explicit manner. *State v. Eason*, 242 N. C. 59, 86 S. E. (2d) 774 (1955).

Where the defendant thinks an indictment fails to impart information sufficiently specific as to the nature of the charge he may, before trial, move the court to order that a bill of particulars be filed, and the court will not arrest the judgment after verdict where he attempts to reserve his fire until he takes first the chance of acquittal. *State v. Tessnear*, 254 N. C. 211, 118 S. E. (2d) 393 (1961).

**Indictment Not Quashed for Mere Informality or Minor Defects.—** In light of the provisions of this section, it is the practice of the Supreme Court not to sustain motions to quash bills of indictment for mere informality or minor defects which do not affect the merits of the case. *State v. Brady*, 273 N. C. 675, 75 S. E. (2d) 791 (1953).

Applied in *State v. Avery*, 236 N. C. 276, 72 S. E. (2d) 670 (1952); *State v. Smith*, 240 N. C. 99, 81 S. E. (2d) 263 (1954); *State v. Cruse*, 253 N. C. 456, 117 S. E. (2d) 49 (1960).

Cited in *State v. Felton*, 239 N. C. 575, 80 S. E. (2d) 625 (1954); *State v. Bisette*, 250 N. C. 514, 108 S. E. (2d) 858 (1959); *State v. Brewer*, 258 N. C. 533, 129 S. E. (2d) 262 (1963).

### III. DEFECTS CURED.

#### B. Omissions and Mistakes.

**Omission of Defendant's Name from Affidavit.—** Where defendant's name appears in the warrant which refers to the affidavit, forming a part thereof, the omission of defendant's name from the affidavit is not a fatal defect. However, an affidavit form which fails to name the person charged is disapproved. *State v. St. Clair*, 246 N. C. 183, 97 S. E. (2d) 840 (1957).

**Reference to a specific statute upon which the charge in a warrant is laid is not necessary to its validity.** *State v. Anderson*, 259 N. C. 499, 130 S. E. (2d) 857 (1963).

**Or to Statute That Is Not Pertinent.—** Where a warrant charges a criminal offense but refers to a statute that is not pertinent, such reference does not invalidate the warrant. *State v. Anderson*, 259 N. C. 499, 130 S. E. (2d) 857 (1963).

### § 15-155. Defects which do not vitiate.

Nothing in § 15-153 or in this section dispenses with the requirement that the essential elements of the offense must be charged. *State v. Sossamon*, 259 N. C. 374, 130 S. E. (2d) 638 (1963).

The words "with force and arms" constitute a formal phrase traditionally included in bills of indictment, but have no significance as an element of the specific crime charged in the bill of indictment. *State v. Acrey*, 262 N.C. 90, 136 S.E.2d 201 (1964).

#### When Time Need Not Be Charged.—

When time is not of the essence of the offense, leaving out the date does not make the bill of indictment defective, and the crime of receiving stolen goods is not one of the offenses in which time is of the essence. *State v. Tessnear*, 254 N. C. 211, 118 S. E. (2d) 393 (1961).

The time named in a bill of indictment is not usually an essential ingredient of the crime charged, and the State may prove that it was in fact committed on some other date. *State v. Whittemore*,

255 N. C. 583, 122 S. E. (2d) 396 (1961); *State v. Wilson*, 264 N.C. 373, 141 S.E.2d 801 (1965).

But this salutary rule, preventing a defendant who does not rely on time as a defense from using a discrepancy between the time named in the bill and the time shown by the evidence for the State, cannot be used to ensnare a defendant and thereby deprive him of an opportunity to adequately present his defense. *State v. Whittemore*, 255 N. C. 583, 122 S. E. (2d) 396 (1961); *State v. Wilson*, 264 N.C. 373, 141 S.E.2d 801 (1965).

Indictment alleging violation of § 14-54 "on or about the . . . day of June, A. D. 1956" was not fatally defective. Time not being of the essence of the offense charged, it was not necessary that the exact date be specified. *State v. Andrews*, 246 N. C. 561, 99 S. E. (2d) 745 (1957).

Cited in *State v. Hall*, 251 N. C. 211, 110 S. E. (2d) 868 (1959); *State v. Whitley*, 264 N.C. 742, 142 S.E.2d 600 (1965).

## ARTICLE 15A.

### *Investigation of Offenses Involving Abandonment and Nonsupport of Children.*

§ 15-155.1. Reports to solicitors of aid to dependent children and illegitimate births.—The State Board of Public Welfare, by and through the Director of Public Assistance, shall promptly after June 19, 1959, make a report to each solicitor of superior court, setting out the names and addresses of all mothers who reside in his solicitorial district and are recipients of aid to dependent children under the provisions of part 2, article 3, chapter 108 of the General Statutes. Such report shall in some manner show the identity of the unwed mothers and shall set forth the number of children born to each said mother. Such a report shall also be made monthly thereafter setting out the names and addresses of all such mothers who reside in the district and who may have become recipients of aid to dependent children since the date of the last report. (1959, c. 1210, s. 1.)

**Editor's Note.**—Section 5 of the act inserting this article provides that its provisions shall not apply to the counties of Gaston and Mecklenburg.

For provision prohibiting action under

this article if such action will result in termination of payments of federal funds to North Carolina for public assistance, see § 108-76.2.

§ 15-155.2. Solicitor to take action on report of aid to dependent child or illegitimate birth.—(a) Upon receipt of such reports as are provided for in G. S. 15-155.1, the solicitor of superior court may make an investigation to determine whether the mother of an illegitimate child or who is a recipient of aid to a dependent child or children, has abandoned, is wilfully neglecting or is refusing to support and maintain the child within the meaning of G. S. 14-326 or G. S. 49-2 or is diverting any part of the funds received as aid to a dependent child to any purpose other than for the support and maintenance of such dependent child in violation of G. S. 108-76.1. In making this investigation the solicitor is authorized to call upon:

- (1) Any county board of public welfare or the State Board of Public Welfare for personal, clerical or investigative assistance and for access to any records kept by either such board and relating to the matter under investigation and such boards are hereby directed to assist in all investigations hereunder and to furnish all records relating thereto when so requested by the solicitor;
- (2) The board of county commissioners of any county within his district for legal or clerical assistance in making any investigation or investigations in such county and such boards are hereby authorized to furnish such assistance in their discretion; and
- (3) The solicitor of any inferior court in his district for personal assistance in making any investigation or investigations in the county in which the court is located and any solicitor so called upon is hereby authorized to furnish such assistance by and with the consent of the board of county commissioners of the county in which the court is located, which board shall provide and fix his compensation for assistance furnished.

(b) If following the investigation the solicitor has reasonable grounds to believe that a violation of G. S. 49-2, 14-326, 108-76.1 or any other criminal offense is being or has been committed, he shall send to the grand jury of the county in which he believes the offense is being or has been committed a bill of indictment charging the commission of the offense. Sole and exclusive jurisdiction of offenses discovered as a result of investigations under this section shall be vested in the superior court notwithstanding any other provisions of law, whether general, special or local. Provided nothing in this article shall be construed to take from the inferior courts any authority or responsibility now vested in them by existing law or to compel the solicitor to again prosecute a crime that has been disposed of in the inferior courts.

(c) If, however, as a result of the investigation provided for in subsection (a) of this section the solicitor has reason to believe that the mother of the illegitimate child or who is recipient of aid to a dependent child, is a mental defective or suffers from a mental disease, mental disorder or mental illness within the meaning of G. S. 122-35.1, he shall make the affidavit provided for in G. S. 122-42 looking to the commitment of such person to the State hospital pursuant to article 3, chapter 122 of the General Statutes. (1959, c. 1210, s. 1.)

**§ 15-155.3. Disclosure of information by solicitor or agent.** — No such solicitor, assistant solicitor, or any attorney at law especially appointed to assist said solicitor, or any agent or employee of such solicitor's office shall disclose any information, record, report, case history or any memorandum or document or any information contained therein, which may relate to or be connected with the mother or father of any illegitimate child, or any illegitimate child, unless in the opinion of such solicitor it is necessary or is required in the prosecution and performance of such solicitor's duties as set forth in the provisions of this article. (1959, c. 1210, s. 4.)

## ARTICLE 16.

### *Trial before Justice.*

**§ 15-161. Justice to make return of cases to superior court.**—It is the duty of each justice of the peace on or before the 25th day of each month to furnish the clerk of the superior court with a list of the names and offenses of all parties tried and finally disposed of by such justice of the peace, together with the papers in each case, in all criminal actions. No indictment shall be found against any party whose case has been finally disposed of by any justice of the peace: Provided, that this section shall not be deemed to extend or enlarge or

otherwise affect the jurisdiction of the justice of the peace, except as provided by law.

The failure of any justice of the peace to file a report without just cause shown shall constitute a misdemeanor and shall be punishable in the discretion of the court. (1869-70, c. 110; Code, s. 906; Rev., s. 3261; C. S., s. 4631; 1955, c. 869.)

**Editor's Note.**—The 1955 amendment, effective July 1, 1955, rewrote this section and added the second paragraph.

## ARTICLE 17.

### *Trial in Superior Court.*

§ 15-162.1. **Plea of guilty of first degree murder, first degree burglary, arson or rape.**—1. Any person, when charged in a bill of indictment with the felony of murder in the first degree, or burglary in the first degree, or arson, or rape, when represented by counsel, whether employed by the defendant or appointed by the court under G. S. 15-4 and 15-5, may, after arraignment, tender in writing, signed by such person and his counsel, a plea of guilty of such crime; and the State, with the approval of the court, may accept such plea. Upon rejection of such plea, the trial shall be upon the defendant's plea of not guilty, and such tender shall have no legal significance whatever.

2. In the event such plea is accepted, the tender and acceptance thereof shall have the effect of a jury verdict of guilty of the crime charged with recommendation by the jury in open court that the punishment shall be imprisonment for life in the State's prison: and thereupon, the court shall pronounce judgment that the defendant be imprisoned for life in the State's prison.

3. Unless and until the State accepts such plea, no reference shall be made in open court at the time of arraignment or at any other time to the tender or proposed tender of such plea; and the fact of such tender shall not be admissible as evidence either for or against the defendant in the trial or at any other time and place. The defendant shall have the right to withdraw such plea, without prejudice of any kind, until such time as it is accepted by the State. (1953, c. 616.)

**Editor's Note.**—For brief comment on this section, see 31 N. C. Law Rev. 405.

Applied in *State v. Morrow*, 264 N.C. 77, 140 S.E.2d 767 (1965); *Edgerton v. North Carolina*, 239 F. Supp. 663 (E.D.N.C. 1965).

Cited in *State v. Manning*, 251 N. C. 1, 110 S. E. (2d) 474 (1959); *State v. Morrow*, 262 N.C. 592, 138 S.E.2d 245 (1964).

### § 15-163. Peremptory challenges of jurors by defendant.

**When Challenge Should Be Made.**—A person charged with crime may, when called upon to plead to the bill of indictment, challenge the array; or he may, after his plea, challenge individual jurors for cause or peremptorily. *State v. Rorie*, 258 N. C. 162, 128 S. E. (2d) 229 (1962).

A defendant cannot wait until the jury has returned a verdict of guilty to challenge the competency of the jury to determine the question. *State v. Rorie*, 258 N. C. 162, 128 S. E. (2d) 229 (1962).

Cited in *State v. Corl*, 250 N. C. 258, 103 S. E. (2d) 615 (1959).

### § 15-164. Peremptory challenges by the State.

In a prosecution of two defendants jointly for offenses less than capital, the State is entitled to challenge peremptorily

four jurors for each defendant. *State v. Knight*, 261 N.C. 17, 134 S.E.2d 101 (1964).

§ 15-167. **Extension of term of court by trial judge.** — Whenever a trial for a felony is in progress on the last Friday of any term of court and it appears to the trial judge that it is unlikely that such trial can be completed before five P. M. on such Friday, the trial judge may extend the term as long as in his opinion it shall be necessary for the purposes of the case, but he may recess court

on Friday or Saturday of such week to such time on the succeeding Sunday or Monday as, in his discretion, he deems wise. The trial judge, in his discretion, may exercise the same power in the trial of any other cause under the same circumstances, except civil actions begun after Thursday of the last week. The length of time such court shall remain in session each day shall be in the discretion of the trial judge. Whenever a trial judge continues a term pursuant to this section, he shall cause an order to such effect to be entered in the minutes, which order may be entered at such time as the judge directs, either before or after he has extended the term. (1830, c. 22; R. C., c. 31, s. 16; C. C. P., s. 397; Code, s. 1229; 1893, c. 226; Rev., s. 3266; C. S., s. 4637; 1961, c. 181.)

**Editor's Note.** — The 1961 amendment rewrote this section.

### § 15-169. Conviction of assault, when included in charge.

#### When Section Applicable.—

In accord with original. See *State v. Jones*, 249 N. C. 134, 105 S. E. (2d) 513 (1958).

**What Indictment Includes—Rape.**—An indictment for rape, as this section declares, includes an assault against the person; and where there is evidence sufficient to warrant such finding, the jury may acquit of the felony of rape and return a verdict of guilty of a lesser criminal assault. *State v. Jones*, 249 N. C. 134, 105 S. E. (2d) 513 (1958).

An assault with intent to commit rape is a lesser degree of the crime of rape. Therefore, a conviction or acquittal of the former bars a subsequent prosecution of the latter based on the same act or transaction. *State v. Birkhead*, 256 N. C. 494, 124 S. E. (2d) 838 (1962).

#### Same—Murder.—

Notwithstanding the provisions of this section, when it is sought to fall back on the lesser offense of assault and battery or assault with a deadly weapon in case the greater offense of murder or manslaughter is not made out, the indictment for murder should be so drawn as necessarily to include an assault and battery or assault with a deadly weapon, or it should contain a separate count to that effect. *State v. Rorie*, 252 N. C. 579, 114 S. E. (2d) 233 (1960).

#### Same—Assault with Intent to Rape.—

In a prosecution of a defendant for assault with intent to commit rape, nonsuit of the felony does not entitle the defendant to his discharge, but the State may put defendant on trial under the same indictment for assault on a female, defendant being a male over the age of 18. *State v. Gammons*, 260 N.C. 753, 133 S.E.2d 649 (1963).

Assault is not a less degree of the crime of larceny from the person, and therefore, in a prosecution for larceny, the court is not required to submit the question of de-

fendant's guilt of assault, even though there be evidence thereof. *State v. Acrey*, 262 N.C. 90, 136 S.E.2d 201 (1964).

**Duty of Judge—Prosecution for Robbery.**—The crime of robbery *ex vi termini* includes an assault on the person, and in a prosecution for robbery, the court must submit the question of defendant's guilt of assault in those instances where the evidence warrants such finding, even in the absence of a request, and even though the State contends solely for conviction of robbery and the defendant contends solely for complete acquittal. *State v. Hicks*, 241 N. C. 156, 84 S. E. (2d) 545 (1954).

If the State's evidence tends to show a completed robbery and there is no conflicting evidence relating to the elements of this offense, the court is not required to submit the question of defendant's guilt of assault, notwithstanding the jury's right to accept the State's evidence in part and reject it in part. *State v. Hicks*, 241 N. C. 156, 84 S. E. (2d) 545 (1954).

#### Same—Failure to Charge upon Lesser Degree.—

In accord with 2nd paragraph in original. See *State v. Davis*, 242 N. C. 476, 87 S. E. (2d) 906 (1955).

Where the State's evidence in a prosecution under an indictment for rape, if believed to its fullest extent, established the crime of rape but the defendant testified the intercourse was with the girl's consent and the evidence was conflicting in other respects, it would have been error for the court not to have charged the jury on the lesser offenses. *State v. Green*, 246 N. C. 717, 100 S. E. (2d) 52 (1957).

It is a well recognized principle that where one is indicted for a crime, and under the same bill he may be convicted of a lesser degree of the same crime, and there is evidence tending to support the milder verdict, the prisoner is entitled to have this view presented to the jury under a correct charge, and an error in this re-

spect is not cured by a verdict convicting the prisoner of a higher offense, for in such case it cannot be determined that the jury would not have convicted of the lesser crime if the view had been correctly presented by the judge, upon evidence. *State v. Bass*, 249 N. C. 209, 105 S. E. (2d) 645 (1958).

### § 15-170. Conviction for a less degree or an attempt.

#### Application of Section.—

This section and § 15-169 are applicable only when there is evidence tending to show that the defendant may be guilty of a lesser offense. *State v. Jones*, 249 N. C. 134, 105 S. E. (2d) 513 (1958), commented on in 41 N. C. Law Rev. 118.

#### Crime of Accessory Included.—

The crime of accessory before the fact is included in the charge of the principal crime. Not so, accessory after the fact. *State v. Jones*, 254 N. C. 450, 119 S. E. (2d) 213 (1961), commented on in 41 N. C. Law Rev. 118.

**Sufficiency of Indictment.**—An indictment or information is insufficient to charge the accused with the commission of a minor offense or one of less degree unless, in charging the major offense, it necessarily includes within itself all of the essential elements of the minor offense, or sufficiently sets them forth by separate allegations in an added count; but when the indictment or information contains all the essential constituents of the minor offense, it sufficiently alleges that offense. *State v. Rorie*, 252 N. C. 579, 114 S. E. (2d) 233 (1960).

#### And Conviction of Offense Charged, etc.—

In accord with 1st paragraph in original. See *State v. Davis*, 242 N. C. 476, 87 S. E. (2d) 906 (1955).

An indictment for rape includes an assault with intent to commit rape. *State v. Green*, 246 N. C. 717, 100 S. E. (2d) 52 (1957); *State v. Birkhead*, 256 N. C. 494, 124 S. E. (2d) 838 (1962).

An assault upon a woman is not a less degree of the crime of sodomy. *State v. Jernigan*, 255 N. C. 732, 122 S. E. (2d) 711 (1961).

Nor is assault a less degree of the crime of larceny from the person. *State v. Acrey*, 262 N.C. 90, 136 S.E.2d 201 (1964).

The misdemeanor of larceny is a less degree of the felony of larceny within the meaning of this section. *State v. Cooper*, 256 N. C. 372, 124 S. E. (2d) 91 (1962);

Where All the Evidence Points to a Graver Crime, etc.—

In accord with original. See *State v. Roy*, 233 N. C. 558, 64 S. E. (2d) 840 (1951).

Cited in *State v. Weaver*, 264 N.C. 681, 142 S.E.2d 633 (1965).

*State v. Summers*, 263 N.C. 517, 139 S.E.2d 627 (1965).

#### In prosecution for assault, etc.—

Where a warrant charges a criminal assault with a deadly weapon, specifying the weapon, and the jury convicts of simple assault, a less degree of the same crime, and the evidence warrants the verdict, the jury is empowered by this section to return such verdict. *State v. Gooding*, 251 N. C. 175, 110 S. E. (2d) 865 (1959).

Assault with a deadly weapon is an essential element of the felony created and defined by § 14-32, being an included "less degree of the same crime." *State v. Weaver*, 264 N.C. 681, 142 S.E.2d 633 (1965).

#### In Prosecution for Robbery.—

An instruction by the trial judge that he was submitting the case to the jury "as to the charge of common law robbery, that is the attempt to rob," was clearly understandable, though "attempt to commit robbery" was not defined in detail. *State v. McNeely*, 244 N. C. 737, 94 S. E. (2d) 853 (1956).

In a prosecution for the crime against nature, the accused may be convicted of the offense charged therein or the attempt to commit the offense. *State v. Harward*, 264 N.C. 746, 142 S.E.2d 691 (1965).

A motion for judgment as of nonsuit addressed to the entire bill is properly overruled if there is evidence sufficient to support a conviction of the crime charged or of an included crime. *State v. Virgil*, 263 N.C. 73, 138 S.E.2d 777 (1964).

Necessity for instructing jury as to included crime of lesser degree than that charged arises when and only when there is evidence from which the jury could find that such included crime of lesser degree was committed. The presence of such evidence is the determinative factor. *State v. Jones*, 264 N.C. 134, 141 S.E.2d 27 (1965).

Quoted in *State v. Willis*, 255 N. C. 473, 121 S. E. (2d) 854 (1961).

Cited in *State v. Stone*, 245 N. C. 42, 95 S. E. (2d) 77 (1956).

§ 15-171: Repealed by Session Laws 1953, c. 100.

### § 15-172. Verdict for murder in first or second degree.

#### Applies to All Indictments for Murder.—

In accord with original. See *State v. Simmons*, 236 N. C. 340, 72 S. E. (2d) 743 (1952).

A defendant will not be permitted to plead guilty to murder in the first degree. *State v. Blue*, 219 N. C. 612, 14 S. E. (2d) 635 (1941). For it is provided by this section that the "jury before whom the offender is tried shall determine in their verdict whether the crime is murder in the first or second degree." *State v. Simmons*, 236 N. C. 340, 72 S. E. (2d) 743 (1952).

**Instruction Held Error.**—An instruc-

tion to the effect that defendant's counsel had argued that the jury should return a verdict of guilty of murder in the first degree with recommendation for life imprisonment must be held for prejudicial error as tantamount to stating that counsel had tendered a plea of guilty to this offense. The error is not cured by the court's statement that if he was wrong he desired to be corrected, since a defendant will not be permitted to plead guilty to murder in the first degree, and tender of such plea would not be binding on him. *State v. Simmons*, 236 N. C. 340, 72 S. E. (2d) 743 (1952).

### § 15-173. Demurrer to the evidence.

#### Editor's Note.—

For brief comment on 1951 amendment, see 29 N. C. Law Rev. 374.

#### Compared with Section 1-183.—

In accord with original. See *State v. Bryant*, 235 N. C. 420, 70 S. E. (2d) 186 (1952); *State v. Sears*, 235 N. C. 623, 70 S. E. (2d) 907 (1952); *State v. Nall*, 239 N. C. 60, 79 S. E. (2d) 354 (1953).

**Means of Raising Objection That Evidence Insufficient for Jury.**—Objection that the evidence is not sufficient to carry the case to the jury must be raised by motion to nonsuit under this section, or by prayer for instructions to the jury, and may not be raised after verdict by motion for new trial or motion in arrest of judgment. *State v. Gaston*, 236 N. C. 499, 73 S. E. (2d) 311 (1952).

#### On Motion to Nonsuit, the Court Is Required, etc.—

In accord with 1st paragraph in original. See *State v. Alston*, 233 N. C. 341, 64 S. E. (2d) 3 (1951).

In accord with 4th paragraph in original. See *State v. Simmons*, 240 N. C. 780, 83 S. E. (2d) 904 (1954).

On motion for nonsuit, it is a question of law for the court to determine, in the first instance, whether the evidence adduced, when considered in its light most favorable to the State, is of sufficient probative force to justify the jury in drawing the affirmative inference of guilt. *State v. Needham*, 235 N. C. 555, 71 S. E. (2d) 29 (1952).

On demurrer to the evidence and motion to nonsuit, the evidence must be considered in the light most favorable to the State, and contradictions and discrepancies in the testimony of the State's witnesses are to be resolved by the jury. *State v. Simpson*, 244 N. C. 325, 93 S. E. (2d) 425

(1956); *State v. Walker*, 251 N. C. 465, 112 S. E. (2d) 61 (1960).

The only question presented by a motion under this section for judgment as in case of nonsuit is whether the evidence is sufficient to require submission to the jury. *State v. Thompson*, 256 N. C. 593, 124 S. E. (2d) 728 (1962).

The court is required, in a motion for judgment of nonsuit, to consider all the State's voluminous and interlocking evidence in the light most favorable to it. *State v. Goldberg*, 261 N.C. 181, 134 S.E.2d 334 (1964).

#### Whether Competent or Incompetent.—

Admitted evidence, whether competent or incompetent, must be considered in passing on defendant's motions for judgment as of nonsuit. *State v. Virgil*, 263 N.C. 73, 138 S.E.2d 777 (1964).

#### Same—Waiver.—

The failure of a defendant to renew his motion for nonsuit at the close of all the evidence constitutes a waiver of his right to insist upon his first motion for nonsuit, and it is not subject to review in the Supreme Court. *State v. Howell*, 261 N.C. 657, 135 S.E.2d 625 (1964).

Where the motion is not limited to a single count or any one degree of the crimes charged, but is addressed to the entire bill or to both counts as a whole, it cannot be allowed in the face of testimony to support either count or any degree of either count. *State v. Marsh*, 234 N. C. 101, 66 S. E. (2d) 684 (1951).

#### Only Incriminating Evidence Need Be Considered, etc.—

In considering a motion under this section, the defendant's evidence, unless favorable to the State, is not to be taken into consideration, except when not in conflict with the State's evidence, it may be used

to explain or make clear that which has been offered by the State. *State v. Bryant*, 235 N. C. 420, 70 S. E. (2d) 186 (1952); *State v. Sears*, 235 N. C. 623, 70 S. E. (2d) 907 (1952).

**When Motion Denied.—**

A motion for judgment as of nonsuit addressed to the entire bill is properly overruled if there is evidence sufficient to support a conviction of the crime charged or of an included crime. *State v. Virgil*, 263 N.C. 73, 138 S.E.2d 777 (1964); *State v. Rowland*, 263 N.C. 353, 139 S.E.2d 661 (1965).

**Defendant's evidence relating to matters in defense should not be considered on motion to nonsuit.** *State v. Avery*, 236 N. C. 276, 72 S. E. (2d) 670 (1952); *State v. Moseley*, 251 N. C. 285, 111 S. E. (2d) 308 (1959).

**Consideration of Entire Evidence on Appeal.—**

Where defendant offers evidence, the only question on appeal is whether the court erred in the denial of the motion made by defendant at the close of all the evidence. *State v. Leggett*, 255 N. C. 358, 121 S. E. (2d) 533 (1961).

**Where a Complete Defense Is Established by the State's Case, etc.—**

In accord with original. See *State v. Jarrell*, 233 N. C. 741, 65 S. E. (2d) 304 (1951).

**Sufficiency of Evidence.—**

In accord with 1st paragraph in original. See *State v. Webb*, 233 N. C. 382, 64 S. E. (2d) 268 (1951); *State v. McLamb*, 235 N. C. 251, 69 S. E. (2d) 537 (1952); *State v. Robbins*, 243 N. C. 161, 90 S. E. (2d) 322 (1955); *State v. Edmundson*, 244 N. C. 693, 94 S. E. (2d) 844 (1956); *State v. Gay*, 251 N. C. 78, 110 S. E. (2d) 458 (1959).

In accord with 3rd paragraph in original. See *State v. Wood*, 235 N. C. 636, 70 S. E. (2d) 665 (1952).

In accord with 6th paragraph in original. See *State v. Block*, 245 N. C. 661, 97 S. E. (2d) 243 (1957); *State v. Avent*, 253 N. C. 580, 118 S. E. (2d) 47 (1961).

In accord with 7th paragraph in original. See *State v. Jarrell*, 233 N. C. 741, 65 S. E. (2d) 304 (1951); *State v. Holland*, 234 N. C. 354, 67 S. E. (2d) 272 (1951); *State v. Simmons*, 240 N. C. 780, 83 S. E. (2d) 904 (1954); *State v. Neal*, 248 N. C. 544, 103 S. E. (2d) 722 (1958); *State v. Glenn*, 251 N. C. 156, 110 S. E. (2d) 791 (1959); *State v. Downey*, 253 N. C. 348, 117 S. E. (2d) 39 (1960).

In accord with 8th paragraph in origi-

nal. See *State v. Block*, 245 N. C. 661, 97 S. E. (2d) 243 (1957).

In accord with 16th paragraph in original. See *State v. Rhodes*, 252 N. C. 438, 113 S. E. (2d) 917 (1960); *State v. Rogers*, 252 N. C. 499, 114 S. E. (2d) 355 (1960).

A motion for nonsuit presents only the question of the sufficiency of the evidence to carry the case to the jury. *State v. Green*, 251 N. C. 40, 110 S. E. (2d) 609 (1959).

There must be legal evidence of the fact in issue and not merely such as raises a suspicion or conjecture in regard to it. *State v. Bass*, 253 N. C. 318, 116 S. E. (2d) 772 (1960).

Evidence which merely shows it possible for the fact in issue to be as alleged, or which raises a mere conjecture that it was so, is an insufficient foundation for a verdict and should not be left to a jury. *State v. Glenn*, 251 N. C. 156, 110 S. E. (2d) 791 (1959).

Upon a motion for judgment of nonsuit the evidence is to be considered in the light most favorable for the State, but evidence which merely suggests the possibility of guilt or which raises only a conjecture is insufficient to require submission to the jury. *State v. Guffey*, 252 N. C. 60, 112 S. E. (2d) 734 (1960).

On motion for nonsuit the State is entitled to have the evidence considered in its most favorable light. The reconciliation of any apparent discrepancy in the testimony, the weight of the evidence, and the credibility of the witnesses are all matters for the jury and not the court. *State v. Reeves*, 235 N. C. 427, 70 S. E. (2d) 9 (1952).

In ruling on a motion for nonsuit the court does not pass upon the credibility of the witnesses for the prosecution, or take into account any evidence contradicting them offered by the defense. The court merely considers the testimony favorable to the State, assumes it to be true, and determines its legal sufficiency to sustain the allegations of the indictment. Whether the testimony is true or false, and what it proves if it be true are matters for the jury. *State v. Wood*, 235 N. C. 636, 70 S. E. (2d) 665 (1952).

On a motion for judgment of nonsuit the State is entitled to have the evidence considered in its most favorable light, and defendant's evidence, unless favorable to the State, is not to be considered, except, when not in conflict with the State's evidence, it may be used to explain or make clear the State's evidence. *State v. Roop*, 255 N. C. 607, 122 S. E. (2d) 363 (1961);



State v. Colson, 262 N.C. 506, 138 S.E.2d 121 (1964).

**Same — Circumstantial Evidence.**—Upon demurrer to the evidence, when the State relies upon circumstantial evidence for a conviction of a criminal offense, the rule is that the facts established or advanced on the hearing must be of such nature and so connected or related as to point unerringly to the defendant's guilt and exclude any other reasonable hypothesis. State v. Simmons, 240 N. C. 780, 83 S. E. (2d) 904 (1954); State v. Rhodes, 252 N. C. 438, 113 S. E. (2d) 917 (1960); State v. Rogers, 252 N. C. 499, 114 S. E. (2d) 355 (1960).

When the motion for nonsuit calls into question the sufficiency of circumstantial evidence, the question for the court is whether a reasonable inference of defendant's guilt may be drawn from the circumstances. If so, it is for the jury to decide whether the facts, taken singly or in combination, satisfy them beyond a reasonable doubt that the defendant is actually guilty. State v. Rowland, 263 N.C. 353, 139 S.E.2d 661 (1965).

**Same — When State's Evidence Is Conflicting.**—When the substantive evidence offered by the State is conflicting—some tending to inculcate and some tending to exculpate the defendant—it is sufficient to repel a demurrer thereto. State v. Tolbert, 240 N. C. 445, 82 S. E. (2d) 201 (1954); State v. Gay, 251 N. C. 78, 110 S. E. (2d) 458 (1959); State v. Green, 251 N. C. 40, 110 S. E. (2d) 609 (1959); State v. Rogers, 252 N. C. 499, 114 S. E. (2d) 355 (1960).

Discrepancies in the State's evidence will not justify the granting of a motion for nonsuit. State v. Moseley, 251 N. C. 285, 111 S. E. (2d) 308 (1959).

**Same — When Complete Defense Is Made Out by State's Evidence.**—It is axiomatic that when a complete defense is made out by the State's evidence, a defendant should be allowed to avail himself of such defense on a demurrer to the evidence under this section. This is true even when the exculpatory evidence is in the form of statements of defendant offered in evidence by the State. State v. Tolbert, 240 N. C. 445, 82 S. E. (2d) 201 (1954).

**Same — When State's Case Must Rest Entirely on Declarations of Defendant.**—When the State's case must rest entirely on declarations made by defendant, and there is no evidence contra which does more than suggest a possibility of guilt or raise a conjecture, demurrer thereto should be sustained. In such case, the declarations of the defendant are presented by the

State as worthy of belief, and when they are wholly exculpatory, the defendant is entitled to his acquittal. State v. Tolbert, 240 N. C. 445, 82 S. E. (2d) 201 (1954).

**Same—Prosecution for Homicide.**—

In a prosecution of defendant for murder of her husband, where the evidence for the State disclosed that deceased was shot twice, the first bullet being fired by co-defendant, and the second bullet being fired by the defendant and that neither acted in concert, and the medical expert could not determine in the absence of autopsy which of the two wounds caused death, the defendant's demurrer to the evidence should have been sustained and the case dismissed. State v. Simpson, 244 N. C. 325, 93 S. E. (2d) 425 (1956).

**Same—Conspiracy.**—

For evidence held sufficient to overrule nonsuit as to each of several defendants in a prosecution for conspiracy, see State v. Walker, 251 N. C. 465, 112 S. E. (2d) 61 (1960).

**Same—Unlawful Sale of Intoxicating Liquors.**—

Evidence tending to show that nontax-paid liquor was found near a hog pen which was maintained by the defendant, with further evidence that the hog pen was near a public alley as well as several public foot-paths, is insufficient to be submitted to the jury on the question of defendant's constructive possession of the liquor, and motion for nonsuit should be sustained. State v. Glenn, 251 N. C. 156, 110 S. E. (2d) 791 (1959).

**Variance.**—

The question of variance in a criminal action may be raised by motion for judgment as of nonsuit, or by demurrer to the evidence. State v. Hicks, 233 N. C. 511, 64 S. E. (2d) 871 (1951), cert. den. Hicks v. North Carolina, 342 U. S. 831, 72 S. Ct. 56, 96 L. Ed. 629 (1951).

**Demurrer to Evidence Properly Denied.**—

State v. Goins, 233 N. C. 460, 64 S. E. (2d) 289 (1951) (prosecution for involuntary manslaughter); State v. Hicks, 233 N. C. 511, 64 S. E. (2d) 871 (1951), cert. den. Hicks v. North Carolina, 342 U. S. 831, 72 S. Ct. 56, 96 L. Ed. 629 (1951) (prosecution for conspiracy); State v. Fuqua, 234 N. C. 168, 66 S. E. (2d) 667 (1951) (prosecution for illegal possession of intoxicating liquor); State v. Holland, 234 N. C. 354, 67 S. E. (2d) 272 (1951) (charge of felonious assault); State v. Minton, 234 N. C. 716, 68 S. E. (2d) 844 (1951) (prosecution for murder); State v. McLamb, 235 N. C. 251, 69 S. E. (2d)

537 (1952) (prosecution for possession of articles for use in manufacturing intoxicating liquor); *State v. Birchfield*, 235 N. C. 410, 70 S. E. (2d) 5 (1952) (prosecution for felonious assault with a deadly weapon with intent to kill); *State v. Bryant*, 235 N. C. 420, 70 S. E. (2d) 186 (1952) (prosecution for larceny of chickens); *State v. Reeves*, 235 N. C. 427, 70 S. E. (2d) 9 (1952) (prosecution for rape); *State v. Murphy*, 235 N. C. 503, 70 S. E. (2d) 498 (1952) (prosecution for possession and sale of intoxicating liquor); *State v. Sears*, 235 N. C. 623, 70 S. E. (2d) 907 (1952) (prosecution for rape); *State v. Wood*, 235 N. C. 636, 70 S. E. (2d) 665 (1952) (prosecution for incest); *State v. Griffin*, 236 N. C. 219, 72 S. E. (2d) 427 (1952) (prosecution for second degree murder); *State v. Bryant*, 236 N. C. 745, 73 S. E. (2d) 791 (1953) (prosecution for breaking and entering with felonious intent and larceny); *State v. Myers*, 240 N. C. 462, 82 S. E. (2d) 213 (1954) (prosecution for receiving stolen goods).

**Denial of Motion for Nonsuit Held Error.**—See *State v. Holland*, 234 N. C. 354, 67 S. E. (2d) 272 (1951) (charge of robbery); *State v. Needham*, 235 N. C. 555, 71 S. E. (2d) 29 (1952) (prosecution for arson and murder).

**Effect of Judgment of Nonsuit on Subsequent Prosecution.**—The granting of a motion under this section for judgment of nonsuit, or verdict of not guilty in a criminal prosecution, charging defendant with willful neglect or refusal to support and maintain his illegitimate child, does not constitute an adjudication on the issue of

paternity, and will not support a plea of former acquittal in a subsequent prosecution under § 49-2. *State v. Robinson*, 236 N. C. 408, 72 S. E. (2d) 857 (1952).

**Tantamount to Verdict of Not Guilty.**—Where defendant's motion to nonsuit was allowed in the Supreme Court, this ruling was tantamount to a verdict of not guilty. *State v. Smith*, 236 N. C. 748, 73 S. E. (2d) 901 (1953); *State v. Wooten*, 239 N. C. 117, 79 S. E. (2d) 254 (1953).

A judgment of nonsuit has the force and effect of a verdict of not guilty of the charge contained in the indictment. *State v. Stinson*, 263 N.C. 283, 139 S.E.2d 558 (1965).

**Applied in** *State v. Ham*, 238 N. C. 94, 76 S. E. (2d) 346 (1953); *State v. Cranfield*, 238 N. C. 110, 76 S. E. (2d) 353 (1953); *State v. Bass*, 249 N. C. 209, 105 S. E. (2d) 645 (1958); *State v. Peeden*, 253 N. C. 562, 117 S. E. (2d) 398 (1960); *State v. Bailey*, 261 N.C. 763, 136 S.E.2d 37 (1964); *State v. Duncan*, 264 N.C. 123, 141 S.E.2d 23 (1965).

**Cited in** *State v. Buchanan*, 233 N. C. 477, 64 S. E. (2d) 549 (1951); *State v. Wilson*, 234 N. C. 552, 67 S. E. (2d) 748 (1951); *State v. Dunn*, 245 N. C. 102, 95 S. E. (2d) 274 (1956); *State v. Revis*, 253 N. C. 50, 116 S. E. (2d) 171 (1960); *State v. Faust*, 254 N. C. 101, 118 S. E. (2d) 769 (1961); *State v. Aldridge*, 254 N. C. 297, 118 S. E. (2d) 766 (1961); *State v. Carter*, 254 N. C. 475, 119 S. E. (2d) 461 (1961); *State v. Gough*, 257 N. C. 348, 126 S. E. (2d) 118 (1962); *State v. Thompson*, 257 N. C. 452, 126 S. E. (2d) 58 (1962); *State v. Jones*, 264 N.C. 134, 141 S.E.2d 27 (1965).

### § 15-174. New trial to defendant.

**Newly Discovered Evidence.**—

A new trial will not be awarded in a criminal case in the Supreme Court for

newly discovered evidence. *State v. Morrow*, 262 N.C. 592, 138 S.E.2d 245 (1964).

### § 15-175. Nol. pros. after two terms; when capias and subpoenas to issue.

**Cited in** *State v. Fumage*, 250 N. C. 616, 109 S. E. (2d) 563 (1959).

**§ 15-176.1. Solicitor may argue for death penalty.** — In the trial of capital cases, the solicitor or other counsel appearing for the State may argue to the jury that a sentence of death should be imposed and that the jury should not recommend life imprisonment. (1961, c. 890.)

**Arguments by Solicitor Held Proper in Light of This Section.**—See *State v. Chris-*

*topher*, 258 N. C. 249, 128 S. E. (2d) 667 (1962).

## ARTICLE 18.

*Appeal.*

## § 15-177. Appeal from justice, trial de novo.

Cited in *State v. Meadows*, 234 N. C. 657, 68 S. E. (2d) 406 (1951); *State v. Norman*, 237 N. C. 205, 74 S. E. (2d) 602 (1953).

## § 15-177.1. Appeal from justice of the peace or inferior court; trial anew or de novo.

Appeal to Superior Court after Plea of Guilty in Inferior Court.—Decisions prior to the enactment of this section enunciated the rule that where the accused in a criminal action pleads guilty to a misdemeanor in an inferior court having complete jurisdiction of the offense and appeals to the superior court from the judgment pronounced by the inferior court on his plea, the superior court sits as a mere court of review to determine the legality of the judgment of the inferior court. This section is aimed at the very foundation of this rule. Its plain purpose is to uproot that rule in its entirety. As a result of this statute, the rules of practice and procedure regulating the trial of criminal actions appealed to the superior court by defendants who pleaded guilty in inferior courts have been brought into complete harmony with those heretofore followed in the trial of the criminal actions appealed to the superior courts by defendants who pleaded not guilty in inferior courts. *State v. Meadows*, 234 N. C. 657, 68 S. E. (2d) 406 (1951).

## § 15-179. When State may appeal.

**Editor's Note.—**

For note on the right of the State to appeal in criminal cases, see 42 N.C.L. Rev. 887 (1964).

**Right Is Statutory.—**

See *State v. Ferguson*, 243 N. C. 766, 92 S. E. (2d) 197 (1956).

**Order Sustaining Plea of Former Acquittal.**—The right of the State to appeal to the Supreme Court from adverse rulings of the superior court or to the superior court from adverse rulings of an inferior court is governed by this section. And the State has no right, under this section, to appeal from an order of the superior court sustaining a defendant's plea of former acquittal. *State v. Wilson*, 234 N. C. 552, 67 S. E. (2d) 748 (1951); *State v. Ferguson*, 243 N. C. 766, 92 S. E. (2d) 197 (1956).

## § 15-180. Appeal by defendant to Supreme Court.

**No Appeal from Order Overruling Motion to Quash Indictment.**—Where an ap-

peal was sought from an order overruling a motion to quash an indictment, the ap-  
Sentence of Superior Court May Be Lighter or Heavier than That Imposed Below.—Since the trial in the superior court is without regard to the proceedings in the inferior court, the judge of the superior court is necessarily required to enter his own independent judgment. Hence, his sentence may be lighter or heavier than that imposed by the inferior court, provided, of course, it does not exceed the limit of punishment which the inferior court could have imposed. *State v. Meadows*, 234 N. C. 657, 68 S. E. (2d) 406 (1951).

Applied in *State v. Williamson*, 238 N. C. 652, 78 S. E. (2d) 763 (1953).

Stated in *State v. Morgan*, 246 N. C. 596, 99 S. E. (2d) 764 (1957).

Cited in *State v. Hairston*, 247 N. C. 395, 100 S. E. (2d) 847 (1957); *State v. Gooding*, 251 N. C. 175, 110 S. E. (2d) 865 (1959); *State v. Hall*, 251 N. C. 211, 110 S. E. (2d) 868 (1959).

The State has no right to appeal from a judgment allowing a plea of former jeopardy or acquittal. *State v. Reid*, 263 N.C. 825, 140 S.E.2d 547 (1965).

Applied in *State v. Wilkes*, 233 N. C. 645, 65 S. E. (2d) 129 (1951) (order quashing indictment); *State v. Furgame*, 250 N. C. 616, 109 S. E. (2d) 563 (1959); *State v. Fesperman*, 264 N.C. 160, 141 S.E.2d 255 (1965); *State v. Hucks*, 264 N.C. 160, 141 S.E.2d 299 (1965); *State v. Teeter*, 264 N.C. 162, 141 S.E.2d 253 (1965); *State v. Stogner*, 264 N.C. 163, 141 S.E.2d 248 (1965); *State v. McCall*, 264 N.C. 165, 141 S.E.2d 250 (1965); *State v. Fesperman*, 264 N.C. 168, 141 S.E.2d 252 (1965).

Cited in *State v. Everett*, 244 N. C. 596, 94 S. E. (2d) 576 (1956); *State v. Hales*, 256 N. C. 27, 122 S. E. (2d) 768 (1961).

peal was dismissed, since the order was interlocutory and did not determine the cause. *State v. Baker*, 240 N. C. 140, 81 S. E. (2d) 199 (1954).

It is the duty of appellant to see that the record is properly made up and transmitted. *State v. Jenkins*, 234 N. C. 112, 66 S. E. (2d) 819 (1951); *State v. Roux*, 263 N.C. 149, 139 S.E.2d 189 (1964), commented on in 43 N.C.L. Rev. 596 (1965).

**Appeal Held Not Intelligently Waived by Indigent.**—See *State v. Roux*, 263 N.C. 149, 139 S.E.2d 189 (1964), commented on in 43 N.C.L. Rev. 596 (1965).

Applied in *State v. Gaskins*, 237 N. C. 438, 75 S. E. (2d) 107 (1953); *State v. Grundler*, 249 N. C. 399, 106 S. E. (2d) 488 (1959).

Stated in *State v. Cruse*, 238 N. C. 53, 76 S. E. (2d) 320 (1953).

Cited in *State v. Stephenson*, 247 N. C. 232, 100 S. E. (2d) 326 (1957); *State v. Grundler*, 251 N. C. 177, 111 S. E. (2d) 1 (1959); *State v. Graves*, 251 N. C. 550, 112 S. E. (2d) 85 (1960).

### § 15-180.1. Defendant may appeal from a suspended sentence.—

In all criminal cases in the inferior courts and in the superior courts of this State a defendant may appeal from a suspended sentence under the same rules as from any other judgment in a criminal case. The purpose of this section is to provide that by giving notice of appeal the defendant does not waive his acceptance of the terms of suspension of sentence. Instead, by giving notice of appeal, the defendant takes the position that there is error of law in his conviction. (1959, c. 1017.)

Applied in *State v. Green*, 251 N. C. 141, 110 S. E. (2d) 805 (1959); *State v. Foye*, 254 N. C. 704, 120 S. E. (2d) 169 (1961).

Quoted in *State v. Warren*, 252 N. C. 690, 114 S. E. (2d) 660 (1960).

§ 15-181. Defendant may appeal without security for costs.—In all cases of conviction in the superior courts, the defendant shall have the right to appeal without giving security for costs, upon filing an affidavit that he is wholly unable to give security for the costs, and is advised by counsel that he has reasonable cause for the appeal prayed, and that the application is in good faith. Where the judge of the superior court has made an order allowing the appellant to appeal as a pauper and the appeal has been filed in the Supreme Court, and an error or omission has been made in the affidavit or certificate of counsel, and the error is called to the attention of the court before the hearing of the argument of the case, the court shall permit an amended affidavit or certificate to be filed correcting the error or omission.

And where it shall appear to the presiding judge that a defendant who has been convicted of a capital felony, or having been tried upon a bill of indictment charging a capital felony, has been convicted of a less offense, and who has prayed an appeal to the Supreme Court from the sentence of death or other sentence pronounced against him upon such conviction, is unable to defray the cost of perfecting his appeal on account of his poverty, it shall be the duty of the county in which the alleged capital felony was committed, upon the order of such judge, to pay the necessary cost of obtaining a transcript of the proceedings had and the evidence offered on the trial from the court reporter for the use of the defendant and the necessary cost of preparing the requisite copies of the record and briefs which the defendant is required to file in the Supreme Court under the rules of said court.

Where it shall appear to the presiding judge that a defendant who has been convicted of a felony other than a capital felony, or having been tried upon a bill of indictment charging a noncapital felony, has been convicted of a lesser offense, and has prayed an appeal to the Supreme Court from sentence imposed, is unable to defray the cost of perfecting his appeal on account of his poverty, the judge may, in his discretion, and upon finding that the defendant is indigent, order the county in which the alleged crime was committed to pay the necessary cost of obtaining a transcript and proceedings for the use of the defendant, and

the necessary cost of preparing the requisite copies of the record and briefs in the Supreme Court.

The judge may fix the reasonable value of the services rendered in furnishing such transcript and preparing such copies of the record and briefs, and said copies of the record and briefs shall be prepared in the manner prescribed by the rules of the Supreme Court in pauper appeals. Provided, that this paragraph shall apply only to those cases in which counsel has been assigned by the court. (1869-70, c. 196, s. 1; Code, s. 1235; Rev., s. 3278; C. S., s. 4651; 1933, c. 197; 1937, c. 330; 1951, c. 81; 1963, c. 954.)

**Editor's Note.**—

Cited in *State v. Grundler*, 251 N. C. 177,

The 1963 amendment inserted the third paragraph.

111 S. E. (2d) 1 (1959).

**§ 15-183. Bail pending appeal.**—When any person convicted of a misdemeanor or felony other than a capital offense and sentenced by the court, shall appeal, the court shall allow such person to give bail pending appeal; provided, in capital cases where the sentence is life imprisonment, the court, in its discretion, may allow such person to give bail pending appeal. (1850-1, c. 2; R. C., c. 35, s. 12; Code, s. 1181; Rev., s. 3280; C. S., s. 4653; 1953, c. 56.)

**Editor's Note.**—The 1953 amendment inserted the words "or felony other than a capital offense" and added the proviso.

Cited in *In re Ferguson*, 235 N. C. 121, 68 S. E. (2d) 792 (1952).

For comment on amendment, see 31 N. C. Law Rev. 405.

**§ 15-184. Appeal not to vacate judgment; stay of execution.** — In criminal cases an appeal to the Supreme Court shall not have the effect of vacating the judgment appealed from, but upon perfecting the appeal as now required by law, either by giving bond or obtaining an order allowing appeal in forma pauperis, there shall be a stay of execution during the pendency of the appeal. The clerk of the superior court shall, after execution is stayed, as provided in this section, notify the Attorney General thereof. Said notice shall give the name of defendant, the crime of which he was convicted and if the statutory time for perfecting the appeal has been extended by agreement or otherwise, the time of such extension. If for any reason the defendant should wish to withdraw his appeal before the same is docketed in the Supreme Court, he may appear before the clerk of the superior court in which he was convicted and request in writing withdrawal of the appeal. The said clerk shall file and make an entry of such withdrawal and shall, if a sentence be called for, issue a commitment and deliver same to the sheriff. The sentence shall begin as of the date of the issuance of the commitment. (1887, c. 191, s. 1; 1887, c. 192, § 4; Rev., s. 3281; 1919, c. 5; C. S., s. 4654; 1955, c. 882.)

**Editor's Note.**—The 1955 amendment rewrote this section.

**§ 15-186. Procedure upon receipt of certificate of Supreme Court.**

The fact that petitioner made a motion for a new trial on the ground of newly discovered evidence, upon receipt by the superior court of certification of the Supreme Court's affirmance, did not suspend

or otherwise affect the express provisions of this section or entitle petitioner to bond as a matter of right pending hearing thereon. *State v. Renfrow*, 247 N. C. 55, 100 S. E. (2d) 315 (1957).

ARTICLE 19.

*Execution.*

**§ 15-194. Judgment sustained on appeal, reprieve, time for execution.**

Applied in *Miller v. State*, 237 N. C. 29, 74 S. E. (2d) 513 (1953).

## ARTICLE 20.

*Suspension of Sentence and Probation.*

§ 15-197. **Suspension of sentence and probation.**—After conviction or plea of guilty or nolo contendere for any offense, except a crime punishable by death or life imprisonment, the judge of any court of record with criminal jurisdiction may suspend the imposition or the execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant on probation. All conditional releases by way of suspension of rendition of sentence, suspension of execution of sentence, or otherwise may be modified as is provided by the terms of this article. (1937, c. 132, s. 1; 1963, c. 632, s. 1.)

**Editor's Note.**—

The 1963 amendment added the second sentence.

For note on suspension of sentence, see 31 N. C. Law Rev. 195.

**Section Read with § 15-200.**—The general authority recognized in this section is to be read in connection with the limitation fixed by § 15-200. *State v. Gibson*, 233 N. C. 691, 65 S. E. (2d) 508 (1951).

**Inherent Power of Court.**—A court has the inherent power to suspend a judgment or stay of execution of a sentence in a criminal case. This article did not withdraw this authority from the courts. It provides a procedure which is cumulative and concurrent rather than exclusive. *State v. Simmington*, 235 N. C. 612, 70 S. E. (2d) 842 (1952).

Courts having jurisdiction may pronounce judgment as by law provided; and then, with the defendant's consent, express or implied, suspend execution thereof upon prescribed conditions. Long recognized as an inherent power of the court, such authority is now recognized expressly by statute. *State v. Cole*, 241 N. C. 576, 86 S. E. (2d) 203 (1955).

The inherent power of a court having jurisdiction to suspend judgment or stay execution of sentence on conviction in a criminal case for a determinate period and for a reasonable length of time has been recognized and upheld in this jurisdiction. *State v. Miller*, 225 N. C. 213, 34 S. E. (2d) 143 (1945); *State v. Griffin*, 246 N. C. 680, 100 S. E. (2d) 49 (1957).

§ 15-198. **Investigation by probation officer.**

**Editor's Note.**—For note on right of confrontation at presentence investigation, see 41 N. C. Law Rev. 260.

This section establishes the policy that full investigation may be made before sentencing. *State v. Pope*, 257 N. C. 326, 126 S. E. (2d) 126 (1962), commented on in 41 N. C. Law Rev. 260.

**Presentence investigations are favored and encouraged.** *State v. Pope*, 257 N. C.

**An Order Suspending the Imposition or Execution of Sentence, etc.**—

Where there is a conviction and a sentence imposed, the fact that the court may suspend the judgment or its execution upon payment of costs or other conditions, and no appeal is taken, the judgment will be considered final when the time for appealing the case has expired, and the defendant may not be heard thereafter to complain on the ground that his conviction was not in accord with due process of law. *Barbour v. Scheidt*, 246 N. C. 169, 97 S. E. (2d) 855 (1957).

**Suspension of Sentence on Condition Defendant Not Operate Motor Vehicle during Period of Suspension.**—Upon defendant's conviction of operating a motor vehicle while under the influence of intoxicating beverage, the court may not suspend judgment upon condition that the defendant not operate a motor vehicle upon the public roads during the period of suspension unless defendant consents thereto, expressly or by implication. *State v. Cole*, 241 N. C. 576, 86 S. E. (2d) 203 (1955); *State v. Green*, 251 N. C. 141, 110 S. E. (2d) 805 (1959).

**Discretion of Trial Judge.**—The propriety of suspending the sentence, ordinarily, is a matter resting in the sound discretion of the trial judge. The General Assembly has endeavored to implement the power of the court in this respect by making further provisions for probation and supervision in this and the following sections. *State v. Stallings*, 234 N. C. 265, 66 S. E. (2d) 822 (1951).

362, 126 S. E. (2d) 126 (1962), commented on in 41 N. C. Law Rev. 260.

**Investigation May Be Made by Judge or Probation Officer.**—The presentence investigation may be made by a probation officer or by the trial judge himself. *State v. Pope*, 257 N. C. 326, 126 S. E. (2d) 126 (1962), commented on in 41 N. C. Law Rev. 260.

**Information to Be Adduced by Investi-**

gation.—The investigation may adduce information concerning defendant's criminal record, if any, his moral character, standing in the community, habits, occupation, social life, responsibilities, education, mental and physical health, the spe-

cific charge against him, and other matters pertinent to a proper judgment. *State v. Pope*, 257 N. C. 326, 126 S. E. (2d) 126 (1962), commented on in 41 N. C. Law Rev. 260.

§ 15-199. **Conditions of probation.**—The court shall determine and may impose, by order duly entered, and may at any time modify the conditions of probation and may include among them the following, or any other: That the probationer shall:

- (1) Avoid injurious or vicious habits;
- (2) Avoid persons or places of disreputable or harmful character;
- (3) Report to the probation officer as directed;
- (4) Permit the probation officer to visit at his home or elsewhere;
- (5) Work faithfully at suitable, gainful employment as far as possible and save his earnings above his reasonably necessary expenses;
- (6) Remain within a specified area;
- (7) Deposit with the clerk of the court a bond for his appearance at such time or times as the court may direct. In the event the probationer is unable to provide the bond otherwise, the court may require the bond to be paid in cash from his earnings in such installments and at such intervals as the court may direct;
- (8) Deposit with the clerk of the court from his earnings a savings account in such installments and at such intervals as the court may direct; and the clerk shall thereupon deposit such funds in the savings account in an institution whose accounts are insured by an agency of the federal government and the principal plus interest earned shall be paid to the probationer upon his discharge or earlier upon order of the court;
- (9) Pay a fine in one or several sums as directed by the court;
- (10) Make reparation or restitution to the aggrieved party for the damage or loss caused by his offense, in an amount to be determined by the court;
- (11) Support his dependents;
- (12) Waive extradition to the State of North Carolina from any jurisdiction in or outside the United States;
- (13) Violate no penal law of any state or the federal government and be of general good behavior;
- (14) With the defendant's consent and with a statement of the availability of jail accommodations, he may be required to report to the sheriff of the county or to the chief of police of any municipality or other law enforcement officer and submit himself to be incarcerated in the county or municipal jail or other designated place of confinement during weekends or at such other times or intervals as the court may direct. The court may, with the consent of the defendant, require the surrender of his earnings less standard payroll deductions required by law, to the county board of public welfare or other responsible agency. After deducting from the earnings the amount determined to be the cost of the defendant's keep while incarcerated, the balance shall be applied as may be needed for the support and maintenance of the defendant's dependents, and any sum remaining shall be released to the defendant upon the expiration of his suspension or at other times as the court may direct. Upon revocation of probation or suspension of sentence, the court shall certify in the judgment of revocation the time or number of days the probationer was incarcerated and such time shall be deducted from the term of the sentence suspended, and so stipulated in the commitment. Provided, that in no event shall the

number of days of incarceration prior to revocation exceed the length of the original suspended sentence. (1937, c. 132, s. 3; 1957, c. 1351; 1963, c. 54; c. 632, s. 2.)

**Editor's Note.** — The 1957 amendment rewrote paragraph (5) and inserted paragraphs (7) and (8). The second 1963 amendment added paragraph (14).

The first 1963 amendment added paragraphs (12) and (13).

**§ 15-200. Termination of probation, arrest, subsequent disposition.**  
 —The period of probation or suspension of sentence shall not exceed a period of five years and shall be determined by the judge of the court and may be continued or extended, terminated or suspended by the court at any time, within the above limit. Upon the satisfactory fulfillment of the conditions of probation or suspension of sentence the court shall by order duly entered discharge the defendant. At any time during the period of probation or suspension of sentence, the court may issue a warrant and cause the defendant to be arrested for violating any of the conditions of probation or suspension of sentence. Any police officer, or other officer with power of arrest, upon the request of the probation officer, may arrest a probationer without a warrant. In case of an arrest without a warrant the arresting officer shall have a written statement signed by said probation officer setting forth that the probationer has, in his judgment, violated the conditions of probation; and said statement shall be sufficient warrant for the detention of said probationer in the county jail, or other appropriate place of detention, until said probationer shall be brought before the judge of the court. Such probation officer shall forthwith report such arrest and detention to the judge of the court, or in superior court cases to the judge holding the courts of the district, or the resident judge, or any judge commissioned at the time to hold court in said district, and submit in writing a report showing in what manner the probationer has violated probation. Upon such arrest, with or without warrant, the court shall cause the defendant to be brought before it in or out of term and may revoke the probation or suspension of sentence, and shall proceed to deal with the case as if there had been no probation or suspension of sentence. If at any time during the period of probation or suspension of sentence a warrant is issued and the defendant is arrested for a violation of any of the conditions of probation or suspension of sentence, or in the event any person is arrested at the instance of a probation officer, the defendant shall be allowed to give bond pending a hearing before the judge of the court, and the court issuing the order of arrest shall in said order, fix the amount of the appearance bond, or if appearance bond should not be fixed by the court, the officer having the defendant in charge shall take sufficient justified bail for the defendant's appearance at said hearing and the bond shall be returnable at such time and place as shall be designated by the probation officer.

Where a probationer resides in, or violates the terms of his probation in, a county and judicial district other than that in which said probationer was placed on probation, concurrent jurisdiction is hereby vested in the resident judge of superior court of the district in which said probationer resides or in which he violates the terms of his probation, or the judge of superior court holding the courts of such district, or a judge of the superior court commissioned to hold court in such district, to issue warrants for the arrest of such probationer, to discharge such probationer from probation, to continue, extend, suspend or terminate the period of probation of such probationer, and to revoke probation and enter judgment or put into effect suspended sentences of probation judgment, for breach of the conditions of probation, as fully as same might be done by the courts of the county and district in which such probationer was placed on probation, when such probationer was originally placed on probation by a superior court judge; provided, that the court may, in its discretion, for good



cause shown, and shall on request of the probationer, return such probationer for hearing and disposition to the county or judicial district in which such probationer was originally placed on probation; provided, that in cases where the probation is revoked in a county other than the county of original conviction, the clerk in such county revoking probation may record the order of revocation in the judge's minute docket, which shall constitute sufficient permanent record of the proceedings in that court, and shall send one copy of the order revoking probation to the North Carolina Prison Department to serve as a temporary commitment, and shall send the original order revoking probation and all other papers pertaining thereto, to the county of original conviction to be filed with the original records; the clerk of the county of original conviction shall then issue a formal commitment to the North Carolina Prison Department. (1937, c. 132, s. 4; 1939, c. 373; 1953, c. 43; 1955, c. 120; 1959, c. 424; 1961, c. 1185.)

**Editor's Note.—**

The 1953 amendment, commented on in 31 N. C. Law Rev. 405, and the 1955 amendment added the last sentence of the first paragraph. The 1959 amendment added the second paragraph.

The 1961 amendment added the last proviso to the second paragraph.

**This Section Limits Authority Recognized by § 15-197.**—See annotations under § 15-197.

**Suspension May Be for Five Years, etc.—**

In accord with original. See *State v. McMilliam*, 243 N. C. 775, 92 S. E. (2d) 205 (1956).

The period during which the execution of a sentence in a criminal case may be suspended on conditions has been fixed as five years, regardless of the term of imprisonment authorized by the law. *State v. Gibson*, 233 N. C. 691, 65 S. E. (2d) 508 (1951).

The maximum period during which the execution of a sentence in a criminal case may be suspended on conditions is five years. A suspension of sentence for a period in excess of that authorized by this section is not void in toto. Ordinarily it is valid to the extent the court had power to suspend or stay execution and void merely as to the excess. *State v. McBride*, 240 N. C. 619, 83 S. E. (2d) 488 (1954).

**Violation of Terms of Sentence Is Not**

**a Jury Matter.**—A hearing to determine whether or not the terms of a suspended sentence have been violated is not a jury matter, but is to be determined in the sound discretion of the judge. *State v. Coffey*, 255 N. C. 293, 121 S. E. (2d) 736 (1961).

**It Need Not Be Proved beyond Reasonable Doubt.**—The alleged violation of the terms of a suspended sentence need not be proven beyond a reasonable doubt. All that is required is that the evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has violated a valid condition upon which the sentence was suspended. *State v. Coffey*, 255 N. C. 293, 121 S. E. (2d) 736 (1961).

**Effect of Conviction in Another State.**—Order suspending a sentence on condition "that the defendant be of good behavior and violate none of the laws of the State" was not violated by proof that defendant was convicted of a criminal law in another state. *State v. McBride*, 240 N. C. 619, 83 S. E. (2d) 488 (1954). See *State v. Millner*, 240 N. C. 602, 83 S. E. (2d) 546 (1954).

**Applied in State v. Brown**, 253 N. C. 195, 116 S. E. (2d) 349 (1960).

**Stated in State v. Griffin**, 246 N. C. 680, 100 S. E. (2d) 49 (1957).

**Cited in State v. Stallings**, 234 N. C. 265, 66 S. E. (2d) 822 (1951).

**§ 15-200.1. Notice of intention to pray revocation of probation or suspension; appeal from revocation.**—In all cases of probation or suspension of sentence in the superior courts and in courts inferior to the superior courts, before a probation or suspension of sentence may be revoked, the probation officer, solicitor or other officer shall inform the probationer in writing of his intention to pray the court to revoke probation or suspension and to put the suspended sentence into effect, and shall set forth in writing the grounds upon which revocation is prayed. The court, at the request of the defendant, shall grant a reasonable time for the defendant to prepare his defense. In all cases where probation or suspension of sentence entered in a court inferior to the superior court is revoked and sentence is placed into effect, the defendant shall have the right of appeal therefrom to the superior court, and, upon such appeal, the mat-

ter shall be determined by the judge without a jury, but only upon the issue of whether or not there has been a violation of the terms of probation or of the suspended sentence. Upon its finding that the conditions were violated, the superior court shall enforce the judgment of the lower court unless the judge finds as a fact that circumstances and conditions surrounding the terms of the probation and the violation thereof have substantially changed, so that enforcement of the judgment of the lower court would not accord justice to the defendant, in which case the judge may modify or revoke the terms of the probationary or suspended sentence in the court's discretion. Appeals from lower courts to the superior courts from judgments revoking probation or invoking suspended sentences may be heard in term or out of term, in the county or out of the county by the resident superior court judge of the district or the superior court judge assigned to hold the courts of the district, or a judge of the superior court commissioned to hold court in the district, or a special superior court judge residing in the district. (1951, c. 1038; 1963, c. 632, s. 3.)

**Editor's Note.**—The 1963 amendment rewrote this section.

**Person under Supervision of Probation Commission.**—The right to appeal from order executing a suspended judgment does not apply to a person under the supervision of the Probation Commission. *State v. Thomas*, 236 N. C. 196, 72 S. E. (2d) 525 (1952).

**Hearing in Superior Court Must Be De Novo.**—On appeal from an order of an inferior court putting into effect a suspended sentence, the hearing in superior court must be de novo, and when the superior court merely finds that there was evidence to support the findings and order of the inferior court, and affirms the order, the cause must be remanded. *State v. Coffey*, 255 N. C. 293, 121 S. E. (2d) 736 (1961).

**Superior Court Is Not Limited to Evidence Heard in Inferior Court.**—Since the hearing on appeal must be de novo in superior court, that court is not limited to the evidence heard in the inferior court, and may hear and consider any competent evidence so long as it bears on the issue of whether or not there has been a violation of the terms of the suspended sentence. *State v. Coffey*, 255 N. C. 293, 121 S. E. (2d) 736 (1961).

**Findings of Court as to Wilfulness of Violation and Absence of Lawful Excuse.**—In order for the court to put into effect a suspended sentence, it need not find that defendant's violation of a condition or suspension of execution was wilful, all that is required being that the court find that defendant had violated a valid condition of suspension and that such violation was without lawful excuse, but when the court fails to find specific facts supporting

the conclusion that the violation was without lawful excuse, there is insufficient predicate for the order putting the suspended sentence into effect. *State v. Robinson*, 248 N. C. 282, 103 S. E. (2d) 376 (1958).

**Where finding of court does not state wherein defendant violated the conditions of a suspended sentence,** and there is a question as to the validity of one or more of the conditions imposed, the defendant is entitled to have the cause remanded for a specific finding as to wherein he has violated the conditions upon which the sentence was suspended. *State v. Davis*, 243 N. C. 754, 92 S. E. (2d) 177 (1956).

**Where matter was not heard de novo by the superior court,** on appeal thereto, as required by this section, the judgment putting the sentence into execution was set aside, and the cause remanded to the superior court for further hearing in accordance with law. *State v. Thompson*, 244 N. C. 282, 93 S. E. (2d) 158 (1956).

**A capias directing defendant to answer a charge of "failure to comply—\$80 in arrears in alimony"** is sufficient to constitute a substantial compliance with this section in proceedings to revoke a suspended sentence entered in a prosecution of defendant for wilful failure to support his minor children. *State v. Dawkins*, 262 N.C. 298, 136 S.E.2d 632 (1964).

Applied in *State v. McKinney*, 251 N. C. 346, 111 S. E. (2d) 189 (1959); *State v. Lance*, 261 N.C. 368, 134 S.E.2d 685 (1964); *State v. White*, 264 N.C. 600, 142 S.E.2d 153 (1965).

Stated in *State v. Stallings*, 234 N. C. 265, 66 S. E. (2d) 822 (1951).

Cited in *State v. Simmington*, 235 N. C. 612, 70 S. E. (2d) 842 (1952); *State v. Lynn*, 251 N. C. 703, 111 S. E. (2d) 866 (1960).

§ 15-200.2. Bill of particulars as prerequisite to praying that suspended sentence be placed in effect.—In any case in the superior court in

which the solicitor for the State prays that a suspended sentence be placed into effect, the solicitor shall, by the day prior to the time he intends to pray judgment placing such suspended sentence into effect, cause to be served upon the defendant a bill of particulars setting forth the time, the place and the manner in which the terms and conditions of such suspended sentence are alleged to have been violated by the defendant. No form of bill of particulars must be followed and the informality or defectiveness of same is not a ground for appeal. Provided, that such notice may be waived in writing by the defendant. Provided nothing herein shall apply to a person under the supervision of the Probation Commission. (1961, c. 1000; 1963, c. 20.)

**Cross Reference.**—For subsequent provision as to notice of intention to pray revocation of suspension or probation, see § 15-200.1 as amended by Session Laws 1963, c. 632.

**Editor's Note.** — The 1963 amendment added the last proviso.

**This section applies only to revocation of suspensions in cases which originate in the superior court.** *State v. Dawkins*, 262 N.C. 298, 136 S.E.2d 632 (1964).

Thus, while a hearing in the superior court on appeal from an order of the inferior court revoking suspension of sentence is de novo, it is solely on the question whether defendant had violated the terms upon which the sentence was suspended; the jurisdiction of the superior court is derivative and limited to that question, and this section is not applicable. *State v. Dawkins*, 262 N.C. 298, 136 S.E.2d 632 (1964).

**§ 15-201. Establishment and organization of a State Probation Commission.**—There is hereby established a State Probation Commission to be composed of five members, who shall be appointed by the Governor and shall serve without a salary as members of such Commission, but shall receive their actual traveling expenses and seven dollars per diem while in the performance of their official duties. The first appointments shall be made within thirty days after March 13, 1937, and shall be made in such manner that the term of one member of the State Probation Commission shall expire each year. Their successors shall be appointed by the Governor within thirty days thereafter for terms of five years each. All vacancies occurring among the members shall be filled as soon as practicable thereafter by the Governor for the unexpired terms. This Commission shall be deemed a "commission for special purpose" within the meaning of the language of section seven of Article NIV of the Constitution, and the membership thereof may be composed of persons holding other official positions in the State, if the Governor shall so elect.

The State Probation Commission shall organize immediately after the appointment of the first members thereof, and elect a chairman from its members. Thereafter a chairman shall be elected annually between January fifteenth and January thirtieth of each year. (1937, c. 132, s. 5; 1959, c. 1164.)

**Editor's Note.** — The 1959 amendment inserted "and seven dollars per diem" in line four.

**§ 15-202. Duties and powers of the Commission; meetings; appointment of Director of Probation; qualifications.**—With respect to the administration of probation in the State, except cases within the jurisdiction of the juvenile courts, the State Probation Commission shall exercise general supervision; formulate policies; adopt general rules, not inconsistent with law, to regulate methods of procedure; and set standards for personnel. It shall meet at stated times to be fixed by it not less often than once every three months, and on call of its chairman, to consider any matters relating to probation in the State.

The executive head of the State probation system shall be a Director of Probation appointed by the State Probation Commission, subject to the approval of the Governor. A Director shall be appointed on July 1, 1963, or as soon thereafter as practicable, for a term expiring July 1, 1966. Subsequent appointments to this office shall be made for a term of four (4) years, except those made to fill out

an unexpired term in case of the death, resignation, or removal of a Director. The Director shall administer the affairs of the State probation system in accordance with controlling law under rules and regulations proposed by him and approved by the State Probation Commission. The Commission may remove the Director, with the consent and approval of the Governor, at any time after notice and hearing for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. The salary of the Director of Probation shall be set by the Governor subject to the approval of the Advisory Budget Commission.

The person appointed as Director of Probation shall be qualified by education, training, experience and temperament for the duties of the office. (1937, c. 132, s. 6; 1943, c. 638; 1957, c. 541, s. 2; 1963, c. 914, s. 1.)

**Editor's Note.—**

The 1957 amendment deleted from the second paragraph the words "and the Council of State" and inserted in lieu thereof the words "subject to the approval

of the Advisory Budget Commission." As the first and third paragraphs were not changed they are not set out.

The 1963 amendment, effective July 1, 1963, rewrote the second paragraph.

**§ 15-203. Duties of the Director of Probation; appointment of probation officers; reports; requests for extradition.**—The Director of Probation shall be responsible for the appointment, promotion, demotion, and discharge of other probation system personnel. The compensation and duties of other probation system personnel shall be determined by the Director of Probation in conformity with the provisions of the Executive Budget Act and the State Personnel Act.

The Director of Probation shall direct the work of the probation officers appointed under this article. He shall consult and cooperate with the courts and institutions in the development of methods and procedure in the administration of probation, and shall arrange conferences of probation officers and judges. He shall make an annual written report with statistical and other information to the Probation Commission and the Governor. He is authorized to present to the Governor written applications for requisitions for the return of probationers who have broken the terms of their probation, and are believed to be in another state, and he shall follow the procedure outlined for requests for extradition as set forth in G. S. 15-77. (1937, c. 132, s. 7; 1959, c. 127; 1963, c. 914, s. 2.)

**Editor's Note.** — The 1959 amendment added the last sentence of the second paragraph.

The 1963 amendment, effective July 1, 1963, rewrote the first paragraph.

**§ 15-203.1:** Repealed by Session Laws 1963, c. 914, s. 6, effective July 1, 1963.

**Editor's Note.**—See now § 15-203.

**§ 15-206. Co-operation with Commissioner of Parole and officials of local units.**—It shall be the duty of the Director of Probation and the Commissioner of Parole to co-operate with each other to the end that the purposes of probation and parole may be more effectively carried out. When requested, each shall make available to the other case records in his possession, and in cases of emergency, where time and expense can be saved, shall provide investigation service.

It is hereby made the duty of every city, county, or State official or department to render all assistance and co-operation within his or its fundamental power which may further the objects of this article. The State Probation Commission, the Director of Probation, and the probation officers are authorized to seek the co-operation of such officials and departments, and especially of the county superintendents of public welfare and of the State Board of Public Welfare. (1937, c. 132, s. 10; 1961, c. 139, s. 2.)

**Editor's Note.** — The 1961 amendment substituted "State Board of Public Wel-

fare" for "State Board of Charities and Public Welfare."

## ARTICLE 21.

*Segregation of Youthful Offenders.*

§ 15-212. **Sentence of youthful offender.**—Any judge of any court who sentences a youthful offender to imprisonment in the State prison or to jail to be assigned to work under the State Prison Department, if in his opinion such person will be benefited by being kept separate, while performing his sentence, from prisoners other than youthful offenders, shall, as a part of the sentence of such person, provide that he shall be segregated as a youthful offender. (1947, c. 262, s. 1; 1957, c. 349, s. 10.)

**Editor's Note.**— The 1957 amendment "State Highway and Public Works Commission" substituted "State Prison Department" for "mission."

§ 15-213. **Duty of Director of Prisons as to segregation of youthful offenders.**—The Director of Prisons shall segregate all youthful offenders whose sentences provide for such segregation and shall neither quarter nor work such prisoners, except in cases of emergency or when temporarily necessary, with other prisoners not coming within that classification.

The Director of Prisons shall, in so far as is possible, provide personnel specially qualified by training, experience and personality to operate units that may be set up to effect the segregation provided in this article. (1947, c. 262, s. 1; 1955, c. 238, s. 9.)

**Editor's Note.**— The 1955 amendment "State Highway and Public Works Commission" substituted "Director of Prisons" for "mission."

§ 15-214. **Extension to persons sentenced prior to July 1st, 1947.**—(a) The benefits of this article, as far as practicable, shall also be extended to:

- (1) All persons who on July 1st, 1947, shall be serving sentences in the State prison or sentences to jail with assignment to work under the State Prison Department, and
- (2) All persons who shall be so sentenced prior to July 1st, 1947, even though they begin to serve such sentences after that date,

Provided such persons at the time of imposition of sentence came within the meaning of the term "youthful offender" as used in this article.

(b) The State Prison Department shall determine which of the prisoners coming within the provisions of subsection (a) of this section will probably be benefited by being segregated as provided in § 15-213, and such prisoners shall thereafter be so segregated as if their sentences so provided. (1947, c. 262, s. 1; 1957, c. 349, s. 10.)

**Editor's Note.**— The 1957 amendment "State Highway and Public Works Commission" substituted "State Prison Department" for "mission."

§ 15-215. **Termination of segregation.**—The Director of Prisons shall have authority to terminate the segregation as a youthful offender of any prisoner who, in the opinion of the Director, exercises a bad influence upon his fellow prisoners, or fails to take proper advantage of the opportunities offered by such segregation. (1947, c. 262, s. 1; 1955, c. 238, s. 9.)

**Editor's Note.**— The 1955 amendment "mission" and "Director" for "Commission" substituted "Director of Prisons" for "sion."  
"State Highway and Public Works Com-

## ARTICLE 22.

*Review of Criminal Trials.*

§ 15-217. **Institution of proceeding; effect on other remedies.**—Any person imprisoned in the penitentiary, Central Prison, common jail of any county

or imprisoned in the common jail of any county and assigned to work under the supervision of the State Prison Department, who asserts that in the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or of the State of North Carolina or both, or that the court was without jurisdiction to impose the sentence, or that the sentence exceeds the maximum authorized by law, or that the sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under a writ of habeas corpus, writ of coram nobis, or other common-law or statutory remedy, as to which there has been no prior adjudication by any court of competent jurisdiction, may institute a proceeding under this article.

The remedy herein provided is not a substitute for nor does it affect any remedies which are incident to the proceedings in the trial court, or any remedy of direct review of the sentence or conviction, but, except as otherwise provided in this article it comprehends and takes the place of all other common-law and statutory remedies which have heretofore been available for challenging the validity of incarceration under sentence of death or imprisonment, and shall be used exclusively in lieu thereof. (1951, c. 1083, s. 1; 1957, c. 349, s. 10; 1959, c. 21; 1965, c. 352, s. 1.)

**Editor's Note.** — The 1965 amendment, effective July 1, 1965, rewrote this section as amended in 1957 and 1959.

Prior to the 1965 amendment this section was limited to the review of constitutional defects in criminal trials. Those cases cited in the note below which were decided prior to the amendment should be read in the light of the former limitation.

For brief comment on this article, see 29 N. C. Law Rev. 390.

This article, known as the North Carolina Post-Conviction Hearing Act, establishes a new judicial proceeding by which the superior court may probe beneath the adjudication in the original criminal action in which an imprisoned petitioner was convicted and sentenced, and grant him appropriate relief in respect to his conviction and sentence in case it determines that two specified conditions concur. These conditions are as follows: (1) That there was a substantial denial of the constitutional rights of the petitioner in the original criminal action in which he was convicted, and (2) that there has been no prior adjudication as to such constitutional rights by any court of competent jurisdiction. *Miller v. State*, 273 N. C. 29, 74 S. E. (2d) 513 (1953).

**And Resembles Common-Law Writ of Coram Nobis.**—The remedy afforded by the North Carolina Post-Conviction Hearing Act closely resembles that available under the common-law writ of coram nobis. *State v. Merritt*, 264 N.C. 716, 142 S.E.2d 687 (1965).

**Purpose of Article.**—The Post-Conviction Hearing Act is not designed to add to the law's delays by giving an accused two days in court where one is sufficient for the doing of substantial justice under fun-

damental law. It is not devised to confer upon an accused, who is defended by counsel of his own selection or competent counsel appointed by the court, a legal privilege, at his own election, to have his rights arising under the common law and the statutes adjudicated at a time of the State's choosing in the original criminal action, and his rights arising under the constitutions of his state and nation adjudicated at a subsequent time of his own choosing in another proceeding. *Miller v. State*, 237 N. C. 29, 74 S. E. (2d) 513 (1953).

This article was not intended to operate as a substitute for an appeal. It was not designed merely to afford to a person heretofore convicted of crime the right to present to the Supreme Court assignments of error in the trial in which he was convicted and from which he did not appeal. *State v. Cruse*, 238 N. C. 53, 76 S. E. (2d) 320 (1953); *State v. Graves*, 251 N. C. 550, 112 S. E. (2d) 85 (1960).

This article was enacted to provide an adequate and available post-trial remedy for persons imprisoned under judicial decrees who suffered substantial and unadjudicated deprivations of their constitutional rights in the original criminal actions resulting in their convictions because they were prevented from claiming such constitutional rights in the original criminal actions by factors beyond their control. *Miller v. State*, 237 N. C. 29, 74 S. E. (2d) 513 (1953); *State v. Graves*, 251 N. C. 550, 112 S. E. (2d) 85 (1960). See *State v. Cruse*, 238 N. C. 53, 76 S. E. (2d) 320 (1953).

The Post-Conviction Hearing Act is not a substitute for appeal. It cannot be used to raise the question whether errors

were committed in the course of the trial. The inquiry is limited to a determination whether the petitioners were denied the right to be represented by counsel, to have witnesses, and a fair opportunity to prepare and to present their defense. The question whether these rights have been denied, is one of law. *State v. Wheeler*, 249 N. C. 187, 105 S. E. (2d) 615 (1958).

Like the Illinois act on which it was modeled, the North Carolina Post-Conviction Hearing Act was passed to replace the ancient and little known or understood writ of error coram nobis, insofar as the review of the constitutionality of criminal trials is concerned. *State v. Merritt*, 264 N.C. 716, 142 S.E.2d 687 (1965).

**Article Affords Review Only in Case of Substantial Denial of Constitutional Right.**—It was not the intention of the legislature to afford under this article a general review of every error a prisoner who is dissatisfied with his conviction and sentence may assert, but only in those instances in which a substantial denial of a constitutional right has been made to appear. *State v. Cruse*, 238 N. C. 53, 76 S. E. (2d) 320 (1953).

Under this article a prisoner has the right to petition the court which sentenced him for relief upon allegation that in the proceedings which resulted in his conviction there was substantial denial of his rights under the Constitution of the United States. The article gives the court full power to afford relief if it finds merit in the petition. Where a prisoner has not attempted to avail himself of this remedy, he has not exhausted remedies available in the courts of the State, which is a prerequisite to the right to apply to a federal court for a writ of habeas corpus. *Quick v. Anderson*, 194 F. (2d) 183 (1952).

**A new trial awarded under this article is a retrial of the whole case, verdict, judgment, and sentence.** *State v. White*, 262 N.C. 52, 136 S.E.2d 205 (1964).

**And Defendant Must Accept Hazards as Well as Benefits.**—Where defendant petitions and obtains a new trial under this article, he must accept the hazards as well as the benefits, and may not complain if sentence imposed upon conviction in the second trial exceeds that imposed at the first. *State v. White*, 262 N.C. 52, 136 S.E.2d 205 (1964).

**No Credit Allowed on Second Conviction for Time Served on First Sentence.**—No statute requires that a defendant convicted a second time upon a new trial obtained under this article shall be given credit for the time he has served on the sentence im-

posed at the first trial, and when the sentence imposed at the second trial, together with the time served on the first sentence, is within the maximum permitted by law, it will not be disturbed on appeal. *State v. White*, 262 N.C. 52, 136 S.E.2d 205 (1964).

**A delay of some two years in the hearing of a petition for a post-conviction review would seem inexcusable.** *State v. Hayes*, 261 N.C. 648, 135 S.E.2d 653 (1964).

**Voluntary Relinquishment of Rights.**—A litigant does not suffer a "denial of his rights," within the meaning of this section, when he intentionally and voluntarily relinquishes them. *Miller v. State*, 237 N. C. 29, 74 S. E. (2d) 513 (1953).

**Delay in Filing Petition Held Not Due to Laches.**—Where petitioner was tried in 1948 without the benefit of counsel, and subsequently escaped and was confined to a federal penitentiary from 1951 to 1962, and the decision in *Gideon v. Wainwright*, 372 U.S. 335, 83 Sup. Ct. 792, 9 L. Ed. 2d 799 (1963), did not give him grounds for relief until 1963, such fifteen-year delay in filing his petition was held not to be due to laches or negligence on his part. *State v. Johnson*, 263 N.C. 479, 139 S.E.2d 692 (1965).

The necessity for the enforcement of rules governing appeals in North Carolina in no way constitutes an encroachment on the rights of a defendant which come within the purview of this and the following sections. *State v. Davis*, 248 N. C. 318, 103 S. E. (2d) 289 (1958).

**Petition Insufficient to Show Violation of Rights.**—See *State v. Hackney*, 240 N. C. 230, 81 S. E. (2d) 778 (1954).

**Failure to Observe §§ 15-46 and 15-47.**—While there are circumstances under which a failure to observe the provisions of §§ 15-46 and 15-47 may not affect constitutional rights, yet where an offense as serious as robbery with firearms is charged, such failure must be given great weight in a hearing under this article. *State v. Graves*, 251 N. C. 550, 112 S. E. (2d) 85 (1960).

**Review by Federal Court Requires Exhaustion of State Remedies.**—Writs of habeas corpus will be refused review in a federal court when presented directly upon conviction in a North Carolina county court, as it is abundantly clear that until the petitioners have exhausted their State remedies, a federal court may not consider the constitutional questions presented. In *re Clayton*, 181 F. Supp. 834 (1960).

**But Question Already Decided Need Not Be Urged on Supreme Court a Second**

**Time under Alternate Procedure.**—Where the State Supreme Court reviewed State court convictions and squarely decided the questions raised, the State's opposition to federal relief on the ground that State remedies were not exhausted because the prisoners did not proceed under this article was without merit, since if the question is presented and adjudicated by the State's highest court once, it is not necessary to urge it upon them a second time under an alternate procedure. *Grundler v. North Carolina*, 283 F. (2d) 798 (1960).

Applied in *Hudson v. North Carolina*, 363 U. S. 697, 80 S. Ct. 1314, 4 L. Ed. (2d) 1500 (1960); *State v. Burell*, 254 N. C. 317,

119 S. E. (2d) 3 (1961); *State v. Broadway*, 259 N. C. 243, 130 S. E. (2d) 337 (1963); *Bottoms v. State*, 262 N.C. 483, 137 S.E.2d 817 (1964); *Potter v. State*, 263 N.C. 114, 139 S.E.2d 4 (1964); *State v. Chamberlain*, 263 N.C. 406, 139 S.E.2d 620 (1965); *State v. Slade*, 264 N.C. 70, 140 S.E.2d 723 (1965); *State v. Benfield*, 264 N.C. 75, 140 S.E.2d 706 (1965); *State v. Lawrence*, 264 N.C. 220, 141 S.E.2d 264 (1965).

Cited in *State v. Burell*, 256 N. C. 288, 123 S. E. (2d) 795 (1962), cert. denied 370 U. S. 961, 82 S. Ct. 1621, 8 L. Ed. (2d) 827 (1962); *State v. Williams*, 261 N.C. 172, 134 S.E.2d 163 (1964).

**§ 15-217.1. Filing petition with clerk; delivery of copy to solicitor; review of petition by judge.**—The proceeding shall be commenced by filing with the clerk of superior court of the county in which the conviction took place a petition, with two copies thereof, verified by affidavit. One copy shall be delivered by the clerk to the solicitor of the solicitorial district who prosecutes the criminal docket of the superior court of the county in which said petition is filed, either in person or by ordinary mail, and the clerk shall enter upon his docket the date and manner of delivery of such copy.

The clerk shall place the petition upon the criminal docket upon his receipt thereof. The clerk shall promptly after delivery of copy to the solicitor bring the petition, or a copy thereof, to the attention of the resident judge or any judge holding the courts of the district or any judge holding court in the county. Such judge shall review the petition and make such order as he deems appropriate with respect to permitting the petitioner to prosecute such action without providing for the payment of costs, with respect to the appointment of counsel, and with respect to the time and place of hearing upon the petition. If it appears to the judge that substantial injustice may be done by any delay in hearing upon the matters alleged in the petition, he may issue such order as may be appropriate to bring the petitioner before the court without delay, and may direct the solicitor to answer the petition at a time specified in the order, and the court shall thereupon inquire into the matters alleged as directed by the reviewing judge, as in the case of a writ of habeas corpus. If upon review of the petition it does not appear to the judge that an order advancing the hearing or other order is appropriate, he shall return the petition to the clerk with a notation to that effect. (1965, c. 352, s. 1.)

**Cross Reference.**—See note to § 15-217.

**Editor's Note.**—Section 3 of the act inserting this section makes it effective July 1, 1965.

In the county of conviction are to be found the records of the trial which the prisoner attacks, as well as the court officials and other persons likely to have any knowledge of the truth or falsity of the

prisoner's allegations that he suffered a substantial denial of his constitutional rights. If entries in the minutes are to be corrected or judgments vacated, manifestly this should be done in the county where they are required to be kept. *State v. Merritt*, 264 N.C. 716, 142 S.E.2d 687 (1965).

**§ 15-218. Contents of petition; waiver of claims not alleged.**—The petition shall identify the proceeding or trial in which the petitioner was convicted, give the date of the rendition of the final judgment complained of, and shall clearly set forth the respects in which petitioner's constitutional rights were violated or in which he is illegally detained, and shall state that the questions raised have not heretofore been raised or passed upon by any court of competent jurisdiction. The petition shall have attached thereto affidavits, records or other evidence supporting its allegations or shall state why the same are not attached. The petition shall



also identify any previous proceedings that the petitioner may have taken to secure relief from his conviction. Argument and citations and discussion of authorities shall be omitted from the petition. Any claims of substantial denial of constitutional rights or of other error remediable under this article not raised or set forth in the original or any amended petition shall be deemed waived. (1951, c. 1083, s. 1; 1953, c. 675, s. 3; 1965, c. 352, s. 1.)

**Editor's Note.—**

The 1953 amendment substituted "com-plain'd" for "claimed" in the first sentence.

The 1965 amendment, effective July 1, 1965, substituted "or in which he is illegally detained, and shall state" for "and" in the first sentence, deleted "constitu-

tional" preceding "questions" in that sentence, inserted "or of other error remediable under this article" in the last sentence and substituted "shall be deemed" for "is" near the end of that sentence.

**Applied in State v. Cruse, 238 N. C. 53, 76 S. E. (2d) 320 (1953).**

**§ 15-219. Petitioner unable to pay costs or procure counsel.**—If the petitioner alleges that the petitioner is without funds to pay the costs of the proceeding, and is unable to give a costs bond with sureties for the payment of the costs for the proceeding and is unable to furnish security for costs by means of a mortgage or lien upon property to secure the costs, the court may order that the petitioner be permitted to proceed to prosecute such proceeding without providing for the payment of costs. If the petitioner is without counsel and alleges in the petition that he is without means of any nature sufficient to procure counsel, he shall state whether or not he wishes counsel to be appointed to represent him. If appointment of counsel is so requested, the court shall appoint counsel if satisfied that the petitioner has no means sufficient to procure counsel. The court shall fix the compensation to be paid such counsel in accordance with the provisions of G.S. 15-5, which compensation shall be paid by the State as provided in said section. (1951, c. 1083, s. 1; 1963, c. 1180; 1965, c. 352, s. 1.)

**Editor's Note.**—The 1963 amendment, effective June 25, 1963, substituted "in accordance with the provisions of G. S. 15-5, which compensation shall be paid by the State as provided in said section" for "which, when so determined, shall be paid by the county in which the conviction occurred" at the end of this section.

The 1965 amendment, effective July 1, 1965, re-enacted the section without change.

**Petitioner was entitled to counsel at his post-conviction hearing. State v. Goff, 263 N.C. 515, 139 S.E.2d 695 (1965).**

**Applied in State v. Roux, 263 N.C. 149, 139 S.E.2d 189 (1964).**

**§ 15-220. Answer of the State; withdrawal of petition; amendments.**—Unless the reviewing judge shall have ordered an earlier date, within 30 days after the date of delivery of the petition to the solicitor of the district, or within such further time as the court may fix, the solicitor shall answer or move to dismiss on behalf of the State. No other or further pleadings shall be filed except as the court may order on its own motion or on that of either party. The court may, in its discretion, grant leave at any stage of the proceeding prior to entry of judgment to withdraw the petition. Withdrawal of a petition shall constitute a waiver of any claim of denial of constitutional rights or of other error remediable under this article which has been alleged in the petition. The court may, in its discretion make such orders as to amendment of the petition or any other pleading, or as to pleading over, or filing further pleadings, or extending the time for filing any pleading other than the original petition, as shall seem to the court appropriate, just and reasonable.

If it shall appear to the court that records, including a transcript of testimony, of the proceedings which resulted in the conviction of petitioner are necessary for a proper determination of the proceedings, the judge shall, upon finding that the petitioner is indigent or upon motion of the State, order the county to pay the necessary cost of obtaining the records specified by the judge. (1951, c. 1083, s. 1; 1965, c. 352, s. 1.)

**Editor's Note.** — The 1965 amendment, effective July 1, 1965, substituted "Unless the reviewing judge shall have ordered an earlier date, within 30 days after the date

of delivery of the petition to" for "Within 30 days after the date of the service of the petition upon" at the beginning of the section, inserted the present fourth sen-

tence and added the second paragraph in the section.

Cited in *State v. Hayes*, 261 N.C. 648, 135 S.E.2d 653 (1964).

§ 15-221. **Hearing.**—The court may receive proof by affidavits, depositions, oral testimony, or other evidence, and the court shall pass upon all issues or questions of fact arising in the proceeding without the aid of a jury. In its discretion, the court may order the petitioner brought before the court for the hearing. When said hearing is completed, the court shall make appropriate findings of fact, conclusions of law thereon and shall enter judgment upon said hearing. If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings under which the petitioner was convicted, and such supplementary orders as to arraignment, retrial, custody, bail or discharge as may be necessary and proper. Such proceeding may be heard by any resident judge of the district or by any judge holding the courts of the district, or any judge holding court in the county, and such proceeding may be heard at term, in chambers or in vacation, or at any regular or special session of court. Unless the judge reviewing the petition has set another time, or unless a judge shall thereafter set another time, the clerk and the solicitor shall calendar the matter for hearing at the next session for the trial of criminal cases in the county after the time for pleading by the solicitor has expired. If said proceeding is set for hearing at any time other than a session of court for the trial of criminal cases in the county, then notice of the time and place of hearing shall be given to the solicitor of the district. (1951, c. 1083, s. 1; 1965, c. 352, s. 1.)

**Editor's Note.** — The 1965 amendment, effective July 1, 1965, substituted "or by any judge holding the courts of the district, or any judge holding court in the county" for "or by any regular or special judge holding the courts of the district" in the fifth sentence, substituted "session" for "term" near the end of that sentence, inserted the present sixth sentence, substituted "a session of court for the trial of criminal cases in the county" for "a regular term of the court of the county in which the petition is filed" in the last sentence and substituted "given to" for "served upon" near the end of that sentence.

**When Case Remanded to Superior Court.**

—In the absence of sufficient and definite findings of fact by the court, as required by this section, the case should be remanded to the superior court to the end that the facts may be sufficiently and definitely found, that the reviewing court can more accurately and safely pass upon the conclusion of law. *State v. Burell*, 254 N. C. 317, 119 S. E. (2d) 3 (1961).

Applied in *Miller v. State*, 237 N. C. 29, 74 S. E. (2d) 513 (1953); *State v. Hackney*, 240 N. C. 230, 81 S. E. (2d) 778 (1954).

Cited in *State v. Hayes*, 261 N.C. 648, 135 S.E.2d 653 (1964).

§ 15-222. **Review by application for certiorari.** — Any final judgment entered upon such a petition and proceeding may be reviewed by the Supreme Court of North Carolina upon application for a writ of certiorari brought within 60 days from the entry of the judgment in such proceeding. The law of this State governing the application, granting and disposition of writs of certiorari shall be applicable to any application for writ of certiorari brought under the provisions of this article for the purpose of seeking a review of such judgment or proceeding. (1951, c. 1083, s. 1; 1965, c. 352, s. 1.)

**Editor's Note.** — The 1965 amendment, effective July 1, 1965, re-enacted the section without change.

**Nature of Writ.**—A writ of certiorari is an extraordinary remedial writ, and it issues from a superior to an inferior court, officer, or commission acting judicially, and it lies only to review judicial or quasi-judicial action to ascertain its validity and to correct errors therein. *State v. Roux*,

263 N.C. 149, 139 S.E.2d 159 (1964).

Applied in *State v. Hackney*, 240 N. C. 230, 81 S. E. (2d) 778 (1954); *Bottoms v. State*, 262 N.C. 483, 137 S.E.2d 817 (1964).

Cited in *State v. Burell*, 256 N. C. 288, 123 S. E. (2d) 795 (1962) cert. denied 370 U. S. 961, 82 S. Ct. 1621, 8 L. Ed. (2d) 827 (1962); *State v. Hayes*, 261 N.C. 648, 135 S.E.2d 653 (1964).

## Chapter 16. Gaming Contracts and Futures.

### ARTICLE 1.

#### *Gaming Contracts.*

#### § 16-1. Gaming and betting contracts void.

Rights, etc.—  
A note given for a gambling debt is void and no action thereon can be maintained. *Bullard v. Johnson*, 264 N.C. 371, 141 S.E.2d 472 (1965).

#### Betting on Horse Race.—

In accord with original. See *State v. Felton*, 239 N. C. 575, 80 S. E. (2d) 625 (1954).

#### Betting on dog races under a pari-mu-

tuel system having no other purpose than that of providing the facilities by means of tickets, machines, etc., for placing bets, calculating odds, determining winnings, if any, constitutes gambling within the meaning of the statutes presently codified as §§ 16-1, 16-2 and 14-292. *State v. Carolina Racing Ass'n*, 241 N. C. 80, 84 S. E. (2d) 390 (1954).

#### § 16-2. Players and betters competent witnesses.

Cited in *State v. Felton*, 239 N. C. 575, 80 S. E. (2d) 625, (1954); *State v. Carolina Racing Ass'n, Inc.*, 241 N. C. 80, 84 S. E. (2d) 390 (1954).

### ARTICLE 2.

#### *Contracts for "Futures."*

#### § 16-3. Certain contracts as to "futures" void.

Stated in *Royster v. Hancock*, 235 N. C. 110, 69 S. E. (2d) 29 (1952).

## Chapter 17.

### Habeas Corpus.

#### Article 7.

#### Habeas Corpus for Custody of Children in Certain Cases.

#### Sec.

17-39.1. Award of custody to such person, organization, etc., as will best promote welfare of child.

### ARTICLE 1.

#### *Constitutional Provisions.*

#### § 17-1. Remedy without delay for restraint of liberty.

#### Cross Reference.—

As to exclusive remedy for challenging the validity of incarceration under sentence of death or imprisonment, see § 15-217.

Habeas corpus is high prerogative writ. *In re Burton*, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

### ARTICLE 2.

#### *Application.*

#### § 17-3. Who may prosecute writ.

Who May Prosecute Writ.—Any person imprisoned or restrained of his liberty for any pretense may prosecute a

writ. *In re Burton*, 257 N. C. 534, 126 S. E. (2d) 581 (1962).  
Court Is Not Permitted to Act as One

of Errors and Appeals.—In habeas corpus proceedings, the court is not permitted to act as one of errors and appeals, but the right to afford relief, on such hearings, arises only when the petitioner is held unlawfully or on a sentence manifestly entered by the court without power to impose it. In *re* Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

Habeas corpus is not available as a substitute for appeal. In *re* Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

The judgment must be void as distinguished from erroneous. In *re* Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

**As Where Court Had No Jurisdiction or Judgment Was Not Authorized by Law.**—In habeas corpus proceedings, the court has jurisdiction to discharge petitioner

only when the record discloses that the court which imprisoned him did not have jurisdiction of the offense or of the person of defendant, or that the judgment was not authorized by law. In *re* Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

The sole question for determination at habeas corpus hearing for alleged unlawful imprisonment is whether petitioner is then being unlawfully restrained of his liberty. In *re* Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

The only questions open to inquiry are whether on the record the court which imposed the sentence had jurisdiction of the matter or had exceeded its powers. In *re* Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

#### § 17-4. When application denied.

Habeas corpus is inappropriate to test, etc.—

In a proceeding wherein there was no question of the superior court having jurisdiction of the offense and of the person of the defendant, and the power to render the judgment imposed, the defendant was not entitled to relief by habeas corpus on the ground that the record failed to show that a verdict was rendered in the case or that

he had entered any plea, since any omissions in the minutes of the court with respect to procedure followed during the course of trial could be amended by the court. *State v. Cannon*, 244 N. C. 399, 94 S. E. (2d) 339 (1956).

Applied in *State v. Renfrow*, 247 N. C. 55, 100 S. E. (2d) 315 (1957).

Quoted in *In re Harris*, 241 N. C. 179, 84 S. E. (2d) 808 (1954).

#### § 17-6. To judge of Supreme or superior court; in writing.

**Before Whom Writ Made Returnable.**—The judge issuing the writ may make it returnable before himself, or, for convenience, before any other judge. In *re* Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

The particular judge before whom the writ is returnable need not be either the resident or presiding judge of any particular term of court. In *re* Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

### ARTICLE 6.

#### *Proceedings and Judgment.*

#### § 17-32. Proceedings on return; facts examined; summary hearing of issues.

**Petitioner Serving Sentence under Void Judgment Is Entitled to Immediate Release.**—Where upon habeas corpus it appears that petitioner is serving a sentence under a void judgment, petitioner is entitled to his immediate release. In *re* Burton, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

**Release of Person Committed to State**

**Mental Institution.**—A person committed to a State mental institution under chapter 122, art. 3, may not invoke the provisions of § 35-4 for a determination of the restoration of sanity by a jury trial as a condition precedent to his release under § 122 46.1, the proper remedy being by habeas corpus under this section. In *re* Harris, 241 N. C. 179, 84 S. E. (2d) 808 (1954).

#### § 17-33. When party discharged

The recovery from a mental disease after commitment to an institution would seem to be an "event which has taken place afterwards," within the meaning of

paragraph (2) of this section, entitling an inmate to discharge under § 17-32. In *re* Harris, 241 N. C. 179, 84 S. E. (2d) 808 (1954).

## ARTICLE 7.

*Habeas Corpus for Custody of Children in Certain Cases.***§ 17-39. Custody as between parents in certain cases; modification of order.****When Section Applies.—**

In accord with 2nd paragraph in original. See *Weddington v. Weddington*, 243 N. C. 702, 92 S. E. (2d) 71 (1956).

It is manifest from a reading of this section, as interpreted and applied in decisions of the Supreme Court, that its provisions are available only in cases where the husband and wife are living in a state of separation, without being divorced, and there arises a contest between them as to the custody of their children. In *re McCormick*, 240 N. C. 468, 82 S. E. (2d) 406 (1954).

Where the relief primarily sought by plaintiff was a court order awarding her the legal custody of the children and providing for their future support, a habeas corpus proceeding was held to be available to plaintiff. *Murphy v. Murphy*, 261 N. C. 95, 134 S.E.2d 148 (1964).

**Nature of Proceeding.**—While the proceeding under this section is referred to as “a habeas corpus” it seems clear that the legislature did not intend it to be “habeas corpus” in the strict meaning of the term. Rather it is set up as a proceeding in the nature of habeas corpus by which a controversy between husband and wife, living in a state of separation, without being divorced, in respect to the custody of their children may be determined. In *re McCormick*, 240 N. C. 468, 82 S. E. (2d) 406 (1954).

This section provides a proceeding in the nature of habeas corpus by which a controversy respecting the custody of minor children may be determined between husband and wife, living in a state of separation without divorce. *Bunn v. Bunn*, 258 N. C. 445, 128 S. E. (2d) 792 (1963).

**Jurisdiction of Juvenile Court.—**

The juvenile court, under § 110-21, has

exclusive original jurisdiction of a child under sixteen years of age “whose custody is subject to controversy” in all cases except those in which the superior court is given jurisdiction by this section or § 50-13. In *re Custody of Simpson*, 262 N. C. 206, 136 S.E.2d 647 (1964).

**Service of Process or General Appearance Required.**—In a habeas corpus proceeding, custody or support of children may not be determined until defendant has been served with process, personally or by publication, or has made a general appearance, and then only after time for answering has expired or after notice duly given. *Murphy v. Murphy*, 261 N. C. 95, 134 S.E.2d 148 (1964).

**It is immaterial whether the respondent or the petitioner has custody.** Where there is a controversy between husband and wife, living in a state of separation, without being divorced, in respect to the custody of their children, the provisions of this section are available to the parent with whom the children then reside. In *re McCormick*, 240 N. C. 468, 82 S. E. (2d) 406 (1954).

**Custody of children may be determined out of term after notice.** In *re Burton*, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

**Effect of Agreement between Parents.**—The inherent and statutory authority of the court to protect the interests and provide for the welfare of infants cannot be affected by agreement entered into by the child’s parents. In *re Burton*, 257 N. C. 534, 126 S. E. (2d) 581 (1962).

**Applied in** *In re Allen*, 238 N. C. 367, 77 S. E. (2d) 907 (1953).

**Cited in** *Dellinger v. Bollinger*, 242 N. C. 696, 89 S. E. (2d) 592 (1955); *Blankenship v. Blankenship*, 256 N. C. 638, 124 S. E. (2d) 857 (1962).

**§ 17-39.1. Award of custody to such person, organization, etc., as will best promote welfare of child.**—In addition to the above mandatory section and other methods authorized by law for determining the custody of minor children, any superior court judge having authority to determine matters in chambers in the district may, in his discretion, issue a writ of habeas corpus requiring that the body of any minor child whose custody is in dispute be brought before him or any other qualified judge. Upon the return of said writ the judge may award the charge or custody of the child to such person, organization, agency or institution for such time, under such regulations and restrictions, and with such provisions and directions, as will, in the opinion of the judge, best promote the

interest and welfare of said child. The cause may be retained for the purpose of varying, modifying or annulling any order for cause at any subsequent time. (1957, c. 545.)

**Cross Reference.**—See note to § 17-39.

**Editor's Note.** — For comment on this section, see 36 N. C. Law Rev. 52.

**Marital Status of Parents Is Not a Factor in Determining Procedure.**—Prior to 1957 habeas corpus could not be used to determine the right to custody of children whose parents had been divorced; but by this section, the marital status of parents is not now a factor in determining the procedure to obtain custody of a child, by habeas corpus. *Cleeland v. Cleeland*, 249 N. C. 16, 105 S. E. (2d) 114 (1958).

By virtue of this section, the marital status of parents is not now a factor in determining the procedure to obtain custody of a child. *Bunn v. Bunn*, 258 N. C. 445, 128 S. E. (2d) 792 (1963).

**Custody and Maintenance of Child Is Not Merely Incident of Divorce Proceedings.**—A superior court judge, by the express provisions of this section, had jurisdiction and power, after the return of the verdict in a divorce case, to determine matters relating to the custody and support of the minor son of the parties by issuing a writ of habeas corpus, apart from his jurisdiction of the divorce suit, so that custody and maintenance of such child is and was more than a mere incident of the divorce proceedings. *Bunn v. Bunn*, 258 N. C. 445, 128 S. E. (2d) 792 (1963).

**Jurisdiction to Award Custody of Child after Denial of Divorce.**—After plaintiff's suit for divorce from bed and board and defendant's cross action for alimony without divorce had both been denied, the superior court judge had jurisdiction and power to enter the portion of the judg-

ment awarding custody of the minor son of the parties to defendant and providing for his maintenance and support. *Bunn v. Bunn*, 258 N. C. 445, 128 S. E. (2d) 792 (1963).

**Duty to Support May Be Compelled.**—The language of this section, authorizing an award of custody, implies the power to compel the person responsible for the support of a child to perform his duty. In re *Skipper*, 261 N.C. 592, 135 S.E.2d 671 (1964).

**The pendency in another state of wife's suit for divorce and custody and support of the children of the marriage does not deprive the courts of this State of jurisdiction in habeas corpus proceedings against the resident husband to determine the right to custody, the children, constituting the res, being within the State.** In re *Skipper*, 261 N.C. 592, 135 S.E.2d 671 (1964).

**Propriety of Award Where Evidence Shows Both Parents Suitable.**—Where the evidence is sufficient to support the court's finding that petitioner is a suitable person to have custody of his son and that the best interests of the child would be served by awarding the child's custody to him, order awarding the custody to the father is proper, even though the evidence would also support a finding that the child's mother is a fit and suitable person and that the best interests of the child would be served by awarding custody to her. In re *White*, 262 N.C. 737, 138 S.E.2d 516 (1964).

Applied in *Spitzer v. Lewark*, 259 N. C. 49, 129 S. E. (2d) 620 (1963).

Cited in *Blankenship v. Blankenship*, 256 N. C. 638, 124 S. E. (2d) 857 (1962).

### § 17-40. Appeal to Supreme Court.

No Appeal Except under This Section.—

In accord with 1st paragraph in original.

See *State v. Renfrow*, 247 N. C. 55, 100 S. E. (2d) 315 (1957).

**Chapter 18.**

**Regulation of Intoxicating Liquors.**

**Article 1.**

**The Turlington Act.**

- Sec.  
 18-6. Seizure of liquor, equipment and materials, or conveyance; arrests; sale of property.  
 18-6.1. Officers to refer to State courts cases involving vehicles or equipment or material seized and arrests made for unlawful transportation.  
 18-13. Search warrants; disposal of liquor, equipment and materials seized.

**Article 3.**

**Alcoholic Beverage Control Act of 1937.**

- 18-37. State Board of Alcoholic Control created; membership; appointed by Governor; chairman; terms; compensation; meetings.  
 18-38. Director of State Board of Alcoholic Control.  
 18-39.1. Special peace officers; Board authorized to commission employees; no additional compensation.  
 18-39.2. Same; powers and jurisdiction.  
 18-39.3. Same; bonds.  
 18-39.4. Same; oaths.  
 18-48. Possession illegal if taxes not paid; punishment and forfeiture for violations; possession in container without proper stamp, prima facie evidence; counterfeit or unauthorized stamps.  
 18-49.5. Transportation, possession and sale at installations operated by or for armed forces.

**Article 4.**

**Beverage Control Act of 1939.**

- 18-69.2. Breweries forbidden to coerce or persuade wholesalers to violate chapter or unjustly cancel contracts or franchises; prima facie evidence of franchise; injunctions; revocation or suspension of licenses and permits.  
 18-75. Who may sell at retail or wholesale.  
 18-78. Revocation or suspension of license or permit; confiscation of beverages not meeting standards of State Board of Alcoholic Control; rule making power of Board; refusal to surrender permit.  
 18-78.1. Prohibited acts under license for sale of malt beverages and

**Sec.**

- wines for consumption on or off premises.  
 18-83.2. Importers to be licensed.  
 18-88.2. Exemption of beer, etc., sold to ocean-going vessels.  
 18-89.1. Rules and regulations.  
 18-90.1. Sale to or purchase by minor under eighteen.

**Article 11.**

**Elections on Question of Sale of Wine and Beer.**

- 18-127.1. Elections on question of sale of 3.2 beer in certain counties.  
 18-127.2. Provisions of § 18-127 extended to municipalities having seasonal population of 1,000 or more.

**Article 12.**

**Additional Powers of State Board over Wine and Malt Beverages.**

- 18-129. Power of State Board of Alcoholic Control to regulate distribution and sale of wine and malt beverages; determination of qualifications of applicant for permit, etc.  
 18-130. Application for permit; contents.  
 18-131. Permit required for selling, distributing, etc., malt beverages or wine for purpose of resale.  
 18-132. Application to be verified; refusal or revocation of permit; penalty for false statement; independent investigation of applicant.  
 18-132.1. Application fees.  
 18-133. Permit revoked if federal special tax liquor stamp procured.  
 18-134. Notice of intent to apply for permit; posting or publication of notice; objections to issuance of permit and hearing thereon.  
 18-135. Certification to Department of Revenue of permits issued; issuance of license; revocation of permit or license.  
 18-136. Refusal, suspension or revocation of permit upon personal disqualification, etc.  
 18-137. Hearing upon suspension or revocation of permit.  
 18-138. Rules and regulations for enforcement of article.  
 18-139. Effect of article on existing local regulations as to sale of beer and wine.

Sec.

18-140. Chief of wine and malt beverage division and assistants; inspectors.

18-141. Sale and consumption of beer or wine during certain hours prohibited.

Sec.

18-142. Keeping places of business clean, etc.

18-143, 18-144. [Repealed.]

ARTICLE 1.

*The Turlington Act.*

**§ 18-1. Definitions; application of article.**

History of Act.—See *Staley v. Winston-Salem*, 258 N. C. 244, 128 S. E. (2d) 604 (1962).

**The Turlington Act Remains in Full Force and Effect, etc.—**

See *State v. Avery*, 236 N. C. 276, 72 S. E. (2d) 670 (1952); *State v. Hill*, 236 N. C. 704, 73 S. E. (2d) 894 (1953).

The Turlington Act is still in force in this State, except as modified by the A. B. C. Act, § 18-36 et seq.; and the two acts must be construed together. *State v. May*, 248 N. C. 60, 102 S. E. (2d) 418 (1958).

**The Two Acts Must Be Read Together.—**

The Turlington Act and the Alcoholic Beverage Control Act must be construed in pari materia as constituting the law in this State as relating to the purchase, possession and sale of intoxicating liquor. *State v. Avery*, 236 N. C. 276, 72 S. E. (2d) 670 (1952). See *State v. Hill*, 236 N. C. 704, 73 S. E. (2d) 894 (1953).

When a warrant or bill of indictment, which charges the unlawful possession and unlawful transportation of intoxicating liquor describes the liquor as "non-tax paid," conviction may be had, as the evidence may warrant, either under the Alcoholic

Beverage Control Act, or under the Turlington Act. These statutes are construed in pari materia. *State v. Tillery*, 243 N. C. 706, 92 S. E. (2d) 64 (1956).

**In counties not electing to operate liquor stores the Turlington Act applies as modified by the provisions of the Alcoholic Beverage Control Act applicable to such counties.** *State v. Brady*, 236 N. C. 295, 72 S. E. (2d) 675 (1952).

**Testimony of Undercover Agent of A. B. C. Board Admissible.—**The direct, unimpeached testimony of an undercover agent for the State Alcoholic Beverage Control Board that he purchased intoxicating liquor from defendant is competent in a prosecution under the Turlington Act, and defendant's contention of variance between indictment and proof on the ground that the indictment related to the Turlington Act and the officer's sole duty related to the enforcement of the State's Alcoholic Beverage Control Act, is feckless. *State v. Taylor*, 236 N. C. 130, 71 S. E. (2d) 924 (1952).

**Cited in** *Davis v. Charlotte*, 242 N. C. 670, 89 S. E. (2d) 406 (1955); *Fulton v. City of Morganton*, 260 N. C. 345, 132 S. E. (2d) 687 (1963).

**§ 18-2. Manufacture, sale, etc., forbidden; construction of law; nonbeverage liquor.**

A violation of this section is a crime separate and distinct from a violation of §§ 18-29, 18-48, and 18-50. *State v. Simmons*, 256 N. C. 688, 124 S. E. (2d) 887 (1962).

**Character of Possession Necessary.—**In accord with 1st paragraph in original. See *State v. Webb*, 233 N. C. 382, 64 S. E. (2d) 268 (1951); *State v. Harrelson*, 245 N. C. 604, 96 S. E. (2d) 867 (1957); *State v. Glenn*, 251 N. C. 156, 110 S. E. (2d) 791 (1959).

An accused has possession of intoxicating liquor within the meaning of this section when he has both the power and the intent to control its disposition or use. The requisite power to control may reside in the accused acting alone or in combination

with others. *State v. Fuqua*, 234 N. C. 168, 66 S. E. (2d) 667 (1951).

**Transportation as Including Possession.—**

Only a person in the actual or constructive possession of nontax-paid whiskey, absent conspiracy or aiding and abetting, could be guilty of the unlawful transportation thereof. *State v. Wells*, 259 N. C. 173, 130 S. E. (2d) 299 (1963).

**Purpose of Possession.—**

Whether the transportation of nontax-paid whiskey is unlawful does not depend upon whether it is being transported for the purpose of sale. *State v. Wells*, 259 N. C. 173, 130 S. E. (2d) 299 (1963).

**Possession of Tax-Paid Liquor at Unauthorized Place Unlawful. — Possession**



of tax-paid whiskey is illegal under this section if it is not at an authorized place. *State v. Welborn*, 249 N. C. 263, 106 S. E. (2d) 204 (1958).

**The possession of less than one gallon of gin** and the possession of less than five gallons of beer raises no presumption that the possession of the gin or beer was for the purpose of sale. *State v. Harrelson*, 245 N. C. 604, 96 S. E. (2d) 867 (1957). See § 18-32.

**Warrant or Indictment.** — Under this section a warrant or indictment should charge the unlawful possession or sale of intoxicating liquors. *State v. May*, 248 N. C. 60, 102 S. E. (2d) 418 (1958).

**§ 18-4. Advertising, etc., of utensils, etc., for use in manufacturing liquor.**—It shall be unlawful to advertise, manufacture, sell, or possess for sale any utensil, contrivance, machine, preparation, compound, tablet, substance, formula, direction, or receipt advertised, designed, or intended for use in the unlawful manufacture of intoxicating liquor. It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this article, or which has been so used, and no property rights shall exist in any such liquor or property. (1923, c. 1, s. 4; C. S., s. 3411(d).)

**Editor's Note.**—This section is reprinted to correct a typographical error.

**Possession, within the meaning of this section, may be either actual or constructive.** *State v. McLamb*, 235 N. C. 251, 69 S. E. (2d) 537 (1952).

If the property designed for the manufacture of liquor was within the power of the defendant in such a sense that he could and did command its use, the possession was as complete within the meaning of this section as if his possession had been actual. *State v. Webb*, 233 N. C. 382, 64 S. E. (2d) 268 (1951); *State v. McLamb*, 235 N. C. 251, 69 S. E. (2d) 537 (1952).

**"Property Designed for the Manufacture of Liquor."**—The word "designed" is defined as "done by design or purposely," that is, "opposed to accidental or inadvertent." Hence, as used in this section, the phrase "property designed for the manufacture of liquor" means property "fashioned according to a plan" for that pur-

**Sufficiency of Evidence—To Deny Nonsuit.**—

State's evidence was amply sufficient to carry case to jury, and court did not err in denying defendant's motion for judgment of nonsuit. *State v. Mitchell*, 260 N. C. 235, 132 S.E.2d 481 (1963).

**Evidence Not Sufficient to Show Violation of Section.**—See *State v. Webb*, 233 N. C. 382, 64 S. E. (2d) 268 (1951).

Evidence was insufficient to support a verdict of guilty of possession of intoxicating liquor. *State v. Harrelson*, 245 N. C. 604, 96 S. E. (2d) 867 (1957).

**Applied in** *State v. Dawson*, 262 N. C. 607, 138 S.E.2d 234 (1964).

*pose.* *State v. McLamb*, 235 N. C. 251, 69 S. E. (2d) 537 (1952).

**A plea of not guilty** under this section puts in issue every element of the offense charged. *State v. McLamb*, 235 N. C. 251, 69 S. E. (2d) 537 (1952).

**Insufficiency of Charge Not Such as to Warrant Sustaining Motion in Arrest of Judgment.**—See *State v. McLamb*, 235 N. C. 251, 69 S. E. (2d) 537 (1952).

**Evidence of the defendant's guilt of possessing parts of a still designed and intended for the purpose of manufacturing intoxicating liquor** was sufficient to be submitted to the jury and to sustain their verdict of guilty, and the fact that the parts had not been assembled into a distillery is immaterial under the language of the statute. *State v. Jaynes*, 198 N. C. 728, 153 S. E. 410 (1930).

**Cited in** *State v. Edmundson*, 244 N. C. 693, 94 S. E. (2d) 844 (1956).

**§ 18-6. Seizure of liquor, equipment and materials, or conveyance; arrests; sale of property.**—When any officer of the law shall discover any person in the act of transporting, in violation of the law, intoxicating liquor, or equipment or materials designed or intended for use in the manufacture of intoxicating liquor, in any wagon, buggy, automobile, water or aircraft, or other vehicle, it shall be his duty to seize any and all intoxicating liquor, and any and all equipment or materials designed or intended for use in the manufacture of intoxicating liquor, found therein being transported contrary to law. Whenever intoxicating liquor, or equipment or materials designed or intended for use in the manufacture of intoxicating liquor, transported or possessed illegally, shall be seized by an officer, he shall take possession of the vehicle and team or automobile, boat, air or watercraft, or any other conveyance, and shall arrest any

person in charge thereof. Such officer shall at once proceed against the person arrested, under the provisions of this article, in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide the judgment of the court. All liquor seized under this section shall be held and shall, upon the acquittal of the person so charged, be returned to the established owner, and shall within ten days upon conviction or default of appearance of such person be destroyed; provided, that any tax-paid liquor so seized shall within ten days be turned over to the board of county commissioners, which shall within ninety days from the receipt thereof turn it over to hospitals for medicinal purposes or sell it to legalized alcoholic beverage control stores within the State of North Carolina, the proceeds of such sale being placed in the school fund of the county in which such seizure was made, or destroy it. Unless the claimant can show that the property seized is his property, and that the same was used in transporting liquor, or equipment, or materials designed or intended for use in the manufacture of intoxicating liquor, without his knowledge and consent, with the right on the part of the claimant to have a jury pass upon his claim, the court shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the costs of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, as being bona fide and as having been created without the lienor having any notice that the carrying vehicle was being used for illegal transportation of liquor, equipment or materials designed or intended for use in the manufacture of intoxicating liquor, and shall pay the balance of the proceeds to the treasurer or the proper officer in the county who receives fines and forfeitures, to be used for the school fund of the county. All liens against property sold under the provisions of this section shall be transferred from the property to be proceeds of the sale of the property. If, however, no one shall be found claiming the team, vehicle, water or aircraft, or automobile, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken, or, if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if no claimant shall appear within ten days after the last publication of the advertisement, the property shall be sold, and the proceeds, after deducting the expenses and costs, shall be paid to the treasurer or proper officer in the county who receives fines and forfeitures, to be used for the school fund of the county: Provided, that nothing in this section shall be construed to authorize any officer to search any automobile or other vehicle or baggage of any person without a search warrant duly issued, except where the officer sees or has absolute personal knowledge that there is intoxicating liquor, equipment or materials designed or intended for use in the manufacture of intoxicating liquor, in such vehicle or baggage.

When any vehicle confiscated under the provisions of this section is found to be specially equipped or modified from its original manufactured condition so as to increase its speed, the court shall, prior to sale, order that the special equipment or modification be removed and destroyed and the vehicle restored to its original manufactured condition. However, if the court should find that such equipment and modifications are so extensive that it would be impractical to restore said vehicle to its original manufactured condition, then the court may order that the vehicle be turned over to such governmental agency or public official within the territorial jurisdiction of the court as the court shall see fit, to be used in the performance of official duties only, and not for resale, transfer, or disposition other

than as junk: Provided, that nothing herein contained shall affect the rights of lien holders and other claimants to said vehicles as set out in this section and provided further, that where such equipment and modifications are so extensive that it would be impractical to restore said vehicle to its original manufactured condition and no one shall be found claiming said vehicle, water or aircraft, or automobile, then in lieu of selling the same, after advertisement, and if no claimant shall appear after the last publication of the advertisement, then the court may order that the vehicle, water or aircraft, or automobile, be turned over to a governmental agency or public official within the territorial jurisdiction of the court, as the court shall see fit, to be used in the performance of official duties only, and not for resale, transfer, or disposition other than as junk. (1923, c. 1, s. 6; C. S., s. 3411(f); 1945, c. 635; 1951, c. 850; 1955, c. 560; 1957, c. 1235, s. 1.)

**Editor's Note.—**

The 1955 amendment added the last proviso to the second paragraph.

The 1957 amendment rewrote the first paragraph and made it applicable to equipment or materials designed or intended for use in the manufacture of intoxicating liquor.

For brief comment on the 1951 amendment, see 29 N. C. Law Rev. 404. For note on search of motor vehicles without warrant, see 30 N. C. Law Rev. 421. For note as to requisites for forfeiture of vehicles transporting liquor in violation of law, see 35 N. C. Law Rev. 509.

For a case relating to tort liability of the possessor of an automobile for failure to notify the lienor of a seizure and sale under this section, see *Williams v. Aldridge Motors, Inc.*, 237 N. C. 352, 75 S. E. (2d) 237 (1953).

No search warrant is required where the owner or person in charge consents to the search. *State v. Coffey*, 255 N. C. 293, 121 S. E. (2d) 736 (1961).

**Or Where Officer Sees or Has Absolute Personal Knowledge of Presence of Liquor.—**No search warrant is required where the officer sees or has absolute personal knowledge that there is intoxicating liquor in an automobile. *State v. Coffey*, 255 N. C. 293, 121 S. E. (2d) 736 (1961).

**Meaning of "Absolute Personal Knowledge."**—

In accord with original. See *State v. Giles*, 254 N. C. 499, 119 S. E. (2d) 394 (1961)

When an officer sees nontax-paid liquor clearly visible in a defendant's car, it becomes his duty under this section to take possession of the automobile and the liquor found therein and to arrest the defendant. It is his duty to act either with or without the aid of a search warrant. *State v. Harper*, 235 N. C. 67, 69 S. E. (2d) 164

(1952). See *State v. Harper*, 236 N. C. 371, 72 S. E. (2d) 871 (1952).

The defendant, in operating his automobile in excess of 55 miles an hour in a 35 mile zone on the public streets in a city, committed a misdemeanor in the presence of the city police officers and they had a right to pursue him and arrest him without a warrant. Consequently after the defendant was taken into custody, it was the duty of the officers to return to defendant's car and to see that it was taken care of and not abandoned. If, upon approaching the automobile, the officers detected the smell of liquor or other intoxicating beverages therein, it was their duty to take possession of the car and seize the liquor without first obtaining a search warrant. *State v. Giles*, 254 N. C. 499, 119 S. E. (2d) 394 (1961).

**Conduct Amounting to Voluntary Consent to Search.—**See *State v. Coffey*, 255 N. C. 293, 121 S. E. (2d) 736 (1961).

**Evidence Required to Hold Passenger.—**To hold a mere passenger, under this section, knowledge of the presence in the automobile of contraband whiskey is insufficient. The evidence must be sufficient to support an inference of some form of control, joint or otherwise, over the automobile or the liquor. *State v. Ferguson*, 238 N. C. 656, 78 S. E. (2d) 911 (1953); *State v. Coffey*, 255 N. C. 293, 121 S. E. (2d) 736 (1961).

Applied in *State v. Barley*, 240 N. C. 253, 81 S. E. (2d) 772 (1954).

Stated in *Chadwick v. Salter*, 254 N. C. 389, 119 S. E. (2d) 158 (1961)

Cited in *State v. McPeak*, 243 N. C. 273, 90 S. E. (2d) 505 (1955); *United States v. One 1955 Model Two-Door Cadillac Coupe Deville*, 136 F. Supp. 304 (1955); *State v. Stinson*, 263 N.C. 283, 139 S.E.2d 558 (1965).

§ 18-6.1. Officers to refer to State courts cases involving vehicles or equipment or materials seized and arrests made for unlawful trans-

**portation.**—All members of the State Highway Patrol and other State and local law enforcing officers shall, whenever seizing any vehicle on account of the unlawful transportation of intoxicating beverages, or equipment or materials designed or intended for use in the manufacture of intoxicating liquor, or making arrests of persons on account of same, refer the cases to the State court having jurisdiction thereof, to be determined by such State court in accordance with the law of this State. Any such officer who shall, in violation of this section, refer such cases to courts of another jurisdiction, shall be guilty of misfeasance in office and subject to a fine of one hundred dollars (\$100.00). (1945, c. 779; 1957, c. 1235, s. 2.)

**Local Modification.**—Forsyth: 1955, c. 311.

**Editor's Note.** — The 1957 amendment

inserted the words "or equipment or materials designed or intended for use in the manufacture of intoxicating liquor."

**§ 18-10. Uniting separate offenses in indictment, etc.; bill of particulars; trial.**

**Procedure on Motion to Quash Warrant for Duplicity.** — When a defendant in apt time moves to quash a warrant on the ground of duplicity, the solicitor may take a nol pros as to all of the charges except one and then proceed to trial on the one charge. Or the solicitor may upon motion

and leave of court amend the warrant and state in separate counts the charges upon which he desires to proceed, provided they were originally set out in the warrant. *State v. Williamson*, 250 N. C. 204, 103 S. E. (2d) 443 (1959).

**§ 18-11. Possession prima facie**

**Rule of Evidence Applies in Any Prosecution for Possession of Liquor for Purpose of Sale.**—The provisions of § 18-50 and this section are not irreconcilable. Indeed, when the two statutes are considered as related parts of the composite whole, they become dovetailed in such manner as to make a clear and understandable regulation. The term "not legally permitted", as used in this section, and the term "illicit" as used in § 18-50, may not be equally comprehensive, yet both designate or describe a type of intoxicating beverage a person may not lawfully possess for the purpose of sale. To that extent at least they are synonymous. Therefore the rule of evidence created by this section applies in any prosecution for the possession of liquor for the purpose of sale. *State v. Hill*, 236 N. C. 704, 73 S. E. (2d) 894 (1953), overruling *State v. Locky*, 214 N. C. 525, 199 S. E. 715 (1938); *State v. McNeill*, 225 N. C. 560, 35 S. E. (2d) 629 (1945); and *State v. Peterson*, 226 N. C. 255, 37 S. E. (2d) 591 (1946). See *State v. Gibbs*, 238 N. C. 258, 77 S. E. (2d) 779 (1953).

**Possession as Evidence of Sale.**—

See *State v. Parker*, 234 N. C. 236, 66 S. E. (2d) 907 (1951).

**Keeping in Home.**—

Under this section modified by the applicable provisions of the Alcoholic Beverage Control Act, a person may lawfully have or keep in his private dwelling while the

**evidence of keeping for sale.**

same is occupied and used by him as his dwelling only an unlimited quantity of intoxicating liquor upon which the taxes imposed by law have been paid for use only for the personal consumption of himself, and of his family residing in such dwelling, and his bona fide guests when entertained by him therein. *State v. Brady*, 236 N. C. 295, 72 S. E. (2d) 675 (1952); *State v. Ritchie*, 243 N. C. 182, 90 S. E. (2d) 301 (1955); *State v. Bell*, 264 N.C. 350, 141 S.E.2d 493 (1965).

**The Possession in One's Dwelling of Not More than One Gallon, etc.**—

Proof of the possession by defendant in his home of less than one gallon of legally acquired tax-paid liquor raises no presumption against him, and nothing else appearing, a verdict of not guilty should be directed in a prosecution for possession for the purpose of sale. To this extent, this section, raising the presumption from the possession of any quantity of liquor that such possession is for the purpose of sale, with burden upon defendant to prove that he possessed same in his private dwelling while occupied as such, for family use purposes permitted by the statute, has been modified by the Alcoholic Beverage Control Act. *State v. Hill*, 236 N. C. 704, 73 S. E. (2d) 894 (1953).

**Possession in Building Used as Combination Store and Dwelling.** — Where the evidence disclosed that defendant was in possession of tax-paid whiskey in a build

ing used by him as a combination store and dwelling and the whiskey was found in the room used as a bedroom, with the seal of one of the bottles broken, but it was stipulated by defendant's counsel that defendant had the whiskey in his store, the evidence was sufficient under this section to support the charge of unlawful possession and defendant's motion to nonsuit was properly denied. *State v. Welborn*, 249 N. C. 268, 106 S. E. (2d) 204 (1958).

**Proof of the Possession of More than One Gallon, etc.—**

While a person may lawfully possess for family use any quantity of legally acquired tax-paid liquor in his private dwelling while occupied by him as such, nevertheless the possession of more than one gallon of tax-paid liquor, even within a private dwelling, invokes the presumption that such liquor is kept for the purpose of sale. *State v. Hill*, 236 N. C. 704, 73 S. E. (2d) 894 (1953).

In a county not electing to operate county liquor stores, this section, as modified by §§ 18-49 and 18-58, renders the possession of more than one gallon of tax-paid liquor, even though in the home of a resident, prima facie evidence that such liquor is kept for the purpose of sale in a prosecution under a warrant or indictment charging that offense. *State v. Brady*, 236 N. C. 295, 72 S. E. (2d) 675 (1952); *State v. Ritchie*, 243 N. C. 182, 90 S. E. (2d) 301 (1955).

**Possession of Any Quantity of Nontax-Paid Liquor.**—Nontax-paid whiskey is outlawed by statute in this State. The possession of any quantity of nontax-paid liquor is, without exception, unlawful, and this section raises the presumption, even though less than one gallon in quantity, that possession is for the purpose of sale. *State v. Guffey*, 252 N. C. 60, 112 S. E. (2d) 734 (1960).

**Possession may be either actual or constructive** within the meaning of this section *State v. Parker*, 234 N. C. 236, 66 S. E. (2d) 907 (1951).

Evidence tending to show that ninety-

six gallons of intoxicating liquor were found in the basement of the tenant house on defendant's farm, and tending to show that he alone had key to the door to the basement, is sufficient to support constructive possession. *State v. Parker*, 234 N. C. 236, 66 S. E. (2d) 907 (1951).

**Time of Possession.**—Under this section, proof of defendant's unlawful possession of nontax-paid whiskey in August, 1958, would constitute prima facie evidence in a separate criminal prosecution based on a transaction of August, 1958, that his possession was for the purpose of sale; but proof of unlawful possession of nontax-paid liquor in August, 1958, standing alone, while a criminal offense, is not relevant to whether his possession, if any, on November 20, 1957, was for the purpose of sale. *State v. Bell*, 249 N. C. 379, 106 S. E. (2d) 495 (1959).

**Instruction.**—In a prosecution of a resident of a county which has not elected to operate county liquor stores on a charge of possession of intoxicating liquor for the purpose of sale, the court is under duty to instruct the jury upon evidence that three gallons of tax-paid liquor were found in defendant's home, that such possession by defendant in his dwelling for the personal consumption of himself, his family and his bona fide friends therein would be lawful, and error in failing to give such instruction is emphasized by a charge that a person has a right to have one gallon of tax-paid liquor in his home for the personal use of himself and his bona fide guests. *State v. Brady*, 236 N. C. 295, 72 S. E. (2d) 675 (1952).

**Evidence Sufficient to Warrant Finding That Possession Was for Purpose of Sale.**—See *State v. Jenkins*, 234 N. C. 112, 66 S. E. (2d) 819 (1951).

**Cited in** *State v. Fuqua*, 234 N. C. 168, 66 S. E. (2d) 667 (1951); *State v. Hall*, 240 N. C. 109, 81 S. E. (2d) 189 (1954); *State v. Poe*, 245 N. C. 402, 96 S. E. (2d) 5 (1957); *State v. Mills*, 246 N. C. 237, 98 S. E. (2d) 329 (1957); *Taylor v. Parks*, 254 N. C. 266, 118 S. E. (2d) 779 (1961).

**§ 18-13. Search warrants; disposal of liquor, equipment and materials seized.**—Upon the filing of a complaint under oath by a reputable citizen, or information furnished under oath by an officer charged with the execution of the law, before a justice of the peace, recorder, mayor, or other officer authorized by the law to issue warrants, that he has reason to believe that any person has in his possession, at a place or places specified, liquor for the purpose of sale, or equipment or materials designed or intended for use in the manufacture of intoxicating liquor, a warrant shall be issued commanding the officer to whom it is directed to search the place or places described in such complaint or information; and if such liquor, or equipment or materials designed or intended for use in the

manufacture of intoxicating liquor, be found in any such place or places, to seize and take into his custody all such liquor, and to seize and take into his custody all glasses, bottles, jugs, pumps, bars, or other equipment used in the business of selling or manufacturing intoxicating liquor which may be found at such place or places, and to keep the same subject to the order of the court. The complaint or information shall describe the place or places to be searched with sufficient particularity to identify the same, and shall describe the intoxicating liquor or other property alleged to be used in carrying on the business of selling or manufacturing intoxicating liquor as particularly as practicable, and any description, however general, that will enable the officer executing the warrant to identify the property seized shall be deemed sufficient. All liquor, and all equipment or materials designed or intended for use in the manufacture of intoxicating liquor, seized under this section shall be held and shall upon the acquittal of the person so charged be returned to the established owner, and shall within ten days upon conviction or default of appearance of such person be destroyed: Provided that any tax-paid liquor so seized shall within ten days be turned over to the board of county commissioners, which shall within ninety days from the receipt thereof turn it over to hospitals for medicinal purposes, or sell it to legalized alcoholic beverage control stores within the State of North Carolina, the proceeds of such sale being placed in the school fund of the county in which such seizure was made, or destroy it. (1923, c. 1, s. 12; C. S., s. 3411(1); 1939, c. 12; 1941, c. 310; 1957, c. 1235, s. 3.)

**Local Modification.**—Guilford: 1955, c. 141.

**Editor's Note.** — The 1957 amendment made this section applicable to equipment or materials designed or intended for use in the manufacture of intoxicating liquor.

For note on requisites for a valid warrant to search for unlawfully possessed liquor, see 35 N. C. Law Rev. 424.

**Clerk of Superior Court May Issue Warrant.**—The clerk of the superior court is an "other officer authorized by the law to issue warrants" within the meaning of this section. State v. Brady, 238 N. C. 407, 78 S. E. (2d) 129 (1953).

**And Deputy Clerk of Municipal Court.**—This section permits any officer authorized to issue warrants to issue a search warrant for the liquor therein specified, and thus, since § 7-198 so authorizes, the deputy clerk of a municipal court could issue a search warrant for illegal liquor. State v. Mock, 259 N. C. 501, 130 S. E. (2d) 863 (1963).

**Warrant Governed by This Section and Not by § 15-27.**—A warrant issued by a justice of the peace upon affidavit of an officer charged with the execution of the law, authorizing the search of the premises at a specified locality and the seizure of all intoxicating liquors, is governed by this section and not by § 15-27. State v. Brady, 238 N. C. 404, 78 S. E. (2d) 126 (1953). See State v. McLamb, 235 N. C. 251, 69 S. E. (2d) 537 (1952).

The effect of § 15-27.1 was to make the requirements of §§ 15-26 and 15-27 ap-

plicable to search warrants obtained under this section. State v. Mock, 259 N. C. 501, 130 S. E. (2d) 863 (1963).

Section 15-27.1 did not nullify this section, indeed, it recognized it as specifically applying to intoxicants. State v. Mock, 259 N. C. 501, 130 S. E. (2d) 863 (1963).

**Affidavit Sufficient to Justify Issuance of Warrant.**—See State v. McLamb, 235 N. C. 251, 69 S. E. (2d) 537 (1952).

Information radioed by one patrolman to another is sufficient information within the meaning of this section to authorize the second patrolman to make the affidavit and to authorize the clerk of a general county court to issue a search warrant. State v. Banks, 250 N. C. 728, 110 S. E. (2d) 322 (1959).

**Description of Premises.** — Where the affidavit upon which a search warrant is issued describes defendant's premises with sufficient definiteness to identify it, and such description is made a part of the search warrant by proper reference, objection to the search warrant on the ground that it did not describe the premises with sufficient definiteness, is untenable. State v. Mills, 246 N. C. 237, 98 S. E. (2d) 329 (1957).

**Warrant Held Sufficient Compliance with Section.**—See State v. Brady, 238 N. C. 404, 78 S. E. (2d) 126 (1953).

**Unlawful Search.** — A warrant for the search of defendant's dwelling at a certain locality, together with barn and outhouses, etc., does not authorize the officer to go into the home of another party, located on

the adjoining lot, and search a room there rented by the defendant. *State v. Mills*, 246 N. C. 237, 98 S. E. (2d) 329 (1957), holding that defendant had not waived his right against the unlawful search of the room.

Cited in *State v. Rhodes*, 233 N. C. 453, 64 S. E. (2d) 287 (1951); *State v. Harrison*, 239 N. C. 659, 80 S. E. (2d) 481 (1954); *State v. Stevens*, 264 N.C. 737, 142 S.E.2d 588 (1965).

Stated in *State v. McMilliam*, 243 N. C. 771, 92 S. E. (2d) 202 (1956).

§ 18-17. **Indictments; allegations of sale; circumstantial evidence.**

Stated in *State v. Bisette*, 250 N. C. 514, 108 S. E. (2d) 858 (1959).

§ 18-22. **Sheriffs and police to search for and seize distilleries; confiscation; disposal of property.**

Cited in *State v. Taft*, 256 N. C. 441, 124 S. E. (2d) 169 (1962).

§ 18-23. **Destruction of liquor at distillery; persons arrested.**

**Arrest without Warrant.**—An alcoholic beverage control officer who saw defendant at the still unlawfully engaged in the manufacture of whiskey had a lawful

right to arrest defendant there without a warrant. *State v. Taft*, 256 N. C. 441, 124 S. E. (2d) 169 (1962).

§ 18-28. **Distilling or manufacturing liquor; first offense misdemeanor.**

Cited in *State v. Taft*, 256 N. C. 441, 124 S. E. (2d) 169 (1962).

§ 18-29. **Misdemeanor; punishment; effect of previous punishment by federal court.**

A violation of this section is a crime separate and distinct from a violation of §§ 18-2, 18-48, and 18-50. *State v. Sim-*

*mons*, 256 N. C. 688, 124 S. E. (2d) 887 (1962).

ARTICLE 2.

*Miscellaneous Regulations.*

§ 18-32. **Keeping liquor for sale; evidence.**—It is unlawful for any person, firm, association or corporation, by whatever name called, to have or keep in possession, for the purpose of sale, except as otherwise authorized by law, any spirituous, vinous or malt liquors, and proof of any one of the following facts shall constitute prima facie evidence of the violation of this section:

- (1) The possession of a license from the government of the United States to sell or manufacture intoxicating liquors; or
- (2) The possession of more than one gallon of spirituous liquors at any one time, whether in one or more places; or
- (3) The possession of more than one gallon of wine at any one time, whether in one or more places; or
- (4) The possession of more than five gallons of malt liquors at any one time, whether in one or more places; provided, however, that in those areas in which malt beverages may be sold legally the amount referred to in this subdivision shall be 15½ gallons of draft malt beverages rather than 5 gallons; or
- (5) The delivery to such person, firm, association or corporation of more than five gallons of spirituous or vinous liquors, or more than twenty gallons of malt liquors within any four successive weeks, whether in one or more places; or
- (6) The possession of intoxicating liquors as samples to obtain orders there-

on: Provided, that this section shall not prohibit any person from keeping in his possession wines and ciders in any quantity where such wines and ciders have been manufactured from grapes or fruit grown on the premises of the person in whose possession such wines and ciders may be. (1913, c. 44, s. 2; 1915, c. 97, s. 8; C. S., s. 3379; 1949, c. 1251, s. 2; 1963, c. 932.)

**Editor's Note.—**

The 1963 amendment inserted the proviso in subdivision (4).

**Possession Means Actual or Constructive.—**

In accordance with first paragraph in original. See *State v. Buchanan*, 233 N. C. 477, 64 S. E. (2d) 549 (1951).

Possession within the meaning of this section, may be either actual or constructive. *State v. Rogers*, 250 N. C. 499, 114 S. E. (2d) 355 (1960).

If the liquor was within the power of the defendant, in such a sense that he could and did command its use, the possession was as complete within the meaning of the statute as if his possession had been actual. *State v. Buchanan*, 233 N. C. 477, 64 S. E. (2d) 549 (1951).

If nontax-paid whiskey is on a person's premises with his knowledge and consent, he has constructive possession thereof while it remains on premises under his exclusive control. *State v. Thompson*, 256 N. C. 593, 124 S. E. (2d) 728 (1962).

**Evidence.—**

In a prosecution for unlawful possession of intoxicating liquor for the purpose of sale, where the evidence is that a quantity of beer less than five gallons and less than one gallon of gin was found in the house of defendants, no presumption arises thereupon against defendants. *State v. Harrelson*, 245 N. C. 604, 96 S. E. (2d) 867 (1957).

The evidence was sufficient to carry the case to the jury on the charge of unlawful possession of whiskey and beer for the purpose of sale. *State v. Mills*, 246 N. C. 237, 98 S. E. (2d) 329 (1957).

**Evidence Sufficient to Make Out Prima Facie Case against Defendant.—**See *State v. Buchanan*, 233 N. C. 477, 64 S. E. (2d) 549 (1951).

**Applied in** *State v. Miller*, 246 N. C. 608, 99 S. E. (2d) 795 (1957).

**Cited in** *State v. Scoggin*, 236 N. C. 19, 72 S. E. (2d) 54 (1952).

### ARTICLE 3.

#### *Alcoholic Beverage Control Act of 1937.*

##### § 18-36. Purposes of article.

**The Two Acts Are Construed in Pari Materia.—**When a warrant or bill of indictment, which charges the unlawful possession and unlawful transportation of intoxicating liquor, describes the liquor as "non-tax paid," conviction may be had, as the evidence may warrant, either under the Alcoholic Beverage Control Act, or under the Turlington Act. These statutes are construed in *pari materia*. *State v. Tillery*, 243 N. C. 706, 92 S. E. (2d) 64 (1956).

The Alcoholic Beverage Control Act and the Turlington Act must be construed together. *State v. May*, 248 N. C. 60, 102 S. E. (2d) 418 (1958).

**Cited in** *State v. Taylor*, 236 N. C. 130, 71 S. E. (2d) 924 (1952); *Fulton v. City of Morganton*, 260 N. C. 345, 132 S. E. (2d) 687 (1963).

**§ 18-37. State Board of Alcoholic Control created; membership; appointed by Governor; chairman; terms; compensation; meetings.—**A State Board of Alcoholic Control is hereby created and shall consist of five members. The members shall be men well known for their character, ability, business acumen and success. The Governor shall appoint the members of the Board and, from those appointed, the Governor shall name one as chairman of the State Board of Alcoholic Control. The chairman and two members shall be appointed for a term of six years. Two members shall be appointed for a term of four years. The term of each member shall begin on the first day of July in the year of appointment.

The chairman and members shall receive no compensation, but shall be allowed



the same per diem, subsistence and travel allowances as members of other State boards and commissions, as provided in chapter 138 of the General Statutes.

The State Board of Alcoholic Control shall not transact any official business unless a quorum, consisting of the chairman and two members, is present. The chairman shall be the executive officer of the Board and shall execute all orders, rules and regulations established by the Board. The Board may meet at the call of the chairman or any three members of the Board. (1937, c. 49, s. 2; c. 411; 1939, c. 185, s. 5; 1941, c. 107, s. 5; 1965, c. 1102, s. 1.)

**Editor's Note.** — The 1965 amendment rewrote this section.

**§ 18-38. Director of State Board of Alcoholic Control.**—There shall be a Director of the State Board of Alcoholic Control who shall be a career official and the administrative officer of the Board. On July 1, 1965, and quadrennially thereafter, the Governor shall appoint the Director, subject to the approval of the State Board of Alcoholic Control. A vacancy in the office of the Director shall be filled for the unexpired term by the Governor, subject to approval by the Board. The Governor, at all times, subject to approval by the Board, shall have full power and authority to remove the Director for cause.

The Director shall be paid a salary fixed by the Governor, subject to the approval of the Advisory Budget Commission.

Subject to the approval of the State Board of Alcoholic Control, the Director shall have such powers and perform such duties as the State Board of Alcoholic Control shall prescribe, including the authority to appoint, promote, demote and discharge all subordinate officers and employees of the State Board of Alcoholic Control, and they shall perform such duties as the Director may assign. (1937, c. 49, s. 3; 1963, c. 916, s. 1; 1965, c. 1102, s. 2.)

**Editor's Note.** — The 1963 amendment section, which formerly provided for the appointment and terms of members of the Board.

The 1965 amendment again rewrote this

**§ 18-39. Powers and authority of Board.** — Said State Board of Alcoholic Control shall have power and authority as follows, to wit:

- (1) To see that all the laws relating to the sale and control of alcoholic beverages are observed and performed.
- (2) To audit and examine the accounts, records, books and papers relating to the operation of county stores herein provided for, or to have the same audited.
- (3) To fix the retail prices of all alcoholic beverages sold in county and municipal liquor stores at such levels as shall promote the temperate use of such beverages and as may facilitate policing, which price shall be uniform throughout the State, to compute the taxes levied by G.S. 18-85 on the retail prices so fixed, to determine the total prices of all such alcoholic beverages which total price shall be the sum of the retail price plus the tax levied by G.S. 18-85, and to notify the stores periodically of such prices. The State Board of Alcoholic Control shall cause the several county and municipal alcoholic boards of control to add to the established retail prices of all alcoholic beverages sold in said county and municipal liquor stores as provided above the sum of five cents (5¢) per bottle on every bottle of alcoholic beverages sold in said stores, which shall be in addition to the retail prices of all alcoholic beverages as set by the State Board of Alcoholic Control, which five cents (5¢) per bottle increase in the retail prices of alcoholic beverages sold by county or municipal liquor stores shall not be subject to the tax levied in G.S. 18-85, but the clear proceeds of the additional retail price of five cents (5¢) per bottle as provided above shall be remitted to the State Treasurer, accompanied by forms

or reports to be prescribed and furnished by the State Board of Alcoholic Control, which remittances shall be placed in the general fund. Said reports and remittances of the five cents (5¢) per bottle as herein provided shall be made monthly by the local boards on or before the 15th day of the succeeding month.

- (4) To remove any member, or members, of county boards whenever in the opinion of the State Board, such member, or members, of the county board, or boards, may be unfit to serve thereon.
- (5) To test any and all alcoholic beverages which may be sold, or proposed to be sold to the county stores, and to install and operate such apparatus, laboratories, or other means or instrumentalities, and employ to operate the same such experts, technicians, employees and laborers, as may be necessary to operate the same, in accordance with the opinion of the said Board. In lieu of establishing and operating laboratories as above directed, the Board may, with the approval of the Governor and the Commissioner of Agriculture, arrange with the State Chemist to furnish such information and advice, and to perform such analyses and other laboratory services as the Board may consider necessary, or may, if they deem advisable, cause such tests to be made otherwise.
- (6) To supervise purchasing by the county boards when said State Board is of the opinion that it is advisable for it to exercise such power in order to carry into effect the purpose and intent of this article, with full power to disapprove any such purchase and at all times shall have the right to inspect all invoices, papers, books and records in the county stores or boards relating to purchases.
- (7) To exercise the power to approve or disapprove in its discretion all regulations adopted by the several county stores for the operation of said stores and the enforcement of alcoholic beverage control laws which may be in violation of the terms or spirit of this article.
- (8) To require that a sufficient amount shall be so allocated as to insure adequate enforcement and the amount shall, in no instance, be less than five per cent, nor more than ten per cent of the net profits arising from the sale of alcoholic beverages.
- (9) To remove in case of violation of the terms or spirit of this article, officers employed, elected or appointed in the several counties where county stores may be operated.
- (10) To approve or disapprove, in its discretion, the opening and location of county stores; provided that in the location of control stores in any county in which a majority of the votes have been cast for liquor control stores, no store or stores shall be located in any community or town in which a majority of the votes cast were against control; provided further, however, that stores may be located in such communities and towns if and when as many as 15% of the qualified voters therein by petition, at any time after eighteen months since the last election on such question, have requested the location of such a store or stores in such communities or towns and the State Board shall have found, upon due investigation after receipt of such petition, that a majority of the qualified electors in such community or town are at the time of the making of such investigation in favor of the establishment of such store or stores, provided each county that may be entitled to operate stores for the sale of alcoholic beverages shall be entitled to operate at least one store for such purpose. As to all additional stores in each of said counties the same shall not be opened until and unless the opening of the same and the place of location thereof shall first be approved by the said State Board, which at any time may withdraw its approval of the operation of any additional county store when the said

store is not operated efficiently and in accordance with the alcoholic beverage control laws and all valid regulations prescribed therefor, or whenever, in the opinion of the said State Board, the operation of any county store shall be inimical to the morals or welfare of the community in which it is operated or for such other cause, or causes, as may appear to said State Board sufficient to warrant the closing of any county store.

- (11) To require the use of a uniform accounting system in the operation of all county stores hereunder and to provide in said system for the keeping therein and the record of all such information as may, in the opinion of the said State Board, be necessary or useful in its auditing of the affairs of the said county stores, as well as in the study of such problems and subjects as may be studied by said State Board in the performance of its duties.
- (12) To grant, to refuse to grant, or to revoke, permits for any person, firm or corporation to do business in North Carolina in selling alcoholic beverages to or for the use of any county store and to provide and to require that such information be furnished by such person, firm or corporation as a condition precedent to the granting of such permit, or permits, and to require the furnishing of such data and information as it may desire during the life of such permit, or permits, and for the purpose of determining whether such permit, or permits, shall be continued, revoked or regranted after expiration dates. No permit, however, shall be granted by said State Board, to any person, firm or corporation when the said State Board has reason sufficient unto itself to believe that such person, firm or corporation has furnished to it any false or inaccurate information or is not fully, frankly and honestly cooperating with the said State Board and the several county boards in observance and performance of all alcoholic beverage laws which may now or hereafter be in force in this State, or whenever the said Board shall be of opinion that such permit ought not to be granted or continued for any cause.
- (13) The said State Board shall have all other powers which may be reasonably implied from the granting of express powers herein named, together with such other powers as may be incidental to, or convenient for, the carrying out and performance of the powers and duties herein given to said Board.
- (14) To permit the establishment of warehouses for the storage of alcoholic beverages within the State, the storage of alcoholic beverages in warehouses already established, and to prescribe rules and regulations for the storage of such beverages and the withdrawal of the same therefrom. Such warehousing or bailment of alcoholic beverages as may be made hereunder shall be for the convenience of delivery to alcoholic boards of control and others authorized to purchase the same and shall be under the strict supervision and subject to all of the rules and regulations of the State Board of Control relating thereto. (1937, c. 49, s. 4; 1937, cc. 237, 411; 1945, c. 954; 1961, c. 956; 1963, c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3.)

**Local Modification.** — City of Greensboro: 1959, c. 1137, s. 1.

**Editor's Note.**—

The 1961 amendment rewrote the first sentence of subsection (10).

The first 1963 amendment added a paragraph at the end of the section. The second 1963 amendment rewrote subdivision (3).

The first 1965 amendment, effective July

1, 1965, added the last two sentences in subdivision (3). The second 1965 amendment deleted the former last paragraph added by the first 1963 amendment, relating to delegation of Board's powers and duties to the chairman thereof.

**Duty of Undercover Agent of Board.**—

This section places upon an undercover investigator of the State Alcoholic Beverage

Control Board the duty of enforcing the provisions of both the Turlington Act and the Alcoholic Beverage Control Act. State v. Taylor, 236 N. C. 130, 71 S. E. (2d) 924 (1952).

**§ 18-39.1. Special peace officers; board authorized to commission employees; no additional compensation.** — The State Board of Alcoholic Control is hereby authorized and empowered to commission as special peace officers such regular employees (including the chairman) as the State Board of Alcoholic Control may designate for the purpose of enforcing the provisions of chapter 18 of the General Statutes. Such employees shall receive no additional compensation for performing the duties of peace officer. (1961, c. 645; 1963, c. 426, s. 1.)

**Editor's Note.**—The act adding this and the three following sections became effective July 1, 1961. The 1963 amendment inserted "(including the chairman)" near the middle of the section.

**§ 18-39.2. Same; powers and jurisdiction.**—Any regular employee of the State Board of Alcoholic Control commissioned as a special peace officer shall have the right to arrest with warrant any person violating the provisions of chapter 18 of the General Statutes and shall have power to pursue and arrest without warrant any person violating in his presence any of the provisions of chapter 18 and any breach of the peace including public drunkenness connected to or associated with the enforcement of the provisions of chapter 18. All special peace officers appointed by the State Board of Alcoholic Control shall have State-wide jurisdiction in enforcing the provisions of chapter 18. (1961, c. 645; 1963, c. 426, s. 2.)

**Editor's Note.** — The 1963 amendment rewrote the second sentence of this section.

**§ 18-39.3. Same; bonds.** — Each employee of the State Board of Alcoholic Control commissioned as a special peace officer under this chapter shall give a bond with a good surety, payable to the State of North Carolina, in a sum not less than one thousand dollars (\$1,000.00), conditioned upon the faithful discharge of his duty as such peace officer. The bond shall be duly approved by and filed in the office of the Insurance Commissioner, and received in evidence in all actions and proceedings in this State. (1961, c. 645.)

**§ 18-39.4. Same; oaths.** — Before any employee of the State Board of Alcoholic Control, commissioned as a special peace officer, shall exercise any power of arrest under this chapter, he shall take the oath required of public officers before an officer authorized to administer oaths. (1961, c. 645.)

**§ 18-41. County boards of alcoholic control.**

Stated in Langley v. Taylor, 245 N. C. 59, 95 S. E. (2d) 115 (1956). Cited in State v. Taft, 256 N. C. 441, 124 S. E. (2d) 169 (1962).

**§ 18-45. Powers and duties of county boards.** — The said county boards shall each have the following powers and duties:

- (1) Control and jurisdiction over the importation, sale and distribution of alcoholic beverages within its respective county.
- (2) Power to buy and to have in its possession and to sell alcoholic beverages within its county.
- (3) Power and authority to adopt rules and regulations governing the operation of stores within its county and relating to the carrying out of the provisions and purposes of this article.
- (4) To prescribe and regulate and direct the duties and services of all employees of said county board.

- (5) To fix the hours for the opening and closing of stores operated by it. No store, however, shall be permitted to remain open between the hours of nine o'clock p. m. and nine o'clock a. m.
- (6) To require any county stores to close on such days as it may designate, but all stores in any county operating under the provisions of this article shall remain closed on Sundays, election days, New Year's Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving and Christmas Day.
- (7) To import, transport, receive, purchase, sell and deliver and have in its possession for sale for present and future delivery alcoholic beverages.
- (8) To purchase or lease property, furnish and equip buildings, rooms and accommodations as and when required for the storage and sale of alcoholic beverages and for distribution to all county stores within said county.
- (9) To borrow money, guarantee the payment thereof and the interest thereon, in such manner as may be required or permitted by law, and to issue, sign, endorse and accept checks, promissory notes, bills of exchange and other negotiable instruments and to do all such other and necessary things as may be required or may be convenient in the conduct of liquor stores in its county.
- (10) To investigate and aid in the prosecution of violations of this article and other liquor laws, by whatever name called, and to seize alcoholic beverages in said county sold, kept, imported or transported illegally and to apply for confiscation thereof and to cooperate in the prosecution of offenders in any court in said county.
- (11) To regulate and to prescribe rules and regulations that may be necessary or feasible for the obtaining of purity in all alcoholic beverages, including true statements of contents and the proper labeling thereof.
- (12) To require liquor stores to sell alcoholic beverages at the prices fixed by the State Board of Alcoholic Control, and to prescribe to whom the same may be sold.

The provisions of this article shall not apply to ethyl alcohol intended for use and/or used for the following purposes:

For scientific, chemical, mechanical, industrial, medicinal and culinary purposes.

For use by those authorized to procure the same tax free, as provided by the acts of Congress and regulations promulgated thereunder.

In the manufacture of denatured alcohol produced and used as provided by the acts of Congress and regulations promulgated thereunder.

In the manufacture of patented, patent, proprietary, medicinal, pharmaceutical, antiseptic, toilet, scientific, chemical, mechanical, and industrial preparations or products unfit for beverage purposes.

In the manufacture of flavoring extracts and syrups unfit for beverage purposes.

- (13) To exercise the power to buy, purchase and sell and to fix the prices at which all alcoholic beverages may be purchased from it, but nothing herein contained shall give said board the power to purchase or sell or deal in alcoholic beverages which contain less than five per centum of alcohol by weight.
- (14) To locate stores in its county and to provide for the management thereof and to appoint and employ at least one person for each store conducted by it, who shall be known as "manager" thereof. The duty of such manager shall be to conduct the said store under directions

of the county board and to carry out the law applying thereto, and such manager shall give bond for the faithful performance of his duties in such sum as may be fixed by said county board, with sufficient corporate surety and said surety, or sureties thereon, shall be approved by the said county board as a part of the qualifications of such manager for his appointment, and the said county board shall have the right to sue on said bond and to recover for all failures on the part of said manager faithfully to perform his duties as such manager, to the extent of any loss occasioned by such manager on his part, but as against the surety, or sureties, thereon, such aggregate recovery, or recoveries, shall not exceed the penalty of said bond.

- (15) To expend for law enforcement a sum not less than five per cent nor more than ten per cent of the total profits to be determined by quarterly audits and in the expenditure of said funds shall employ one or more persons to be appointed by and directly responsible to the respective county boards. In addition, any county or municipal board is authorized, in its discretion, to expend for education as to the effects of the use of alcoholic beverages and for the rehabilitation of alcoholics not more than five per cent (5%) of its total profits, to be determined by quarterly audits. The persons so appointed shall, after taking the oath prescribed by law for the peace officers, have the same powers and authorities within their respective counties as other peace officers. And any person so appointed, or any other peace officer while in hot pursuit of anyone found to be violating the prohibition laws of this State, shall have the right to go into any other county of the State and arrest such offender therein so long as such hot pursuit of such person shall continue, and the common law of hot pursuit shall be applicable to said offenses and such officers. Any law enforcement officer appointed by such county boards and any other peace officer is hereby authorized, upon request of the sheriff or other lawful officer in any other county, to go into such other county and assist in suppressing a violation of the prohibition law therein, and while so acting shall have such powers as a peace officer as are granted to him in his own county and be entitled to all the protection provided for said officer while acting in his own county.
- (16) To discontinue the operation of any store in its county whenever it shall appear to said board that the operation thereof is not sufficiently profitable to justify a continuance of its operation, or when, in its opinion, the operation of any store is inimical or hurtful to the morals or welfare of the community in which it is operated, or when said county board may be directed to close any store by the State Board.

All the powers and duties herein conferred upon county boards, or required of them, shall be subject to the powers herein conferred upon the State Board and whenever or wherever herein the State Board has been given power to approve or disapprove anything in respect to county stores or county boards, then no power on the part of the county boards and no act of any county board shall be exercisable or valid until and unless the same has been approved by the State Board. (1937, c. 49, s. 10; 1937, cc. 411, 431; 1939, c. 98; 1957, cc. 1006, 1335; 1963, c. 1119, s. 2.)

Local Modification.—Beaufort, as to subdivision (8): 1961, c. 945; Caswell: 1959, c. 97; Catawba, as to subdivision (15): 1953, c. 784; Chowan, as to subdivision (15): 1957, c. 693; Cumberland, as to subdivision (8): 1959, c. 315; Hertford, as to subdivision (15): 1965, c. 895; Martin, as to subdivision (15): 1957, c. 693; Mecklenburg,

as to subdivision (8): 1953, c. 11; Nash, as to subdivision (15): 1965, c. 1086; Onslow: 1965, c. 98; Wake (town of Wake Forest and within five miles thereof): 1955, c. 308, s. 1; city of Greensboro: 1959, c. 1137, s. 1; city of Winston-Salem, as to subdivision (8): 1959, c. 898.

**Editor's Note.—**

The 1957 amendments inserted the second sentence in subdivision (15).

The 1963 amendment rewrote subdivision (12).

**§ 18-48. Possession illegal if taxes not paid; punishment and forfeiture for violations; possession in container without proper stamp, prima facie evidence; counterfeit or unauthorized stamps.**—It shall be unlawful for any firm, person or corporation to have in his or its possession any alcoholic beverages as defined herein upon which the taxes imposed by the laws of Congress of the United States or by the laws of this State, have not been paid and any person convicted of the violation of this section shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court and the alcoholic beverage shall be seized and forfeited, together with any vehicle, vessel, aeroplane or other equipment used in the transportation and to carry the said alcoholic beverages, and the procedure pointed out in § 18-6 for the seizure, arrest, confiscation and sale of such vehicle, vessel, aeroplane or other means of transportation shall be used and the provisions of said § 18-6 are hereby declared to be in full force and effect in any of the counties of the State which shall operate under the provisions of this article, and the possession of such alcoholic beverages in a container which does not bear either a revenue stamp of the federal government or a stamp of any of the county boards of the State of North Carolina shall constitute prima facie evidence of the violation of this section. The willful manufacturing or causing to be manufactured or the willful possession of any counterfeit or unauthorized beverage control stamps shall be unlawful and punishable as a misdemeanor. (1937, c. 49, s. 13; 1957, c. 984.)

**Cross Reference.** — As to presumption arising from possession of nontax-paid liquor, see annotation under § 18-50.

**Editor's Note.** — The 1957 amendment added the second sentence.

**Purpose of Section.**—After the adoption of the Turlington Act, article 1 of this chapter, the State imposed no tax on alcoholic beverages and it was, with certain exceptions, unlawful to possess any quantity of intoxicating liquor. Under the A. B. C. Act, liquor may be purchased from A. B. C. stores and now it is not unlawful to possess liquor in the quantities and under the conditions prescribed by that Act. But, to make certain that this modification of the Turlington Act applies only to liquor upon which the taxes imposed by the federal and State governments have been paid, the General Assembly wrote into the A. B. C. Act the provision which is now this section, making it unlawful to possess any quantity of liquor upon which such taxes have not been paid. *State v. Avery*, 236 N. C. 276, 72 S. E. (2d) 670 (1952).

An alcoholic beverage control officer is a "public officer" within the meaning of § 14-223 and is entitled to the protection of that section. *State v. Taft*, 256 N. C. 441, 124 S. E. (2d) 169 (1962).

Applied in *Langley v. Patrick*, 238 N. C. 250, 77 S. E. (2d) 656 (1953) (as to subsection (c)).

Quoted in *Langley v. Taylor*, 245 N. C. 59, 95 S. E. (2d) 115 (1956).

**This section must be construed with the Turlington Act, and does not create a separate offense.** *State v. Avery*, 236 N. C. 276, 72 S. E. (2d) 670 (1952).

A violation of this section is a crime separate and distinct from a violation of §§ 18-2, 18-29, and 18-50. *State v. Simmons*, 256 N. C. 688, 124 S. E. (2d) 887 (1962).

**Possession Unlawful without Exception.**—In accord with original. See *State v. Parker*, 234 N. C. 236, 66 S. E. (2d) 907 (1951); *State v. Avery*, 236 N. C. 276, 72 S. E. (2d) 670 (1952); *State v. Brown*, 238 N. C. 260, 77 S. E. (2d) 627 (1953); *State v. Guffey*, 252 N. C. 60, 112 S. E. (2d) 734 (1960).

**This section and § 18-50 are on an equal footing, etc.—**

In accord with original. See *State v. Hall*, 240 N. C. 109, 81 S. E. (2d) 189 (1954); *State v. Daniels*, 244 N. C. 671, 94 S. E. (2d) 799 (1956).

**And Each Creates a Specific Offense.**—This section and § 18-50 each creates a specific criminal offense, and a violation

of this section is not a lesser offense included in the offense defined in § 18-50. *State v. Cofield*, 247 N. C. 185, 100 S. E. (2d) 355 (1957); *State v. Morgan*, 246 N. C. 596, 99 S. E. (2d) 764 (1957).

**Which Raises Presumption under § 18-11.**—This section and § 18-50 are Statewide in application, and the possession of any quantity of nontax-paid liquor is, without exception, unlawful, and under § 18-11 raises the presumption, even though less than one gallon in quantity, that possession is for the purpose of sale. *State v. Guffey*, 252 N. C. 60, 112 S. E. (2d) 734 (1960).

**Possession May Be Actual or Constructive.**—Possession, within the meaning of this section, may be either actual or constructive. *State v. Brown*, 238 N. C. 260, 77 S. E. (2d) 627 (1953); *State v. Guffey*, 252 N. C. 60, 112 S. E. (2d) 734 (1960).

There can be a constructive possession of nontax-paid whiskey, as well as an actual possession. *State v. Carver*, 259 N. C. 229, 130 S. E. (2d) 285 (1963).

**What Warrant or Indictment Should Charge.**—Under this section a warrant or indictment should charge the unlawful possession of alcoholic beverages upon which the taxes imposed by the laws of the Congress of the United States or by the laws of this State had not been paid. *State v. May*, 248 N. C. 60, 102 S. E. (2d) 418 (1958).

**Amendment of Warrant Charging Violation of § 18-50.**—The superior court had no power to permit a warrant charging a violation of § 18-50 to be amended so as to charge also a violation of this section. *State v. Cofield*, 247 N. C. 185, 100 S. E. (2d) 355 (1957).

An allegation in a warrant or bill of indictment to the effect that the federal and State taxes had not been paid upon the liquor seized or that it was illicit liquor is merely descriptive, and does not limit the prosecution to any particular section of the liquor law or deprive the State of the benefit of the general provisions of the law as it now exists. Instead, it facilitates proof of the unlawfulness of the possession and renders it unnecessary to prove possession of any particular quantity. *State v. Avery*, 236 N. C. 276, 72 S. E. (2d) 670 (1952).

The General Assembly has made it easy and simple to make out a prima facie case under this section. All the State has to prove to make out a prima facie case is to show that the container or containers seized contained an alcoholic beverage and that the container or containers bore no revenue stamp of the federal gov-

ernment or a stamp of any of the county boards of the State of North Carolina. *State v. Smith*, 249 N. C. 212, 105 S. E. (2d) 622 (1958).

**What State Must Prove.**—A plea of not guilty places upon the State the burden of proving beyond a reasonable doubt all essential elements of the offense under this section: (1) Possession; (2) the Federal or State tax had not been paid; (3) alcoholic contents exceeding fourteen per cent by volume under § 18-60. *State v. Pitt*, 248 N. C. 57, 102 S. E. (2d) 410 (1958).

**Evidential Effect of the Absence of Stamps on Containers.**—The provision of this section as to the evidential effect of the absence of stamps on containers holding alcoholic beverages creates a factual inference or conclusion to be drawn from other facts recited. This inference or conclusion is denominated prima facie evidence. It, like all the other evidence, must be weighed before the jury can render a verdict. In criminal cases this evidence, coupled with other evidence, must establish defendant's guilt beyond a reasonable doubt. Defendant is entitled to have the jury scrutinize this evidence as it does all of the other evidence with a presumption of innocence in his favor. It does not suffice for proof "until contradicted and overcome by other evidence." It may fall because of its own weakness. *State v. Bryant*, 245 N. C. 645, 97 S. E. (2d) 264 (1957).

**Sufficiency of Evidence.**—

In accord with 2nd paragraph in original. See *State v. Harrison*, 239 N. C. 659 80 S. E. (2d) 481 (1954).

The court cannot take judicial notice that "bootleg whiskey" is "non-tax-paid liquor." *State v. Tillery*, 243 N. C. 706, 92 S. E. (2d) 64 (1956).

Evidence that whiskey belonging to defendant was found on defendant's premises, that the whiskey was not A. B. C. whiskey, together with stipulations that the containers bore no stamps, is sufficient to be submitted to the jury in a prosecution under this section. *State v. Pitt*, 248 N. C. 57, 102 S. E. (2d) 410 (1958).

**Evidence Sufficient to Overrule Defendant's Motion to Nonsuit.**—See *State v. Avery*, 236 N. C. 276, 72 S. E. (2d) 670 (1952); *State v. Bryant*, 245 N. C. 645, 97 S. E. (2d) 264 (1957); *State v. Mitchell*, 260 N. C. 235, 132 S. E. (2d) 481 (1963).

Evidence showing nontax-paid liquor found within the curtilage of the defendant's home is sufficient to take the case to the jury under this section, and the court



will properly overrule defendant's motion for judgment as of nonsuit. *State v. Gibbs*, 238 N. C. 258, 77 S. E. (2d) 779 (1953).

Applied in *State v. Barley*, 240 N. C. 253, 81 S. E. (2d) 772 (1954); *State v. Bell*, 249 N. C. 379, 106 S. E. (2d) 495 (1959); *State v. Humphrey*, 261 N.C. 511, 135 S.E.2d 214 (1964).

**§ 18-49. Transportation, not in excess of one gallon, authorized; transportation in course of delivery to stores.**

Local Modification.—Haywood: 1955, c. 827.

Section permits, with certain provisos, the transportation of taxpaid whiskey not in excess of one gallon from a county in North Carolina which has elected to operate under the Alcoholic Beverage Control Act to another county not coming under its provisions for the use of himself, his family, and his bona fide guests. *State v. Bell*, 264 N.C. 350, 141 S.E.2d 493 (1965).

**Sufficiency of Evidence.**—Evidence tending to show only that defendant transported in a bus from a county having liquor stores to a dry county one gallon of tax-paid liquor with seals unbroken is in-

Cited in *State v. Jenkins*, 234 N. C. 112, 66 S. E. (2d) 819 (1951); *State v. Scoggin*, 236 N. C. 19, 72 S. E. (2d) 54 (1952); *State v. Poe*, 245 N. C. 402, 96 S. E. (2d) 5 (1957); *State v. Cobb*, 250 N. C. 234, 108 S. E. (2d) 237 (1959).

sufficient to show unlawful transportation, it being legally established that the transportation was not for the purpose of sale. *State v. Love*, 236 N. C. 344, 72 S. E. (2d) 737 (1952).

Evidence held insufficient to fix defendant with ownership or possession of liquor found in baggage compartment of bus. *State v. Love*, 236 N. C. 344, 72 S. E. (2d) 737 (1952).

Applied in *State v. Coffey*, 255 N. C. 293, 121 S. E. (2d) 736 (1961).

Cited in *State v. Fuqua*, 234 N. C. 168, 66 S. E. (2d) 667 (1951); *State v. Welborn*, 249 N. C. 268, 106 S. E. (2d) 204 (1958).

**§ 18-49.1. Regulating transportation in excess of one gallon for delivery to federal reservation or to another state; conditions to be complied with.**

(1) Statement as to Bond and Bill of Lading Required.—There shall accompany such alcoholic beverages a statement signed by the chairman or Director of the State Board of Alcoholic Beverage Control showing that the bond hereinbefore required has been furnished and approved. There shall accompany such alcoholic beverages at all times during transportation a bill of lading or other memorandum of shipment signed by the consignor showing an exact description of the alcoholic beverages being transported, the name and address of the consignor, the name and address of the consignee, the route to be traveled by such vehicle while in the State of North Carolina, and such route must be substantially the most direct route, from the consignor's place of business to the place of business of the consignee.

(1965, c. 1102, s. 4.)

Editor's Note.—

The 1965 amendment substituted "Director" for "secretary" near the middle of the first sentence of subdivision (1).

As only subdivision (1) was affected by

the amendment, the rest of the section is not set out.

Applied in *State v. Wells*, 259 N. C. 173, 130 S. E. (2d) 299 (1963).

**§ 18-49.2. Transportation in excess of one gallon prohibited, exceptions; regulations of A.B.C. Board.**

**Possession Necessary Element of Transportation.**—Only a person in the actual or constructive possession of nontax-paid whiskey, absent conspiracy or aiding and abetting, could be guilty of the unlawful transportation thereof. *State v. Wells*, 259 N. C. 173, 130 S. E. (2d) 299 (1963).

**Purpose of Transportation.**—Whether the transportation of nontax-paid whiskey is unlawful does not depend upon whether it is being transported for the purpose of sale. *State v. Wells*, 259 N. C. 173, 130 S. E. (2d) 299 (1963).

**§ 18-49.3. Violation of § 18-49.1 or 18-49.2 a misdemeanor; seizure and disposition of vehicle and alcoholic beverages.**

Applied in *State v. Wells*, 259 N. C. 173, 130 S. E. (2d) 299 (1963).

**§ 18-49.5. Transportation, possession and sale at installations operated by or for armed forces.**—Alcoholic beverages in quantities in excess of one gallon may be purchased by, transported to, possessed and sold by any open mess or officers' club at any installation located in any county in this State where alcoholic beverages may be legally sold or possessed, which installation is operated by or for any of the armed forces of the United States and where the possession, dispensing and sale of such alcoholic beverages is under the control and supervision of the department of the armed forces concerned; provided, however, that all such alcoholic beverages transported, possessed, dispensed or sold pursuant to this section on the premises of any such installation shall be purchased at the retail alcoholic beverage control store of the county in which such installation is located at the full retail price prevailing at the time of such purchase. Transportation permits may be issued by the State Board of Alcoholic Beverage Control under regulations adopted pursuant to G. S. 18-49.2 for the transportation of alcoholic beverages in excess of one gallon from the alcoholic beverage control store of the county in which such installation is located, for delivery to the responsible officer of such installation operated by or for any of the armed forces of the United States. The provisions of this section shall not be construed as to affect the source, or place of purchase, or the price paid for alcoholic beverages purchased, possessed, sold and dispensed by or at any open mess or officers' club or other facility located at or maintained at or by any of the armed forces of the United States at any place where jurisdiction has been ceded to or taken by the United States government. (1955, c. 1211.)

**§ 18-50. Possession for sale and sales of illicit liquors; sales of liquors purchased from stores.**

A violation of this section is a crime separate and distinct from a violation of §§ 18-2, 18-29, and 18-48. *State v. Simmons*, 256 N. C. 688, 124 S. E. (2d) 887 (1962).

This section and § 18-48 each creates a specific criminal offense, and a violation of § 18-48 is not a lesser offense included in the offense defined in this section. *State v. Cofield*, 247 N. C. 185, 100 S. E. (2d) 355 (1957); *State v. Morgan*, 246 N. C. 596, 99 S. E. (2d) 764 (1957).

**Warrant Cannot Be Amended So as to Charge Violation of § 18-48.**—The superior court had no power to permit a warrant charging a violation of this section to be amended so as to charge also a violation of § 18-48. *State v. Cofield*, 247 N. C. 185, 100 S. E. (2d) 355 (1957).

**What Warrant Should Charge.**—Under this section a warrant or indictment should charge the unlawful possession for sale, or sale, of illicit liquors or the sale of any liquors purchased from the county stores. *State v. May*, 248 N. C. 60, 102 S. E. (2d) 418 (1958).

**What State Must Prove.**—This section places upon the State only the burden of proving the defendant unlawfully had illicit liquors in his possession for sale

*State v. May*, 248 N. C. 60, 102 S. E. (2d) 418 (1958).

**Possession for Purpose of Sale Is Essential Element.**—Where the defendant was charged with the possession of tax-paid liquor for the purpose of sale, and the court removed from the warrant the charge that the possession was for the purpose of sale, he removed from the jury an essential element of the charge, and a conviction under the warrant could not be had for unlawful possession. *State v. Poe*, 245 N. C. 402, 96 S. E. (2d) 5 (1957).

**Presumption of Intent to Sell Arising from Possession.**—Sections 18-48 and 18-50 are statewide in application, and the possession of any quantity of nontax-paid liquor is without exception unlawful, and under § 18-11 raises the presumption, even though less than one gallon in quantity that possession is for the purpose of sale, since the statutes are not irreconcilable but may be harmonized as related parts of a composite whole. *State v. Hill*, 236 N. C. 704, 73 S. E. (2d) 894 (1953), overruling *State v. Lockey*, 214 N. C. 525, 199 S. E. 715 (1938); *State v. McNeill*, 225 N. C. 560, 35 S. E. (2d) 629 (1945); and *State v.*

Peterson, 226 N. C. 255, 37 S. E. (2d) 591 (1946). See annotation under § 18-11.

**One Charged with Violation of This Section, etc.—**

In accord with 1st paragraph in original. See *State v. Daniels*, 244 N. C. 671, 94 S. E. (2d) 799 (1956).

Where defendant was convicted in a recorder's court of possession of nontax-paid whiskey for the purpose of sale, and on appeal was convicted in the superior court of having in his possession nontax-paid whiskey, and was found not guilty of possession of nontax-paid whiskey for the purpose of sale, it was held that the judgment must be arrested, since defendant could not be prosecuted in the superior court on the original warrant except for an offense for which he was convicted in the inferior court. And the trial, conviction, and sentence in the superior court could not be upheld on the theory that possessing alcoholic beverages on which taxes have not been paid is a lesser offense in-

cluded in the charge of possessing intoxicating liquor for the purpose of sale. *State v. Hall*, 240 N. C. 109, 81 S. E. (2d) 189 (1954).

**Evidence Sufficient for Jury.**—See *State v. Mitchell*, 260 N.C. 235, 132 S.E.2d 481 (1963).

Evidence tending to show that some 18 gallons of nontax-paid liquor was found in defendant's home was sufficient to be submitted to the jury on a charge of unlawful possession of illicit liquor for the purpose of sale, the credibility of the exculpatory evidence being for the jury. *State v. Turner*, 253 N. C. 37, 116 S. E. (2d) 194 (1960).

Applied in *State v. Bell*, 264 N.C. 350, 141 S.E.2d 493 (1965).

Cited in *State v. Welborn*, 249 N. C. 268, 106 S. E. (2d) 204 (1958); *State v. Cobb*, 250 N. C. 234, 108 S. E. (2d) 23; (1959); *Taylor v. Parks*, 254 N. C. 266, 118 S. E. (2d) 779 (1961).

**§ 18-51. Drinking or offering drinks on premises of stores, and public roads or streets; drunkenness, etc., at athletic contests or other public places.**

**Origin and Purpose of Section.** — This section grew out of legislative authorization of the sale of liquor in ABC stores, and sought to restrict its use after purchase. *State v. Fenner*, 263 N.C. 694, 140 S.E.2d 349 (1965).

"Other public place" was added to this section unquestionably to prevent a too narrow construction of the term "at any athletic contest," and not for the purpose of including public places of all kinds.

*State v. Fenner*, 263 N.C. 694, 140 S.E.2d 349 (1965).

The word "other" commonly occurs in a general expression, following specific designations, in statutes where the *ejusdem generis* rule is applied. *State v. Fenner*, 263 N.C. 694, 140 S.E.2d 349 (1965).

**Section Not General Law Respecting Public Drunkenness.** — See note to § 14-335.

**§ 18-57. Net profits to be paid into general fund of the various counties.**

**Local Modification.**—Caswell: 1955, c. 40; Rockingham: 1965, c. 971.

**§ 18-58. Transportation into State; and purchases, other than from stores, prohibited.**—It shall be unlawful for any person, firm, or corporation, to purchase in, or to bring into this State, any alcoholic beverage from any source, except from a county store operated in accordance with this article, except a person may purchase legally outside of this State and bring into the same for his own personal use not more than one gallon of such alcoholic beverage: Provided, that the cap or seal on the container or containers of said alcoholic beverages has not been opened or broken. A violation of this section shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. (1937, c. 49, s. 22; 1955, c. 999.)

**Editor's Note.** — The 1955 amendment added the proviso at the end of the first sentence.

Cited in *State v. Fuqua*, 234 N. C. 168, 66 S. E. (2d) 667 (1951).

**§ 18-60. Definition of "alcoholic beverage."**

**Cross Reference.**—See note to § 18-48. 97 S. E. (2d) 264 (1957); *Staley v. Winston-Salem*, 258 N. C. 244, 128 S. E. (2d) 604 (1962); *State v. Mitchell*, 260 N.C. 235, 132 S.E.2d 481 (1963).  
 Stated in *State v. May*, 248 N. C. 60, 102 S. E. (2d) 418 (1958).  
 Cited in *State v. Bryant*, 245 N. C. 645,

ARTICLE 4.

*Beverage Control Act of 1939.*

**§ 18-63. Title.**

**Local Modification.**—Town of Wake Forest: 1955, c. 308, s. 2.

**§ 18-64. Definitions.**

Cited in *State v. Wilson*, 237 N. C. 746, 75 S. E. (2d) 924 (1953); *Davis v. Charlotte*, 242 N. C. 670, 89 S. E. (2d) 406 (1955).

**§ 18-65. Regulations; statement required on container; application of other law.**

Cited in *Davis v. Charlotte*, 242 N. C. 670, 89 S. E. (2d) 406 (1955).

**§ 18-66. Transportation.**

**Sufficiency of Evidence.**—Evidence was sufficient to convict defendant of unlawful transportation of beer where it showed that he owned the truck used by him in the transportation of the beer; that he had in his truck sixty cases of beer which he was directed to deliver; that his truck was not registered for the purpose of transporting beer as required by law, and that he had no "bill of lading or anything else for the beer." *State v. McCullough*, 244 N. C. 11, 92 S. E. (2d) 389 (1956).

**§ 18-69.1. Prohibition against exclusive outlets.**—It shall be unlawful for any manufacturer, bottler or wholesaler of wine or malt beverages, whether licensed in this State or not, or any officer, director or an affiliate of such manufacturer, bottler or wholesaler either directly or indirectly:

(1) To require by agreement or otherwise, that any retailer engaged in the sale of wine or malt beverages, purchase any such products from such person, firm or corporation to the exclusion in whole or in part of wine or malt beverages sold or offered for sale by other persons, firms or corporations in North Carolina; or

(2) To have any financial interest direct or indirect in the business for which any retailer's permit has been issued under this article or in the premises where the business of any person to whom a retailer's permit has been issued hereunder is conducted; or

(3) To lend or give to any person licensed hereunder as a retailer or his employee or to the owner of the premises on which the business of any such retailer is conducted any money, services, equipment, furniture, fixtures or other things of value with which the business of such retailer is or may be conducted.

All of the above restrictions are subject to such exceptions as may be prescribed by the Board of Alcoholic Control having due regard for public health, the quantity and value of articles involved, established trade customs not contrary to the public interest and the purposes of this section. (1945, c. 708, s. 6, 1953, c. 1207, s. 1.)

**Editor's Note.**—The 1953 amendment rewrote this section.

**§ 18-69.2. Breweries forbidden to coerce or persuade wholesalers to violate chapter or unjustly cancel contracts or franchises; prima facie evidence of franchise; injunctions; revocation or suspension of licenses**

**and permits.**—(a) It shall be unlawful, and punishable as provided in § 18-108, for any brewery or any officer, agent, or representative of any brewery:

- (1) To coerce, or attempt to coerce, or persuade, any person licensed to sell beer at wholesale, to enter into any agreement to take any action which would violate or tend to violate any provision of chapter 18 of the General Statutes of North Carolina, or any rules or regulations promulgated by the Board of Alcoholic Control of the State of North Carolina in accordance therewith; or
- (2) To unfairly, without due regard to the equities of such wholesaler, or without just cause or provocation, to cancel or terminate any agreement or contract, written or oral, or the franchise of such wholesaler existing on January 1, 1965, or thereafter entered into, to sell beer manufactured by the brewery; provided, also, that, from and after June 17, 1965, this provision shall be a part of any franchise, contract, agreement or understanding, whether written or oral, between any wholesale dealer in beer licensed to do business in North Carolina, and any brewery doing business with such licensed wholesaler, just as though said provision had been specifically agreed upon between said wholesaler and said brewery.

(b) The doing or accomplishment of any of the following acts shall constitute prima facie evidence of a contractual franchise relationship within the contemplation of this section, as between a licensed malt beverage wholesaler and a brewery, to wit:

- (1) The shipment, the preparation for shipment, or acceptance of any order by any brewery or its agent for any malt beverage, to a licensed wholesale distributor within the State of North Carolina.
- (2) The payment by any licensed wholesale distributor in the State or the acceptance of payment by any brewery or its agent for the shipment of an order of malt beverage intended for sale within the State.

(c) The superior court of North Carolina is hereby vested with jurisdiction and power to enjoin the cancellation or termination of a franchise or agreement between a wholesaler of beer and a brewery, at the instance of such wholesaler who is or might be adversely affected by such cancellation or termination, and, in granting an injunction, the superior court of North Carolina shall provide that no brewery shall supply the customers or territory of the wholesaler through servicing said territory or customers through other distributors or means, while said injunction is in effect.

(d) The Board of Alcoholic Control, State of North Carolina, is empowered to investigate any violations of this section and to furnish to the prosecuting attorney of any court having jurisdiction of the offense information with respect to any violations of this section, and the Board of Alcoholic Control, State of North Carolina, shall have the power to enforce conformance with the provisions of any injunction granted by the superior court under the terms of this section, and, if the court finds that there has been a violation of the provisions of any injunction granted by it, the Board of Alcoholic Control of North Carolina may revoke or suspend the license of any wholesaler and the license or permit of any brewery to ship beer into the State of North Carolina. (1965, c. 1191.)

### § 18-72. Character of license.

The word "premises" when applied to a drive-in restaurant must be held to include the entire private property area designed for use by patrons while being served. *Davis v. Charlotte*, 242 N. C. 670, 89 S. E. (2d) 406 (1955).

City Cannot Prohibit Curb Sales by "On

Premises" Licensees. — A city ordinance prohibiting sale of wine and beer by car hop or curb service was enjoined in so far as it applied to plaintiffs holding valid "on premises" licenses issued pursuant to this section. *Davis v. Charlotte*, 242 N. C. 670, 89 S. E. (2d) 406 (1955).

**§ 18-73. Retail license issued for sale of wines.**

**Effect of City Zoning Ordinance.**—A restaurant owner's right to operate a restaurant being conceded, a city zoning ordinance could not set at nought a State-wide statute permitting the sale of wines in such restaurants. *Staley v. Winston-Salem*, 258 N. C. 244, 128 S. E. (2d) 604 (1962).

**§ 18-74. Amount of retail license tax.**

Cited in *Davis v. Charlotte*, 242 N. C. 670, 89 S. E. (2d) 406 (1955).

**§ 18-75. Who may sell at retail or wholesale.**—Every person making application for license to sell at retail or wholesale the beverages enumerated in § 18-64, if the place where such sale is to be made is within a municipality, shall make application first to the governing board of such municipality, and the application shall contain:

- (1) Name and residence of the applicant and the length of his residence within the State of North Carolina.
- (2) The particular place for which the license is desired, designating the same by a street and number, if practicable; if not, by such other apt description as definitely locates it.
- (3) The name of the owner of the premises upon which the business licensed is to be carried on.
- (4) That the applicant intends to carry on the business authorized by the license for himself or under his immediate supervision and direction.
- (5) A statement that the applicant is a citizen and resident of North Carolina and not less than twenty-one years of age; that he has not been convicted of, or entered a plea of guilty or nolo contendere to, a felony or other crime involving moral turpitude within the past three (3) years; or a violation of the prohibition laws, either State or federal, within the past two (2) years.

The application must be verified by the affidavit of the petitioner made before a notary public or other person duly authorized by law to administer oaths. If it appears from the statement of the applicant or otherwise that he has at any time been convicted of, or entered a plea of guilty or nolo contendere to, a felony or other crime involving moral turpitude within the past three (3) years, or that he has, within the two (2) years prior to the filing of the application, been adjudged guilty of violating the prohibition laws, either State or federal, or that he has within two (2) years prior to the filing of the application completed a sentence for violation of the prohibition laws, such license shall not be granted. If it appears that any false statement is knowingly made in any part of the application and license received thereon, the license shall be revoked and the applicant subjected to the penalty provided by law for misdemeanors. Before issuing a license, the governing body of the municipality shall be satisfied that the statements required by subdivisions (1), (2), (3), (4), and (5) of this section are true.

Neither the State nor any city or county shall issue a license under this article to any person, firm, or corporation who is not a citizen of the United States and who has not been a bona fide resident of the State of North Carolina for one (1) year. Provided, that if the applicant is a corporation, the requirement as to residence shall not apply to the officers, directors, or stockholders of the corporation; however, such residence requirement shall apply to any such officer, director or stockholder, agent or employee who is also the manager and in charge of the premises for which the permit is applied for, but the governing body of the county or municipality may, in its discretion, waive such requirement. No resident of the State shall obtain a license under this article and employ or receive aid from a nonresident for the purpose of defeating this requirement. No license shall be issued to a poolroom or billiard parlor or any person,

firm or corporation operating same for the sale of wine as defined in G. S. 18-64, subsection (b). Any person violating this paragraph shall be guilty of a misdemeanor, and upon conviction shall be imprisoned not more than thirty (30) days or fined not more than two hundred dollars (\$200.00). (1939, c. 158, s. 511; 1945, c. 708, s. 6; 1947, c. 1098, s. 1; 1963, c. 426, s. 3; c. 1188.)

**Editor's Note.—**

The first 1963 amendment rewrote subdivision (5) and the second sentence of the next-to-last paragraph of this section.

The second 1963 amendment rewrote the first sentence of the last paragraph

and inserted the present second sentence therein.

Cited in *Davis v. Charlotte*, 242 N. C. 670, 89 S. E. (2d) 406 (1955); *Staley v. Winston-Salem*, 258 N. C. 244, 128 S. E. (2d) 604 (1962).

**§ 18-76. County license to sell at retail.**

**Local Modification.—**Franklin: 1959, c. 441.

**§ 18-77. Issuance of license mandatory; sales during religious services.**

Cited in *Davis v. Charlotte*, 242 N. C. 670, 89 S. E. (2d) 406 (1955); *Staley v. Winston-Salem*, 258 N. C. 244, 128 S. E. (2d) 604 (1962).

**§ 18-78. Revocation or suspension of license or permit; confiscation of beverages not meeting standards of State Board of Alcoholic Control; rule making power of Board; refusal to surrender permit. —**

(a) If any licensee violates any of the provisions of this article or any rules and regulations under authority of this article or fails to superintend in person or through a manager, the business for which the license was issued, or allows the premises, with respect to which the license was issued, to be used for any unlawful, disorderly, or immoral purposes, or knowingly employs in the sale or distribution of beverages any person who has been convicted of, or entered a plea of guilty or nolo contendere to, a felony involving moral turpitude (federal or State) within the past three (3) years, or adjudged guilty of violating the prohibition laws (federal or State) within two (2) years, or leaves the licensed premises in charge of any person who has had a license or permit for the sale of beverages revoked within the past two (2) years, or otherwise fails to carry out in good faith the purposes of this article, the license of any such person may be revoked or suspended by the governing board of the municipality or by the board of county commissioners after the licensee has been given an opportunity to be heard in his defense.

(b) The State Board of Alcoholic Control shall have the authority to fix such standards for the beverages described in § 18-64 (a) as are determined by said Board to best protect the public against beverages containing deleterious, harmful or impure substances or elements, or an improper balance of elements, and against spurious or imitation beverages unfit for human consumption; to test the products described in § 18-64 (a) possessed or offered for sale or sold in this State and to make chemical or laboratory analyses of such beverages or to determine in any other manner whether such beverages meet the standards established by said Board; to confiscate and destroy any such beverages not meeting such standards; to enter and inspect any premises on which such beverages are possessed or offered for sale; to examine any and all books, records, accounts, invoices or other papers or data which in any way relate to the possession or sale of such beverages; and to take all proper steps for the prosecution of persons violating the provisions of this section, and for carrying out the provisions and intent thereof; provided the owner of said beverages confiscated shall be served with written notice to show cause within five days before the Board why the order should not be made permanent; and no beverages shall be destroyed until the order is final; provided further that the said owner shall have the right to ap-

peal from the ruling of the said Board to the superior court of the county in which the said beverages were confiscated within ten (10) days from the final order of the said Board.

(c) Whenever any license or permit which has been issued by any municipality, any board of county commissioners, the Commissioner of Revenue, or by the Board of Alcoholic Control has been revoked, the State ABC Board may at its discretion refuse to issue a permit or license for said premises to any person for any period not to exceed six months after the revocation of such permit or license.

(d) The State Board of Alcoholic Control shall have the power to adopt, repeal and amend rules and regulations to carry out the provisions of this article and to govern the distribution, merchandising and advertising of wine and malt beverages and the Board may revoke or suspend the State permit of any licensee for a violation of the provisions of this article or of any rule or regulation adopted by said Board. Whenever there shall be filed with the State Board of Alcoholic Control a certified copy of a judgment of a court convicting a licensee of a violation of the State or Federal prohibition laws, or any of the provisions of this article or of any rule or regulation issued by said Board, said Board may suspend or revoke the permit of such licensee and shall serve a written notice of such suspension or revocation upon the licensee either by requiring the delivery of such notice to the licensee in person by an agent of the Board or by sending same by registered mail to his last known post office address. Except as provided in the preceding sentence, before the State permit authorizing the sale of the beverages enumerated in § 18-64 may be revoked or suspended, the Board shall give the affected permittee such notice and hearing as is required by chapter 18 of the General Statutes for the type of permit concerned. Upon such hearings the duly authorized agents of the Board may administer oaths and may issue subpoenas for the attendance of witnesses and the production of books, papers and documents belonging to the permittee. The revocation or suspension of a permit issued by the State Board of Alcoholic Control shall automatically revoke or suspend any and all State, county and municipal licenses issued to such licensee under the authority of this article, and the revocation or suspension of either a State, county or municipal license shall automatically revoke or suspend any other licenses issued to the licensee under the authority of this article.

(e) Any person who shall refuse to surrender a wine or malt beverage permit on demand under authority of the Board, after such permit has been duly cancelled, suspended or revoked, shall be guilty of a misdemeanor. Notices, orders or demands issued by the Board for the surrender of such permits may be served and executed by the inspectors employed by the Board, and such inspectors, while serving and executing such notices, orders or demands, shall have all the power and authority possessed by peace officers when serving and executing warrants charging violation of the criminal laws of the State.

(f) Upon the appeal to the superior court of decisions of the board suspending or revoking licenses or permits or disapproving applications for licenses or permits and the appealing parties request a transcript of the entire record or a portion thereof, the same shall be furnished to the appealing parties upon payment to the board of a fee of fifty cents (50¢) per page, but in no event shall the minimum fee be less than twenty-five dollars (\$25.00) per copy of the record. (1939, c. 158, s. 514; 1943, c. 400, s. 6; 1949, c. 974, s. 14; 1953, c. 1207, ss. 2-4; 1957, c. 1440; 1963, c. 426, ss. 4, 5.)

**Editor's Note.—**

The 1953 amendment rewrote the portions of this section comprising subsections (a), (c) and (d) and added the part comprising subsection (e)

The 1957 amendment inserted subsection (b).

The 1963 amendment rewrote subsection (a) and added subsection (f).

**Legislation for Revocation and Suspension of Permits Is Constitutional.** — The legislation for the revocation or suspension of a retail beer permit for violation of § 18-78.1 is an exercise of the police power of



the State in the interests of public morals and welfare, is reasonable, bears a real and substantial relationship to the public purpose sought to be accomplished by the legislature in the Beverage Control Act, tends to preserve public morals and welfare, and is not in violation of Article I. § 17, of the North Carolina Constitution, as contended by petitioners. *Boyd v. Allen*, 246 N. C. 150, 97 S. E. (2d) 864 (1957).

**Nature of Proceedings to Suspend Beer Permit.**—A proceeding by the State Board of Alcoholic Control to suspend a beer permit for alleged violations by the holder of G. S. 18-78.1, is an administrative proceeding, which does not involve any criminal liability of the holder of such permit. *Boyd v. Allen*, 246 N. C. 150, 97 S. E. (2d) 864 (1957).

**The Board's findings are conclusive if supported by material and substantial evidence.** *Freeman v. Board of Alcoholic Control*, 264 N.C. 320, 141 S.E.2d 499 (1965).

**And Its Decision Cannot Be Reversed by Jury Verdict.**—The verdict of the jury in a criminal prosecution does not have the effect of reversing the decision of the Board of Alcoholic Control. *Freeman v. Board of Alcoholic Control*, 264 N.C. 320, 141 S.E.2d 499 (1965).

**Findings Held to Support Judgment**

**Suspending Permit.**—Findings of fact, supported by evidence, that the holders of a beer permit sold whiskey on the premises, and sold beer consumed by the purchaser on the premises after closing hours and at a time when the sale of beer was prohibited by law, support judgment suspending the permit, notwithstanding the further finding that the holders had no knowledge of the unlawful conduct of the employees. *Boyd v. Allen*, 246 N. C. 150, 97 S. E. (2d) 864 (1957).

**Evidence of Age of Person to Whom Licensee Sold Beer.**—Testimony of officers that a person who had bought beer from a licensee declared he was under eighteen is incompetent as hearsay, and a certified copy of a birth certificate without testimony of any person having knowledge thereof that it was the record of the purchaser of the beer is incompetent to prove the age of the purchaser, and therefore such evidence is insufficient to sustain a finding of the State Board of Alcoholic Control that the licensee sold beer to a minor or failed to give his licensed premises proper supervision. *Thomas v. State Board of Alcoholic Control*, 255 N. C. 513, 128 S. E. (2d) 884 (1963).

**Applied in *Sinodis v. State Board of Alcoholic Control***, 258 N. C. 282, 128 S. E. (2d) 587 (1962).

**§ 18-78.1. Prohibited acts under license for sale of malt beverages and wines for consumption on or off premises.**—No holder of a license authorizing the sale at retail of beverages, as defined in § 18-64, and article 5, for consumption on or off the premises where sold, or any servant, agent, or employee of the licensee, shall do any of the following upon the licensed premises:

- (1) Knowingly sell such beverages to any person under eighteen (18) years of age.
- (2) Knowingly sell such beverages to any person while such person is in an intoxicated condition.
- (3) Sell such beverages upon the licensed premises or permit such beverages to be consumed thereon, on any day or at any time when such sale or consumption is prohibited by law.
- (4) Permit on the licensed premises any disorderly conduct, breach of peace, or any lewd, immoral, or improper entertainment, conduct, or practices.
- (5) Sell, offer for sale, possess, or knowingly permit the consumption on the licensed premises of any kind of alcoholic liquors the sale or possession of which is not authorized by law. (1943, c. 400, s. 6; 1945, c. 708, s. 6; 1949, c. 974, s. 15; 1959, c. 745, s. 2; 1963, c. 426, s. 6.)

**Cross Reference.**—See note to § 18-78.

**Editor's Note.**—

The 1959 amendment inserted the word "knowingly" in line one of subdivision (5) and substituted the words "by law" for "under his license" at the end of the subdivision.

The 1963 amendment made this section

applicable to holders of "off-premises" as well as "on-premises" licenses. It also inserted "and article 5" near the middle of the first paragraph.

**"Knowingly."**—It appears by the punctuation that the word "knowingly" does not modify sell, offer for sale, or possess, but does modify "permit the consumption

on the premises." *Campbell v. North Carolina State Bd. of Alcoholic Control*, 263 N.C. 224, 139 S.E.2d 197 (1964).

**Proprietor Responsible Even If One Carries His Own Beverage.**—The proprietor is responsible if he knowingly permits another to drink on his premises, even if he carried his own beverage. *Campbell v. North Carolina State Bd. of Alcoholic Control*, 263 N.C. 224, 139 S.E.2d 197 (1964).

### § 18-79. State license.

Cited in *Davis v. Charlotte*, 242 N. C. 670, 89 S. E. (2d) 406 (1955).

**§ 18-81. Additional tax.** — (a) In addition to the license taxes herein levied, a tax is hereby levied upon the sale of beverages enumerated in § 18-64, subsection (a), of seven dollars and fifty cents (\$7.50) per barrel of thirty-one gallons, or the equivalent of such tax in containers of more or less than thirty-one gallons, and in bottles or other containers of not more than six ounces, a tax of one and one-fourth cents ( $1\frac{1}{4}\phi$ ) per bottle or container, and in bottles or other containers of more than six ounces and not more than twelve ounces, a tax of two and one-half cents ( $2\frac{1}{2}\phi$ ) per bottle or container, and in bottles or containers of the capacity of one quart, or its equivalent, a tax of six and two-thirds cents ( $6\frac{2}{3}\phi$ ) per bottle or container: Provided fruit cider of alcoholic content not exceeding that provided in this article may be sold in bottles or other containers of not more than six ounces at a tax of five-eighths of a cent ( $\frac{5}{8}$ ths of  $1\phi$ ) per bottle or container.

Manufacturers and bottlers may, at their option, pay the tax levied in this subsection at the rate of twenty-one one hundredths of a cent (.21¢) per ounce when the beverages taxed herein contained in bottles of over six ounces.

(a1) In addition to all other taxes levied in this chapter, there is hereby levied an additional tax or surtax upon the sale of beverages enumerated in G. S. 18-64, subsection (a), of three dollars (\$3.00) per barrel of thirty-one gallons, or the equivalent of such tax in containers of more or less than thirty-one gallons, and in bottles or other containers of not more than six ounces, a tax of one-half of one cent ( $\frac{1}{2}\phi$ ) per bottle or container, and in bottles or other containers of more than six ounces and not more than twelve ounces, a tax of one cent (1¢) per bottle or container, and in bottles or containers of the capacity of one quart, or its equivalent, a tax of two and two-thirds cents ( $2\frac{2}{3}\phi$ ) per bottle or container. Notwithstanding any provisions of subsection (t) of this section, none of the revenues collected pursuant to the tax imposed by this subsection shall be allocated or distributed to any county or municipality, but all of said revenue derived from the increase in tax rates imposed by this subsection shall be paid into the general fund of the State. Every person, firm or corporation who owns or possesses any of the beverages enumerated in subsection (a) of G. S. 18-64 on July 1, 1955, for the purpose of sale in this State shall file with the Commissioner of Revenue not later than July 20, 1955, a complete inventory of such beverages and pay to the Commissioner of Revenue the tax imposed by this subsection with respect to all such beverages on hand on said July 1, 1955. The Commissioner of Revenue shall prescribe the form and manner of making such inventory reports and the method of evidencing the payment of the tax herein imposed with respect to said inventory of said beverages.

Manufacturers and bottlers may, at their option, pay the tax levied in this subsection at the rate of nine one-hundredths of a cent (.09¢) per ounce when the beverages taxed herein are contained in bottles of over six ounces.

**Evidence of Age of Person to Whom Licensee Sold Beer.**—See note to § 18-78.

Applied in *Boyd v. Allen*, 246 N. C. 150, 97 S. E. (2d) 864 (1957); *Sinodis v. State Board of Alcoholic Control*, 258 N. C. 282, 128 S. E. (2d) 587 (1962).

Cited in *Davis v. Charlotte*, 242 N. C. 670, 89 S. E. (2d) 406 (1955).

(a2) Notwithstanding any other provisions of subsection (a) of G. S. 18-81, as amended by chapter 1313 of the 1955 Session Laws, the rate of the tax therein imposed in said subsection (a) of G. S. 18-81 with respect to beverages described in subsection (a) of G. S. 18-64 shall be one and one-half cents (1½¢) per bottle or container with respect to such beverages in bottles or other containers of exactly seven ounces.

Notwithstanding any other provisions of subsection (a1) of G. S. 18-81, as enacted by chapter 1313 of the 1955 Session Laws, the rate of additional tax or surtax therein imposed in said subsection (a1) of G. S. 18-81, said subsection being an amendment to G. S. 18-81, with respect to beverages described in subsection (a) of G. S. 18-64 shall be six-tenths of one cent (.6¢) per bottle or container with respect to such beverages in bottles or other containers of exactly seven ounces.

Except as herein provided, all provisions of article 4 of chapter 18 of the General Statutes shall be applicable with respect to the taxes imposed by this subsection in the same manner and to the same extent said provisions are applicable to other taxes imposed in said article with respect to beverages described in subsection (a) of G. S. 18-64.

The provisions of this subsection shall not be applicable with respect to beverages in bottles or containers in other than those of exactly seven ounces, and the provisions of G. S. 18-81, as amended by said chapter 1313, above referred to, shall be applicable to said beverages in any other size containers, and the taxes therein imposed with respect to beverages in containers of more than six but not more than twelve ounces shall be applicable with respect to said beverages in containers of more than seven but not more than twelve ounces.

(b) The payment of the tax imposed by subsections (a) and (a1) of this section shall be evidenced as to containers of one quart, or its equivalent, or less, by the affixing of crowns or lids to such containers in which beverages are placed, received, stored, shipped, or handled, and upon which the tax has been paid at the rate prescribed in subsections (a) and (a1) of this section.

(k) The Commissioner of Revenue shall promulgate rules and regulations to relieve manufacturers or bottlers of beverages from the liability to affix tax-paid crowns or lids to such containers of such beverages as are intended to be shipped and are thereafter shipped out of this State by such manufacturers or bottlers for resale out of this State or for use or consumption by or on ocean-going vessels which ply the high seas in interstate or foreign commerce in the transport of freight and/or passengers for hire exclusively, when delivered to an officer or agent of such vessel for use of such vessel.

(t) From the taxes collected annually under subsection (a) an amount equivalent to forty-seven and one-half per cent (47½%) thereof, and from the taxes collected annually under subsection (r) an amount equivalent to one-half thereof shall be allocated and distributed, upon the basis herein provided, to counties and municipalities wherein such beverages may be licensed to be sold at retail under the provisions of this article. The amounts distributable to each county and municipality entitled to the same under the provisions of this subsection shall be determined upon the basis of population therein as shown by the latest federal decennial census. Where such beverages may be licensed to be sold at retail in both the county and municipality, allocation of such amounts shall be made to both the county and the municipality on the basis of population. Where such beverages may be licensed to be sold at retail in a municipality in a county wherein the sale of such beverages is otherwise prohibited, allocation of such amounts shall be made to the municipality on the basis of population; provided, however, that where the sale of such beverages is prohibited within defined areas within a county or municipality, the amounts otherwise distributable to such county or municipality on the basis of population shall be reduced in the same ratio that such areas

bear to the total area of the county or municipality, and the amount of such reduction shall be retained by the State: Provided, further, that if said area within a county is a municipality for which the population is shown by the latest federal decennial census, reduction of such amounts shall be based on such population rather than on area. The Commissioner of Revenue shall determine the amounts distributable to each county and municipality, for the period July 1st, 1947, to September 30th, 1947, inclusive, and shall distribute such amounts within sixty (60) days thereafter; and the Commissioner of Revenue annually thereafter shall determine the amounts distributable to each county and municipality for each twelve-month period ending September 30th and shall distribute such amounts within sixty (60) days thereafter.

The taxes levied in this section are in addition to the taxes levied in Schedule E of the Revenue Act. (1939, c. 158, s. 517; c. 370, s. 1; 1941, c. 50, s. 7; c. 339, s. 4; 1943, c. 400, s. 6; cc. 564, 565; 1945, c. 708, s. 6; 1947, c. 1084, ss. 7-9; 1951, c. 1162, s. 1; 1955, c. 1313, s. 6; c. 1370; 1957, c. 1340, s. 11; 1963, c. 460, s. 3; c. 992, s. 2.)

**Editor's Note.—**

The first 1955 amendment rewrote subsection (a), added subsection (a1), changed "the preceding subsection" in subsection (b) to read "subsections (a) and (a1) of this section," and rewrote the first sentence of subsection (t). The second 1955 amendment, effective July 1, 1955, inserted subsection (a2).

The 1957 amendment added the second paragraph to subsections (a) and (a1). The amendment also deleted the former last sentence of subsection (a1) limiting its duration.

The first 1963 amendment inserted the words "at retail" immediately after the word "sold" in the first, third and fourth sentences of subsection (t).

The second 1963 amendment, effective July 1, 1963, inserted "tax-paid" near the beginning of subsection (k) and added at the end the provision as to beverages for use or consumption on ocean-going vessels.

Only the subsections mentioned and the last paragraph are set out.

**§ 18-83.2. Importers to be licensed.**—(a) Any person who shall engage in the business of receiving shipments of the beverages described in §§ 18-64, 18-96, and 18-99 of this article and reselling the same in the same form and in the original containers to retailers or to other wholesalers described in this article may procure from the Commissioner of Revenue an importer's license which will entitle such licensed importer to purchase the beverages described above directly from bottlers, manufacturers and wholesalers located in foreign countries or possessions or territories of the United States, hereinafter called "foreign wholesaler". No licensee under this section shall import any of the beverages described herein without first obtaining and keeping in force an appropriate permit from the State Board of Alcoholic Control. The annual importer's license as provided for under this section shall be one hundred fifty dollars (\$150.00) and shall expire on the next succeeding thirtieth day of April. The license issued under this section shall be revocable at any time by the Commissioner of Revenue for failure to comply with any of the conditions of this article or any rules or regulations issued by the Commissioner with respect to the character of the records required to be kept reports to be made, or payment of tax provided for under this article.

It is the intent of this section to limit the purchase by licensed importers of beverages described in §§ 18-64, 18-96, and 18-99 to sales and shipments made by such foreign wholesalers from their location outside the continental United States directly to the licensed importer in this State.

The Commissioner of Revenue shall require each such importer to furnish bond in an indemnity company licensed to do business under the insurance laws of this State in such sums as the Commissioner of Revenue shall find adequate to cover the tax liability of each such importer proportioned to the volume of business of each such importer, but in no event to be less than two thousand dollars (\$2,000.00).

- (b) (1) Proper North Carolina taxpaid crowns or lids as provided under § 18-81 of this article must be affixed to all original containers of beverages described in § 18-64 (a) before such beverages shipped from such foreign wholesalers are received, sold, handled, offered for sale or held for sale within this State.
- (2) Proper North Carolina tax-paid wine stamps as provided under §§ 18-81 and 18-85.1 of this article must be affixed to all original bottles or containers of beverages described in §§ 18-64 (b), 18-96, and 18-99 before such beverages shipped from such foreign wholesalers are received, sold, handled, offered for sale or held for sale within this State.

(c) The purchase of North Carolina tax-paid crowns, lids and stamps as referred to in this section may be made by the licensed importer, but the shipment of such tax-paid crowns, lids or stamps released for the account of the licensed importer shall only be made directly to the foreign wholesaler. Any unused North Carolina tax-paid crowns, lids or stamps which are returned for a tax refund for the account of the licensed importer must be returned directly to the crown, lid or stamp manufacturer from whom received, subject to any rules or regulations issued by the Commissioner of Revenue and other relevant provisions of law. (1957, c. 1244.)

**§ 18-85. Tax on spirituous liquors; sale of fortified wines in A. B. C. stores.**—(a) In lieu of taxes levied in Schedule E of the Revenue Act on the sale of spirituous liquors, there is hereby levied a tax of ten per cent (10%) on the retail price of spirituous distilled liquors of every kind that is sold in this State, including liquors sold in county or municipal liquor stores. Provided, however, that in no event shall the amount paid under this section by county or municipal liquor stores exceed one-half of the net profits from liquors sold through such stores in any county or municipality. The taxes levied in this section shall be payable monthly, at the same time and in the same manner as taxes levied in Schedule E of the Revenue Act, and the liability for such tax shall be subject to all the rules, regulations and penalties provided in Schedule E and in other sections of the Revenue Act for the payment or collection of taxes.

(b) In addition to the tax provided for in subsection (a) of this section, there is hereby levied an additional tax or surtax of two per cent (2%) on the retail price of spirituous distilled liquors of every kind that is sold in this State, including liquors sold in county or municipal liquor stores. The proviso contained in subsection (a) of this section shall not apply to the taxes levied under this subsection.

(c) Spirituous liquors as referred to in this section shall be deemed to include any alcoholic beverages containing an alcoholic content of more than twenty-four per cent (24%) by volume.

(d) Fortified wines may be sold in county or municipal alcoholic beverage control stores duly established under the authority of article 3 of this chapter or of any other applicable law (1939, c. 158, s. 519½; 1941, c. 339, s. 4; 1951, c. 1162, s. 2; 1955, c. 1313, s. 6; 1961, c. 826, s. 1.)

**Editor's Note.**—The 1955 amendment, effective July 1, 1955, increased the tax in the first sentence from eight and one-half to ten per cent.

The 1961 amendment, effective July 1, 1961, designated unnumbered paragraphs 1, 2 and 3 as subsections (a), (c) and (d), respectively, and inserted subsection (b).

**§ 18-85.1. Tax on fortified wines.**—In addition to other taxes levied in this article, there is hereby levied a tax upon the sale of fortified wines as defined in sections 18-96 and 18-99 of seventy cents (70¢) per gallon.

(1955, c. 1313, s. 6.)

**Editor's Note.**—The 1955 amendment, effective July 1, 1955, which increased the tax in the first sentence from forty to seventy cents per gallon, further provided:

The "Commissioner of Revenue is authorized to require the filing of inventories with respect to wines on hand on July 1, 1955, and to prescribe by rules and regulations the manner in which the additional

tax provided for in this subsection shall be paid and evidenced with respect to said inventories." As only the first sentence was affected by the amendment the rest of the section is not set out.

**§ 18-88.2. Exemption of beer, etc., sold to ocean-going vessels.**—The taxes levied in this article upon the sale of beverages described in G. S. 18-64 (a) shall not apply or be chargeable against any manufacturer, bottler, wholesaler, or distributor on any of such beverages sold and delivered for use or consumption by or on ocean-going vessels which ply the high seas in interstate or foreign commerce in the transport of freight and/or passengers for hire exclusively, when delivered to an officer or agent of such vessel for use of such vessel; provided, however, that sales of beverages described in § 18-64 (a) made to officers, agents, members of the crew or passengers of such vessels for their personal use shall not be exempted from payment of such taxes. Subject to such rules and regulations as may be promulgated by the Commissioner of Revenue, such beverages may be sold and delivered to such ocean-going vessels without having affixed thereto tax-paid lids or crowns. (1963, c. 992, s. 1.)

**Editor's Note.**—The act inserting this section became effective July 1, 1963.

**§ 18-89.1. Rules and regulations.**—The Commissioner of Revenue shall, from time to time, initiate and prepare such regulations, not inconsistent with the provisions of G. S. 18-78 or other provisions of law, as may be useful and necessary to implement the provisions of this article, such regulations to become effective when approved by the Tax Review Board. All regulations and amendments thereto shall be published and made available by the Commissioner of Revenue.

The Commissioner of Revenue may, from time to time, make and prescribe such administrative rules, not inconsistent with law and the regulations approved by the Tax Review Board, as may be useful for the administration of his department and the discharge of his responsibilities.

References to rules and regulations of the Commissioner of Revenue in this chapter and in any subsequent amendments or additions thereto (unless expressly provided to the contrary therein) shall be construed to mean those rules and regulations promulgated under the provisions of this section. (1955, c. 1350, s. 3.)

**§ 18-90.1. Sale to or purchase by minor under eighteen.**—It shall be unlawful for:

- (1) Any person, firm or corporation to sell or give any of the products described in G. S. 18-64 and G. S. 18-60 to any minor under eighteen (18) years of age.
- (2) Any minor under eighteen (18) years of age to purchase, or for anyone to aid or abet such minor in purchasing, any of the products described in G. S. 18-64 or in G. S. 18-60. (1933, c. 216, s. 8; 1959, c. 745, s. 1.)

**Editor's Note.**—The 1959 amendment divided this section into subdivisions and added subdivision (2). It also substituted in subdivision (1) "described in G. S. 18-

64 and G. S. 18-60" for the words "authorized to be sold by this article."

**Evidence of Age of Person to Whom Licensee Sold Beer.**—See note to § 18-78.

## ARTICLE 5.

### *Fortified Wine Control Act of 1941.*

**§ 18-99. Application of other laws; sale of sweet wines; licensing of wholesale distributors.**—The provisions of article 3 of this chapter shall

apply to fortified wines: Provided, in any county in which the operation of alcoholic beverage control stores is authorized by law, it shall be legal to sell sweet wines for consumption on the premises in hotels and restaurants which have a Grade A rating from the State Board of Health, and it shall be legal to sell said wines in drug stores and grocery stores for off premises consumption; such sales however shall be subject to the rules and regulations of the State Alcoholic Beverage Control Board. For the purpose of this section, sweet wines shall be any wine made by fermentation from grapes, fruits or berries, to which nothing but pure brandy has been added, which brandy is made from the same type of grape, fruit or berry, which is contained in the base wine to which it is added, and having an alcoholic content of not less than fourteen per centum (14%) and not more than twenty per centum (20%) of absolute alcohol, reckoned by volume, and approved by the State Board of Alcoholic Control as to identity, quality and purity as provided in this chapter: Provided, that nothing in this article or chapter shall prevent wholesale distributors from possessing, transporting, warehousing, or selling, as a wholesaler, in any county of the State, and the State Alcoholic Control Board shall approve and authorize the licensing of wholesale distributors, in any county, who qualify under the provisions of chapter 18; provided, that such sales are to persons, firms or corporations that have complied with the licensing provisions of chapter 18. (1941, c. 339, s. 6; 1945, c. 903, s. 11; 1963, c. 460, s. 2.)

**Local Modification.**—Guilford: 1959, c. 1072.

**Editor's Note.**—

The 1963 amendment rewrote the second proviso and added the third proviso.

**ARTICLE 7.**

*Beer and Wine; Hours of Sale.*

§ 18-105. **Sale between certain hours unlawful.**—It shall be unlawful for any person, firm, or corporation, licensed to sell beer and/or wine in North Carolina to sell, or offer for sale, any beer and/or wine in North Carolina between the hours of 11:45 o'clock P. M. and 7:30 o'clock A. M. every day. (1943, c. 339, s. 1; 1963, c. 426, s. 7.)

**Editor's Note.**—

Prior to the 1963 amendment this section prohibited sales between eleven-thirty P. M. and seven A. M.

**Cited in** *Davis v. Charlotte*, 242 N. C. 670, 89 S. E. (2d) 406 (1955).

§ 18-106. **Permitting consumption on premises during certain hours unlawful.**—It shall be unlawful for any person, firm, or corporation, licensed to sell beer and/or wine in North Carolina, to permit or allow the consumption of any beer and/or wine at any time and in any place in North Carolina under the control of, or being operated by, said licensee, between the hours of 12:00 o'clock midnight and 7:30 o'clock A. M. (1943, c. 339, s. 2; 1953, c. 675, s. 4; 1963, c. 426, s. 8.)

**Editor's Note.**—

Prior to the 1963 amendment this section, as amended in 1953, applied to consumption of beer or wine between midnight and seven A. M.

**Cited in** *Davis v. Charlotte*, 249 N. C. 670, 89 S. E. (2d) 406 (1955).

§ 18-107. **Regulation by counties and municipalities.**—In addition to the restrictions on the sale of beer and/or wine set out in G. S. 18-105, the governing bodies of all municipalities and counties in North Carolina shall have, and they are hereby vested with, full power and authority to regulate and prohibit the sale of beer and/or wine from 11:45 o'clock P. M. on each Saturday until 7:30 o'clock on the following Monday.

The power herein vested in governing bodies of municipalities shall be exclusive within the corporate limits of their respective municipalities, and the powers herein vested in the county commissioners of the various counties in North Carolina shall be exclusive in all portions of their respective counties not embraced in the corporate limits of municipalities therein. (1943, c. 339, s. 3; 1963, c. 426, s. 9.)

**Editor's Note.** — The 1963 amendment **Stated in Davis v. Charlotte**, 242 N. C. 670, 89 S. E. (2d) 406 (1955). rewrote the first paragraph of this section.

#### ARTICLE 8.

##### *Establishment of Standards for Lawful Wine; Permits, etc.*

**§ 18-109. Powers of State Board of Alcoholic Control.** — The State Board of Alcoholic Control shall be referred to herein as "the Board". The Board is authorized and empowered:

- (1) To adopt rules and regulations establishing standards of identity, quality and purity for the wines described in § 18-64 (b) and in article five of this chapter. These standards shall be such as are deemed by said Board to best protect the public against wine containing deleterious, harmful or impure substances or elements, or an improper balance of elements, and against spurious or imitation wines and wines unfit for beverage purposes. Provided, nothing in this or in any other section of this article or act shall authorize said Board to increase the alcoholic content of the wines described in § 18-64 (b) and in article five of this chapter.
- (2) To issue permits to resident or nonresident manufacturers, wineries, bottlers, and wholesalers, or any other persons selling wine for the purpose of resale, or offering wine for sale for the purpose of resale, whether on their own account or for or on behalf of other persons, which permit shall only authorize the possession or sale in this State of wines meeting the standards adopted by the Board; and to revoke any such permit on violation of any of the provisions of this article or of any of the rules and regulations promulgated under the authority of this article.
- (3) To test wines possessed or offered for sale, or sold in this State and to make chemical or laboratory analyses of said wines or to determine in any other manner whether said wines meet the standards established by said Board; to confiscate and destroy any wines not meeting said standards; to enter and inspect any premises upon which said wines are possessed or offered for sale; and to examine any and all books, records, accounts, invoices, or other papers or data which in any way relate to the possession or sale of said wines.
- (4) To take all proper steps for the prosecution of persons violating the provisions of this article, and for carrying out the provisions and intent thereof.
- (5) To employ a Director of the Wine Division and such other personnel as may be necessary for the efficient administration and enforcement of this article, subject to the provisions of the Executive Budget Act. The Director of the Wine Division and his assistants shall have full authority to make investigations, hold hearings and make findings of fact. Upon the approval by the Board of the findings and order of suspension or revocation of the permit of any licensee, such findings of the Director of the Wine Division or his assistants shall be deemed to be the findings and the order of the Board.
- (6) To exercise all other powers which may be reasonably implied from the granting of express powers herein, together with such other powers



as may be incidental to, or convenient for, the carrying out and performance of the powers and duties herein given to said Board; and to exercise any and all of the powers granted said Board under § 18-39 which are needed for the proper administration and enforcement of this article.

- (7) The advertisement and sale of wine in this State shall be subject to all existing laws and the following additional authority and powers hereby expressly granted to the Board:
- a. The Board, in its discretion, may approve or disapprove all forms of advertising of wine, including the type and amount of display material which may be used in the place of business of a retail permit holder;
  - b. The board shall have the sole power, in its discretion, to determine the fitness and qualification of an applicant for a permit to sell wine at retail. The Board shall inquire into the character of the applicant, the location, general appearance and type of place of business of the applicant;
  - c. The Board shall have authority, in its discretion, to determine the number of retail permits to be granted in any locality. In addition to the powers herein granted to the State Board of Alcoholic Control, said Board is authorized and empowered to adopt rules and regulations regulating and fixing the hours of sale in the several counties and municipalities therein in which wine is authorized to be sold. The Board shall not issue a permit hereunder for the sale of wine in any pool room or billiard parlor or in any other place of business, of whatsoever kind and character, if in the discretion of the Board, it is not a proper place for the sale of wine;
  - d. The Board shall require that all retail permit holders keep their places of business clean, well lighted and in an orderly manner;
  - e. Every person intending to apply for any permit to sell wine at retail hereunder shall, not more than thirty (30) days and not less than ten (10) days before applying to the Board for such permit, make application to the county and municipal authority, as provided for in chapter 18, article IV, of the General Statutes of North Carolina, and shall post a notice of such intention on the front door of the building, place or room where he proposes to engage in such business, or publish such notice at least once in a newspaper published in or having a general circulation in the county, city or town wherein such person proposes to engage in such business;
  - f. Every person desiring a permit under the provisions of this subdivision shall, after publishing notice of his intention as provided in paragraph (e) above, file with the Board an application therefor on forms provided by the Board and a statement in writing and under oath setting forth such information as the Board shall require;
  - g. Any objections to the issuance of the permit to an applicant shall be filed in writing with the Board and the Board shall not refuse to grant any such permit except upon a hearing held after ten days' notice to the applicant of the time and place of such hearing, which notice shall contain a statement of the objections to granting such permit and shall be served on the applicant by sending same to the applicant by registered or certified mail to his last known post-office address, or by personal service by an agent of the Board. The applicant shall have the right to pro-

- duce evidence in his behalf at the hearing and be represented in person or by counsel;
- h. All persons holding a license to sell wine at retail at the time of the enactment of this law shall be deemed to have complied with all requirements of the Board in filing application for a permit to sell wine at retail, except operators of pool rooms and billiard parlors, but shall be subject to the action of the Board in suspension or revocation of licenses, as provided for herein. All permits shall be for a period of one year unless sooner revoked or suspended and shall be renewable May first of each calendar year;
  - i. The Board shall certify to the Department of Revenue the names and addresses of all persons to whom the Board has issued permits and no license issued to an applicant shall be valid until the applicant has obtained the permit, as provided by this subdivision;
  - j. The Board may suspend or revoke any permit issued by it if in the discretion of the Board it is of the opinion that the permittee is not a suitable person to hold such permit or that the place occupied by the permittee is not a suitable place, or that the numbers of permits issued should be reduced;
  - k. Before the Board may suspend or revoke any permit issued under the provisions of this subdivision, at least ten days' notice of such proposed or contemplated action by the Board shall be given to the affected permittee. Such notice shall be in writing, shall contain a statement in detail of the grounds or reasons for such proposed or contemplated action of the Board, and shall be served on the permittee by sending the same to such permittee by registered or certified mail to his last known post-office address, or by personal service by an agent of the Board. The Board shall in such notice appoint a time and place when and at which the said permittee shall be heard as to why the said permits shall not be suspended or revoked. The permittee shall at such time and place have the right to produce evidence in his behalf and to be represented by counsel;
  - l. The action of the Board in refusing to issue a permit or in suspending or revoking same pursuant to the provisions of this subdivision shall not be subject to review by any court nor shall any mandamus lie in such case;
  - m. In case where the Board suspends or revokes a permit, the Board shall grant the permittee a reasonable length of time in which to dispose of his stock.
- (8) All licenses shall be issued under the provisions of article 4 of chapter 18 of the General Statutes. The granting of a permit hereunder to sell wine shall be required in addition to the requirements of article 4 of chapter 18 of the General Statutes as to securing a license to sell wine at retail. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1957, c. 1048; 1963, c. 426, s. 10; c. 460, s. 1.)

**Editor's Note.**—The 1957 amendment rewrote subdivision (5).

The first 1963 amendment inserted in paragraphs g and k of subdivision (7) the references to certified mail and to personal service by an agent of the Board.

The second 1963 amendment changed subdivision (1) by deleting from the end

thereof the words "or to permit the sale or possession of any wines in any county of the State where the same are now or shall hereafter be prohibited by law."

This section relieves licensing authorities, State and local, of responsibility with respect to the fitness of the applicant or place where wines may be sold. Staley

v. Winston-Salem, 258 N. C. 244, 128 S. E. (2d) 604 (1962).

The State Board exercises sole discretionary powers in determining fitness of the applicant, the number of retail outlets permitted in any locality, and supervision over those who sell wines. *Staley v. Winston-Salem*, 258 N. C. 244, 128 S. E. (2d) 604 (1962).

The Board may revoke or suspend per-

mits for cause. *Staley v. Winston-Salem*, 258 N. C. 244, 128 S. E. (2d) 604 (1962).

**Effect of City Zoning Ordinance.**—A restaurant owner's right to operate a restaurant being conceded, a city zoning ordinance could not set at nought a State-wide statute permitting the sale of wines in such restaurants. *Staley v. Winston-Salem*, 258 N. C. 244, 128 S. E. (2d) 604 (1962).

**§ 18-113. Violation misdemeanor; permit revoked.**—Any person who violates any of the provisions of this article, or any of the rules and regulations promulgated under the authority of this article, shall be guilty of a misdemeanor and shall, upon conviction, be fined or imprisoned, or both, in the discretion of the court. Any permit issued under authority hereof shall be subject to suspension or revocation by the Board when it appears that the permit holder has violated any of the provisions of this article. Provided, however, that when the Board shall determine that any person has violated any of the provisions hereof, before his permit shall be either suspended or revoked, he shall be given ten days' written notice by registered or certified mail or personal service by an agent of the Board, advising the permit holder of the charges against him and fixing a day, hour and place for a hearing, which hearing shall be conducted by the Board. The permit holder shall be entitled to appear in person or be represented by counsel at such hearing. (1945, c. 903, s. 1; 1963, c. 426, s. 11.)

**Editor's Note.** — The 1963 amendment formerly provided for five days' written made changes in the third sentence, which notice by registered mail.

## ARTICLE 11.

### *Elections on Question of Sale of Wine and Beer.*

#### **§ 18-124. Provision for elections in counties or municipalities.**

(b) **Petition Requesting Election.**—Upon the presentation to it of a petition signed by twenty-five per cent (25%) of the registered voters of the county that voted for Governor in the last election requesting that an election be held for the purpose of submitting to the voters of the county the question of whether or not wine or beer or both shall legally be sold therein, the county board of elections shall call an election for the purpose of submitting said question or questions to the voters of the county.

(f) **Restrictions as to Time of Election.**—No election shall be held pursuant to the provisions of this article in any county within sixty (60) days of the holding of any general election, special election, or primary election in said county or any municipality thereof. Provided, however, that if, in any petition filed pursuant to the provisions of G.S. 18-124, or G.S. 18-127, or other provision, it shall be requested that an election be held on the same day as any election called to determine whether alcoholic beverage control stores should be operated in any city or county, the city or county board of elections or the governing body of any municipality, as the case may be, may call the election on the same day as the election on alcoholic beverage control stores. In such case it shall be within the discretion of the city or county board of elections, or the governing body of any municipality, as the case may be, to place the questions pertaining to the sale of beer and/or wine and wine and the establishment of alcoholic beverage control stores on the same ballot or on separate ballots, unless the petition presented to the board, signed by the requisite number of citizens, specifies the method and manner of balloting, in which case the same would be controlling. Provided further, that when the calling of an election is provided by special act to determine whether alcoholic beverage control stores shall be operated in any city or county, the city or county board of elections

or the governing body of any municipality may place the questions pertaining to the sale of beer and/or beer and wine and the establishment of alcoholic beverage control stores on the same ballot and in the same question whenever such special act does not require a petition or does not provide sufficient time for compliance with G.S. 18-124 or G.S. 18-127.

(1963, c. 265, ss. 1, 2; 1965, c. 506.)

**Local Modification.**—Session Laws 1955, c. 308, s. 2, amended this article by making it unlawful to sell beer or wine within the town of Wake Forest or within one mile thereof.

**Editor's Note.**—

The 1963 amendment, effective July 1, 1963, substituted "twenty-five per cent (25%)" for "fifteen per cent (15%)" near the beginning of subsection (b). It also added the second and third sentences of subsection (f).

The 1965 amendment rewrote the third sentence, and added the fourth sentence, of subsection (f).

As only subsections (b) and (f) were affected by the amendments, the rest of the section is not set out.

**Effect of Mere Irregularity.**—The provisions of subsection (a) of this section are construed to mean that all conditions contained in this article, which are essential to the conduct of a fair and impartial election, must be observed. But the failure to observe the strict letter of a provision authorizing the calling of an election, which failure is not alleged to have been prejudicial to anyone, nor to have had any bearing whatever on the outcome of the election, will be treated as a mere irregularity and such election will not be invalidated thereby. *Green v. Briggs*, 243 N. C. 745, 92 S. E. (2d) 149 (1956).

**The failure of the board of elections to give statutory notice** of its release of petition forms for the calling of an election under this section, when the release of such forms is promptly given wide publicity by press and radio, will not invalidate

the election, there being a substantial compliance with the requirement of the statute, and the failure of statutory notice not being prejudicial. *Green v. Briggs*, 243 N. C. 745, 92 S. E. (2d) 149 (1956).

**Restriction as to Time of Election.**—

The fact that a municipal primary election is held less than sixty days subsequent to a local option election does not invalidate the local election, under subsection (f) of this section, if the municipal primary election is held without constitutional or statutory authority and is, therefore, a legal nullity. *Tucker v. A. B. C. Board*, 240 N. C. 177, 81 S. E. (2d) 399 (1954).

The statutory requirement that a beer and wine election should be called within thirty days of the date of the return of the petitions is for the benefit of the proponents of such election, and when there is valid reason for delay and such delay does not prejudice the rights of anyone or affect the outcome of the election, opponents of the election may not complain thereof. *Green v. Briggs*, 243 N. C. 745, 92 S. E. (2d) 149 (1956).

If the board of elections fails to call an election under this section within thirty days of the date of the return of the petitions and if there is no valid reason for the delay in calling the election, the proponents may move for a mandamus after the expiration of the thirty days. *Green v. Briggs*, 243 N. C. 745, 92 S. E. (2d) 149 (1956).

**Cited in** *Rider v. Lenoir County*, 236 N. C. 620, 73 S. E. (2d) 913 (1952).

**§ 18-127. Elections in certain municipalities after majority vote in county against sale of wine or beer.**—The governing board of any municipality having a population of 1,000 or more persons according to the last federal census and located in a county which has voted against the legal sale of beer or wine or both shall, upon receipt of a petition bearing the names of 25% of the registered voters who voted for the governing body of such municipality in the last election, call an election to determine whether or not such prohibited beverage or beverages shall, notwithstanding the results of such county election, legally be sold and licensed within the corporate limits of said municipality for:

- (1) "On-premises" and "off-premises" sales,
- (2) "Off-premises" sales only, or
- (3) "On-premises" sales by Grade A hotels and restaurants only and "off-premises" sales by other licensees.

The petition shall state the particular question to be voted upon as to either

or both of beer and wine and the ballot shall be governed by the language of the petition; but no election shall be held in such municipality under this section unless the sale of such beverage is at that time prohibited in the county in which such municipality is located.

No petition shall be considered unless it complies with this section nor unless it states that the signers thereof are registered voters in the municipality in which the election is requested.

The provisions of this article, including the laws and regulations adopted by reference, relating to county elections, including the provisions relating to the calling of elections, notice of elections, holding of elections, and results of elections, are hereby in all respects made applicable to any municipal election held pursuant to the provisions of this section except that the county board of elections shall not conduct any such election.

The majority of votes cast at such elections on each question presented on the ballot shall determine the legality within the municipality of the type of sale involved in such question. If a majority of the votes cast in an election held pursuant to the provisions of this section in answer to any local option question on wine or beer shall be for the type of sale voted upon, then such sales shall thereafter be lawful in that municipality and the governing board of that municipality shall, notwithstanding any public, special, local or private act, whenever passed, to the contrary, issue appropriate licenses of the type authorized to all qualified applicants. If a majority of the votes cast in an election held pursuant to the provisions of this section in answer to any local option question on wine or beer shall be against the type of sale voted upon, then unless authorized by subsequent election, sales of the type denied by such vote shall continue to be unlawful.

Sale or possession for the purpose of sale in violation of the provisions of this section shall constitute a misdemeanor, the punishment for which shall as hereinbefore provided be in the discretion of the court. (1947, c. 1084, s. 4; 1957, c. 816; 1963, c. 265, s. 3.)

**Local Modification.**—Town of Shallotte: The 1963 amendment, effective July 1, 1963, substituted "25%" for "15%" near

**Editor's Note.** — The 1957 amendment the middle of the first paragraph. rewrote this section.

**§ 18-127.1. Elections on question of sale of 3.2 beer in certain counties.** — The governing body of any incorporated municipality having a population of two hundred (200) people or more at the time of the presentation of the petition hereinafter referred to and having organized municipal police protection, located in any county which has voted against the legal sale of beer, shall, upon receipt of a petition bearing the names of twenty-five per cent (25%) of the registered voters who voted for the governing body in the last election, call an election to determine whether or not beer containing alcohol of not more than three and two-tenths per cent (3.2%) by weight shall be sold legally, either for on premises consumption or off premises consumption or both, the ballot to be governed by the language of the petition; provided, however, the provisions of this section shall not apply to any incorporated municipality wherein beer is now legally sold unless an election shall be called under the provisions of chapter 18 of the General Statutes and the majority of the ballots therein cast shall be against the legal sale of beer as defined in G. S. 18-64 (a).

This section shall not apply to the counties of: Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Bladen, Brunswick, Burke, Cabarrus, Caldwell, Chatham, Cherokee, Clay, Cleveland, Columbus, Cumberland, Davidson, Davie, Duplin, Gaston, Graham, Harnett, Haywood, Hertford, Hoke, Jackson, Johnston, Lee, Lincoln, McDowell, Macon, Madison, Mitchell, Montgomery, Moore, Northampton, Pender, Person, Randolph, Robeson, Rockingham, Rutherford, Sampson, Scotland, Stanly, Swain, Transylvania, Union, Watauga, Wayne, Wilkes, Yadkin and Yancey.

In the event the results of the election are for the legal sale of the above described beverage, such beverage shall be subject to the laws, rules and regulations applicable to full-strength beer. (1955, cc. 802, 1083, 1164; 1963, c. 265, s. 4.)

**Editor's Note.**— This section was derived from chapter 802 of the 1955 Session Laws. Chapters 1083 and 1164 made additions to the list of counties in the second paragraph. The 1963 amendment, effective July 1, 1963, substituted "twenty-five per cent (25%)" for "fifteen per cent (15%)" near the middle of the first paragraph.

**§ 18-127.2. Provisions of § 18-127 extended to municipalities having seasonal population of 1,000 or more.**—The provisions of G. S. 18-127 and all portions thereof are extended to include any incorporated municipality having a seasonal population of one thousand (1,000) or more persons.

An incorporated municipality shall be deemed to have a seasonal population of one thousand (1,000) or more persons if it shall be determined by the mayor and governing body of the municipality that for a period of six (6) weeks in the year such municipality has an average daily population of one thousand (1,000) or more people. An affirmative finding to this effect entered upon the records of the municipality shall be determinative of this question.

This section shall not apply to municipalities located in the counties of Ashe, Avery, Bladen, Burke, Cherokee, Clay, Columbus, Dare, Davie, Macon, Northampton, Robeson, Rutherford, Scotland, Stanly, Union and Watauga. (1963, c. 1092.)

**Local Modification.** — Watauga, town of Blowing Rock: 1965, c. 874.

ARTICLE 12.

*Additional Powers of State Board over Wine and Malt Beverages.*

**§ 18-129. Power of State Board of Alcoholic Control to regulate distribution and sale of wine and malt beverages; determination of qualifications of applicant for permit, etc.**—The State Board of Alcoholic Control shall be referred to herein as "the Board", and said Board in addition to all powers now conferred upon it by law is hereby vested with additional powers to regulate the distribution and sale of wine and malt beverages as follows:

The distribution and sale of beer and wine in this State shall be subject to all existing laws and the following additional authority and powers are hereby expressly granted to the Board.

The Board shall have the sole power, in its discretion, to determine the fitness and qualifications of an applicant for a permit to sell, manufacture or bottle beer or wine. The Board shall inquire into the character of the applicant, the location, general appearance and type of place of business of the applicant. (1949, c. 974, s. 1; 1963, c. 426, s. 12.)

**Editor's Note.**— Session Laws 1963, c. 426, s. 12, rewrote this article, which formerly comprised §§ 18-129 to 18-144, to appear as §§ 18-129 to 18-142. The principal change was to make the article applicable to wine as well as malt beverages.

**§ 18-130. Application for permit; contents.**—All resident bottlers, wineries or manufacturers of beer or wine and all resident wholesalers and retailers of beer or wine shall file a written application for a permit with the State Board of Alcoholic Control, and in the application shall state under oath therein:

- (1) The name and residence of the applicant and the length of his residence within the State of North Carolina;
- (2) The particular place for which the license is desired, designating the same by street and number if practicable; if not, by such other apt de-

- scription as definitely locates it; and if said place is outside a municipality within the county, the distance to the nearest church or public or private school from said place;
- (3) The name of the owner of the premises upon which the business licensed is to be carried on, and, if the owner is not the applicant, that such applicant is the actual and bona fide lessee of the premises;
  - (4) That the place or building in which it is proposed to do business conforms to all laws of health and fire regulations applicable thereto, and is a safe and proper place or building;
  - (5) That the applicant intends to carry on the business authorized by the permit for himself or under his immediate supervision and direction;
  - (6) That the applicant has been a bona fide resident of this State for a period of at least one (1) year immediately preceding the date of filing his application and that he is not less than twenty-one years of age;
  - (7) The place of birth of applicant and that he is a citizen of the United States, and, if a naturalized citizen, when and where naturalized;
  - (8) That the applicant has not been convicted of, or entered a plea of guilty or nolo contendere to, a felony or other crime involving moral turpitude within the past three (3) years; that the applicant's citizenship has been restored by the court if he has been so deprived of it; that he has not, within the two (2) years next preceding the filing of the application, been adjudged guilty of violating the prohibition or liquor laws, either State or federal; and it shall be within the discretion of the Board, after making investigation, to determine whether or not any person who has ever been convicted of, or entered a plea of guilty or nolo contendere to, a felony shall be deemed as a suitable person to receive and hold a malt beverage or wine permit;
  - (9) That the applicant has not during the three (3) years next preceding the date of said application had any permit or license issuable hereunder or any license issued to him pursuant to the laws of this State, or any other state, to sell alcoholic beverages of any kind revoked;
  - (10) That the applicant is not the holder of a federal special tax liquor stamp;
  - (11) If the applicant is a firm, association or partnership, the application shall state the matters required in subdivisions (6), (7), (8) and (9), with respect to each of the members thereof, and each of said members must meet all of the requirements in said subdivisions provided;
  - (12) If the applicant is a corporation, organized or authorized to do business in this State, the application shall state the matters required in subdivisions (7), (8) and (9), with respect to each of the officers and directors thereof, and any stockholder owning more than twenty-five per cent (25%) of the stock of such corporation, and the person or persons who shall conduct and manage the licensed premises for the corporation, and each of said persons must meet all the requirements in said subdivisions provided; provided, however, that the requirement as to residence shall not apply to said officers, directors and stockholders of such corporation, however, such requirement shall apply to any such officer, director or stockholder, agent or employee who is also the manager and in charge of the premises for which permit is applied for, but the board may, in its discretion, waive such requirement. (1949, c. 974, s. 1; 1963, c. 119; c. 426, s. 12.)

**Editor's Note.**—Session Laws 1963, c. 119, added the words "but the board may in its discretion waive such requirement" at the end of subdivision (12). Applied in *Tucker v. A. B. C. Board*, 240 N. C. 177, 81 S. E. (2d) 399 (1954).

**§ 18-131. Permit required for selling, distributing, etc., malt beverages or wine for purpose of resale.**—All manufacturers of malt beverages, or wine, wineries, brewers, bottlers of malt beverages or wine, or any other persons selling or soliciting orders for, delivering or distributing malt beverages or wine for the purpose of resale, whether on their own account or for or on behalf of other persons, whether any of such manufacturers, brewers, bottlers, or other persons are residents or nonresidents of this State shall, as a condition precedent to the sale, or the offering for sale, or delivery, distribution or soliciting of orders for any malt beverages or wine described in G. S. 18-64 and in articles 4, 5 and 7 of this chapter, apply for and obtain from the State Board of Alcoholic Control a permit for the sale, distribution, soliciting orders for or delivery of malt beverages or wine. The sale, distribution, soliciting orders for or delivery of malt beverages or wine in this State without such a permit shall constitute a misdemeanor. The Board shall have the power to adopt, repeal, and amend rules and regulations to carry out the provisions of this section, and the Board may after hearing suspend or revoke this said permit of any permittee for a violation of the provisions of the State Malt Beverage and Wine Laws or of any rule or regulation adopted by said Board.

The fact that any brewery, winery, manufacturer or bottler of malt beverages or wine has applied for or obtained a permit under the provisions of this article shall not be construed as domesticating said brewery, manufacturer or bottler, and shall not be evidence for any other purpose that such brewery, manufacturer or bottler is doing business in North Carolina. (1957, c. 1448; 1963, c. 426, s. 12.)

**Editor's Note.**—Prior to the 1963 amendment of this article this section appeared as § 18-130.1. For section which formerly appeared as § 18-131, see § 18-132.

**§ 18-132. Application to be verified; refusal or revocation of permit; penalty for false statement; independent investigation of applicant.**—The application must be verified by the affidavit of the applicant before a notary public or other person duly authorized by law to administer oaths. The foregoing provisions and requirements are mandatory prerequisites for the issuance of a permit and in the event any applicant fails to qualify under the same, or if any false statement is knowingly made in any application, permit shall be refused. If a permit is granted on any application, containing a false statement knowingly made, said permit shall be revoked and the applicant upon conviction shall be guilty of a misdemeanor and subject to the penalty provided by law for misdemeanors. In addition to the information furnished in any application, the chief of the wine and malt beverage division shall make such additional and independent investigation of each applicant, and of the place to be occupied, as deemed necessary or advisable. (1949, c. 974, s. 2; 1963, c. 426, s. 12.)

**Editor's Note.**—Prior to the 1963 amendment of this article this section appeared as § 18-131. For section which formerly appeared as § 18-132, see § 18-133.

**§ 18-132.1. Application fees.** — Every person, firm, association, partnership, or corporation applying to the State Board of Alcoholic Control for a permit to sell beer or wine under the provisions of § 18-130 shall pay an application fee at the time of application according to the following schedule:

(1) For an application for a permit under the provisions of § 18-130, a fee of twenty-five dollars (\$25.00); provided, that if applications for a beer permit and a wine permit are filed at the same time for the same location, the total fee shall be twenty-five dollars (\$25.00).

(2) For an application for a new permit under the provisions of § 18-130 by reason of the fact that a new manager has been assigned to an establishment for which a permit or permits are presently held a fee of ten dollars (\$10.00); provided, this fee shall not be payable if the new manager has within thirty (30) days of the time of filing of the



application held a permit as the manager of another establishment of the same person, firm, association, partnership, or corporation.

All fees required by this section shall be paid by check or money order made payable to the State Board of Alcoholic Control, and they shall be deposited by the State Board of Alcoholic Control with the State Treasurer.

The application of any person, firm, association, partnership, or corporation who fails to comply with the provisions of this section shall be refused, and if the permit has been granted it shall be canceled. (1965, c. 326.)

**§ 18-133. Permit revoked if federal special tax liquor stamp procured.**—If an applicant, after obtaining a permit, shall procure a federal special tax liquor stamp, the Board shall revoke his permit forthwith. (1949, c. 974, s. 3; 1963, c. 426, s. 12.)

**Editor's Note.**—Prior to the 1963 amendment of this article this section appeared as § 18-132. For section which formerly appeared as § 18-133, see § 18-134.

**§ 18-134. Notice of intent to apply for permit; posting or publication of notice; objections to issuance of permit and hearing thereon.**—Every person intending to apply for any permit to sell beer or wine at retail hereunder shall, not more than thirty (30) days and not less than ten (10) days before applying to the Board for such permit, give written notice of such intention to the county and municipal authorities in which applicant proposes to maintain his business, and shall post a notice of such intention on the front door of the building, place or room where he proposes to engage in such business, or publish such notice at least once in a newspaper published in or having a general circulation in the county, city or town wherein such persons propose to engage in such business.

Any objections to the issuance of the permit to an applicant shall be filed in writing with the Board and the Board shall not refuse to grant any such permit except upon a hearing, if requested in writing by applicant, held after ten days' notice to the applicant of the time and place of such hearing, which notice shall contain a statement of the objections to granting such permit and shall be served on the applicant by sending same to the applicant by registered mail to the address given in his application or by personal service by an agent of the Board. The applicant shall have the right to produce evidence in his behalf at the hearing and be represented in person or by counsel. (1949, c. 974, s. 4; 1963, c. 426, s. 12.)

**Editor's Note.**—Prior to the 1963 amendment of this article this section appeared as § 18-133. Applied in *Tucker v. A. B. C. Board*, 240 N. C. 177, 81 S. E. (2d) 399 (1954).

**§ 18-135. Certification to Department of Revenue of permits issued; issuance of license; revocation of permit or license.**—The Board shall certify to the Department of Revenue the names, locations and addresses of all persons to whom the Board has issued permits, and no license issued to an applicant shall be valid until the applicant has obtained the permit as provided by this article.

Provided, however, that when a permit has been issued by the Board the permittee, upon payment of fees now provided by law, shall have license issued to him by the Commissioner of Revenue and by the governing body of any county or municipality wherein said permittee shall conduct his business. In all cases where a permit is revoked by the Board, such revocation shall render void any State, county or municipal license issued hereunder and in the event any county or municipality through its governing body shall for cause revoke any license such revocation shall automatically revoke any other malt beverage or wine license or permit held by the licensee.

Provided, further, however, that the jurisdiction herein conferred upon the Board to revoke or suspend permits shall not preclude the governing body of

any county or municipality from revoking or suspending the license of any retail licensee within its jurisdiction for violating any existing law regulating the sale of malt beverages or wine or of the provisions of this article. In any proceeding before such governing body for the revocation or suspension of a retailer's license, the licensee shall be given due notice of the charges against him and be given an opportunity to appear personally and by counsel in his defense. (1949, c. 974, s. 6; 1963, c. 426, s. 12.)

Applied in *Sinodis v. State Board of Alcoholic Control*, 258 N. C. 282, 128 S. E. (2d) 587 (1962).

**§ 18-136. Refusal, suspension or revocation of permit upon personal disqualification, etc.**—The Board may refuse to issue a new permit or may suspend or revoke any permit issued by it if in the discretion of the Board it is of the opinion that the applicant or permittee is not a suitable person to hold such permit or that the place occupied by the applicant or permittee is not a suitable place. (1949, c. 974, s. 7; 1953, c. 1207, s. 5; 1963, c. 426, s. 12.)

**Editor's Note.** — The 1953 amendment inserted the words "may refuse to issue a new permit or" near the beginning of the section and the words "applicant or" at two places in the section.

**§ 18-137. Hearing upon suspension or revocation of permit.**—Before the Board may suspend or revoke any permit issued under the provisions of this article, at least ten days' notice of such proposed or contemplated action by the Board shall be given to the affected permittee. Such notice shall be in writing, shall contain a statement in detail of the grounds or reasons for such proposed or contemplated action of the Board, and shall be served on the permittee by sending the same to such permittee by registered or certified mail to his last known post-office address or by personal service by an agent of the Board. The Board shall in such notice appoint a time and place when and at which the said permittee shall be heard as to why the said permit shall not be suspended or revoked. The permittee shall at such time and place have the right to produce evidence in his behalf and to be represented by counsel. (1949, c. 974, s. 8; 1963, c. 426, s. 12.)

**Hearing Sufficient to Meet Requirements of Due Process.** — A hearing by an examiner for the State Alcoholic Control Board, under provisions of statute and the rules promulgated pursuant thereto, of which hearing the permittee is given notice, is represented by counsel, introduces evidence cross-examines the adverse witnesses, all witnesses being sworn, with right to object and except to any ruling and argue the matter, is held sufficient to meet the requirements of due process of law. *Sinodis v. State Board of Alcoholic Control*, 258 N. C. 282, 128 S. E. (2d) 587 (1962).

**The failure to furnish a copy of the hearing examiner's proposed findings and recommendations without a request cannot be held violative of due process or** the statutes providing for a hearing. *Sinodis v. State Board of Alcoholic Control*, 258 N. C. 282, 128 S. E. (2d) 587 (1962).

**Failure to Request Hearing by Board.** —The holder of a permit to sell malt beverages is entitled, after a hearing by an examiner for the Board of charges of violations of law warranting a revocation of permit, to request a hearing by the Board, and when he does not request such hearing after notice of the date the Board would consider the matter, his application for jurisdiction review under § 143-307 must be dismissed for failure to exhaust available administrative remedies. *Sinodis v. State Board of Alcoholic Control*, 258 N. C. 282, 128 S. E. (2d) 587 (1962).

**§ 18-138. Rules and regulations for enforcement of article.** — The Board is hereby vested with power to adopt rules and regulations for carrying out the provisions of this article, but not inconsistent herewith, and to amend or repeal such regulation. Every regulation or amendment thereto adopted by the Board shall become effective on the tenth day after the date of its adoption and

the filing of a certified copy thereof in the office of the Secretary of State. (1949, c. 974, s. 9; 1963, c. 426, s. 12.)

Cited in *Sinodis v. State Board of Alcoholic Control*, 258 N. C. 282, 128 S. E. (2d) 587 (1962).

**§ 18-139. Effect of article on existing local regulations as to sale of beer and wine.**—Nothing in this article shall require any county or municipality to issue licenses for any territory where the sale of beer or wine is prohibited by special legislative act or for any area where the sale or possession for the purpose of sale of beer or wine is unlawful as a result of local option election, and this article shall not repeal any special, public-local or private act prohibiting or regulating the sale of beer or wine in any county in this State, or any act authorizing the Board of commissioners of any county of this State, or the governing body of any municipality, in its discretion, to prohibit the sale of beer or wine. (1949, c. 974, s. 10; 1963, c. 426, s. 12.)

**§ 18-140. Chief of wine and malt beverage division and assistants; inspectors.**—(a) To more adequately insure the strict enforcement of the regulations of the Board and of the provisions of this article, the Board shall appoint a person to be known and designated as "chief of wine and malt beverage division", who shall be in charge of the administration of such division. Said Board, in addition to said chief of wine and malt beverage division, may appoint one or more assistants to the chief of the wine and malt beverage division, all of whom shall have full authority to make investigations, hold hearings and to make findings of fact. Upon the approval of the said Board of the findings and orders of suspension or revocation of the permit of any licensee, such findings of said chief, assistant or assistants shall be deemed to be the findings and the order of the Board. The Board shall employ an adequate number of field men to be designated as "inspectors", not less than fifteen in number who shall devote their full time to the enforcement of the provisions of this article and such rules and regulations as may be promulgated thereunder by the Board.

(b) Such inspectors shall investigate the operation of the licensed premises of all persons licensed under any article of chapter 18, examine the books and records of such licensee, procure evidence with respect to the violation of this article or any rules and regulations adopted thereunder and perform such other duties as the Board may direct. Such inspectors shall have the right to enter any such licensed premises in the State in the performance of their duty at any hour of the day or night. Refusal by such permittee or by any other employee of a permittee to permit such inspectors to enter the premises shall be cause for revocation or suspension of the permit of such permittee. The inspectors so appointed shall, after taking the oath prescribed for peace officers, have the same power and authority in the enforcement of this article as other peace officers.

(c) All alcoholic beverage control officers now employed or who may hereafter be employed may be used by the Board as inspectors in counties and cities having alcoholic beverage control stores in addition to the other inspectors provided for under this article, and shall be vested with all powers and authority as herein vested in inspectors. (1949, c. 974, s. 11; 1951, c. 1056, s. 1; c. 1186, ss. 1, 2; 1963, c. 426, s. 12.)

**§ 18-141. Sale and consumption of beer or wine during certain hours prohibited.**—No beer or wine shall be sold between the hours of 11:45 o'clock P. M. and 7:30 o'clock A. M., nor shall any beer or wine be consumed in any place where beer or wine is sold between the hours of 12:00 o'clock midnight and 7:30 o'clock A. M. (1949, c. 974, s. 12; 1951, c. 997, s. 1; 1963, c. 426, s. 12.)

Cited in *Davis v. Charlotte*, 242 N. C. Allen, 246 N. C. 150, 97 S. E. (2d) 864 670, 89 S. E. (2d) 406 (1955); *Boyd v.* (1957).

§ 18-142. **Keeping places of business clean, etc.**—The Board shall require that all retail permit holders keep their places of business clean, well lighted and in an orderly manner. (1949, c. 974, s. 13; 1963, c. 426, s. 12.)

§ 18-143: Repealed by Session Laws 1955, c. 1313, s. 6.

**Editor's Note**—The repealing act became effective July 1, 1955. The repealed section had previously been amended by chapter 128 of the 1955 Session Laws.

§ 18-144: Repealed by Session Laws 1963, c. 426, s. 12.

## ARTICLE 13.

### *Wholesale Malt Beverage Salesman's Permit.*

§ 18-146. **Qualifications of applicant.**—Such salesman shall be twenty-one years of age, a citizen of the United States, and no salesman's permit shall be issued to any person who has been convicted within two (2) years, preceding the filing of his application, of violating the State or federal prohibition laws, or who has been convicted of, or entered a plea of guilty or nolo contendere to, a felony or of any crime involving moral turpitude within the past three (3) years and without restoration of his citizenship by the court. No salesman's permit shall be issued to any person whose permit or license issued to him pursuant to the laws of this State or any other state to sell alcoholic beverages of any kind has been revoked during the three (3) years next preceding the date of application for a permit. (1951, c. 378, s. 2; 1963, c. 426, s. 13.)

**Editor's Note.** — The 1963 amendment inserted in the latter part of the first sentence the words "or entered a plea of guilty or nolo contendere to," and the words "within the past three (3) years and without restoration of his citizenship by the court." It also substituted "three (3) years" for "two years" in the second sentence.

## Chapter 19.

### **Offenses against Public Morals.**

§ 19-1. **What are nuisances under this chapter.**

#### **Constitutionality.**—

In accord with original. See *State v. Carolina-Virginia Racing Ass'n*, 239 N. C. 591, 80 S. E. (2d) 638 (1954); *State v. Carolina Racing Ass'n*, 241 N. C. 80, 84 S. E. (2d) 390 (1954).

**Agency Acting under Color of Legislative Authority.**—In *Amick v. Lancaster*, 228 N. C. 157, 44 S. E. (2d) 733 (1947), the action was brought under this chapter to enjoin as a nuisance the operation of a liquor store by a town pursuant to ch 862, 1947 Session Laws. The court held that since the alcoholic control board was acting "under color of legislative authority" the remedy by action under this chapter was inappropriate. But this ruling should be restricted to actions to enjoin the operations of a governmental board acting "under color of legislative authority," and should not be extended to actions to enjoin the operations of a private person, firm, association or corporation

acting "under color of legislative authority." *State v. Carolina Racing Ass'n*, 241 N. C. 80, 84 S. E. (2d) 390 (1954).

**Betting on dog races under a pari-mutuel system** having no other purpose than that of providing the facilities for placing bets, calculating odds, determining winnings, if any, constitutes gambling, and is subject to abatement by injunction as a statutory nuisance, under this chapter, unless specifically permitted by a constitutional statute. *State v. Carolina Racing Ass'n*, 241 N. C. 80, 84 S. E. (2d) 390 (1954).

**Race Track Operated under Unconstitutional Statute.**—Where the statute under which defendant maintains and operates a race track for pari-mutuel betting is unconstitutional, a private citizen may maintain an action in the name of the State to enjoin the operation of such track as a public nuisance, in proceeding under this chapter. *State v. Carolina-Virginia Racing*

Ass'n, 239 N. C. 591, 80 S. E. (2d) 638 (1954).

**Opening Safe on Premises Where Nuisance Maintained.** — Where, in an action under this section and § 19-2, to abate a public nuisance on the sole ground that the premises were used for the unlawful sale of whiskey, etc., a safe found in the padlocked building was opened by the sheriff and no whiskey or other intoxicating beverages found therein, the court could not thereafter require that the safe be reopened for the purpose of taking an inventory thereof, there being nothing to

show the materiality of anything in the safe as bearing upon the question of abatement. Such inventory would be an invasion of the property rights of defendant without due process of law. *State v. Flowers*, 247 N. C. 558, 101 S. E. (2d) 320 (1958).

Cited in *State v. Murphy*, 235 N. C. 503, 70 S. E. (2d) 498 (1952); *State v. Carolina-Virginia Racing Ass'n*, 240 N. C. 614, 83 S. E. (2d) 501 (1954); *State ex rel. Bowman v. Malloy*, 264 N.C. 396, 141 S.E.2d 796 (1965); *State v. Smith*, 265 N.C. 173, 143 S.E.2d 293 (1965).

### § 19-2. Action for abatement; injunction.

**Local Modification.** — McDowell: 1959, c. 590, s. 1.

**Cross Reference.**—See note to § 19-1.

An action to abate a public nuisance by injunction or otherwise must be maintained in the name of the State, and this section designates with particularity those who may become relators and prosecute the cause in the name of the State. *Dare County v. Mater*, 235 N. C. 179, 69 S. E. (2d) 244 (1952).

While the members of a county board of commissioners may, as individuals, become relators under this section, they may not prosecute this action in the name of the county. *Dare County v. Mater*, 235 N. C. 179, 69 S. E. (2d) 244 (1952).

**Allegation of Direct Injury to Citizen Bringing Action Not Required.** — While

ordinarily a resident and citizen may not enjoin public officials from putting into effect the provisions of a legislative enactment on the ground that the act is unconstitutional unless he alleges and proves that he will suffer direct injury, such allegation is not necessary in an action in the name of the State under this section to enjoin the maintenance of a gambling nuisance. *State v. Carolina-Virginia Racing Ass'n*, 239 N. C. 591, 80 S. E. (2d) 638 (1954).

Applied in *State v. Flowers*, 247 N. C. 558, 101 S. E. (2d) 320 (1958); *State ex rel. Morris v. Shinn*, 262 N.C. 88, 136 S.E.2d 244 (1964).

Cited in *State v. Carolina Racing Ass'n*, 241 N. C. 80, 84 S. E. (2d) 390 (1954).

### § 19-5. Order abating nuisance; what it shall contain.

**Local Modification.** — McDowell: 1959, c. 590, s. 2.

**Proceeding Is In Personam.**—

Actions as authorized by this chapter for the abatement of nuisances are not in rem but in personam. *State ex rel. Bowman v. Malloy*, 264 N.C. 396, 141 S.E.2d 796 (1965).

Applied in *State ex rel. Morris v. Shinn*, 262 N.C. 88, 136 S.E.2d 244 (1964).

Stated in *State v. Carolina Racing Ass'n*, 241 N. C. 80, 84 S. E. (2d) 390 (1954).

### § 19-6. Application of proceeds of sale.

**Local Modification.** — McDowell: 1959, c. 590, s. 3.

Cited in *State v. Carolina Racing Ass'n*, 241 N. C. 80, 84 S. E. (2d) 390 (1954).

### § 19-7. How order of abatement may be canceled.

Stated in *State v. Carolina Racing Ass'n*, 241 N. C. 80, 84 S. E. (2d) 390 (1954).

### § 19-8. Attorney's fees may be taxed as costs.

**Local Modification.** — McDowell: 1959, c. 590, s. 4.

Cited in *State v. Murphy*, 235 N. C. 503, 70 S. E. (2d) 498 (1952).

**Chapter 20.**  
**Motor Vehicles.**

**Article 1.**

**Department of Motor Vehicles.**

Sec.

- 20-3. Organization of Department.
- 20-3.1. Purchase and use of airplanes.

**Article 1A.**

**Reciprocity Agreements as to Registration and Licensing.**

- 20-4.1. Declaration of policy.
- 20-4.2. Definitions.
- 20-4.3. Commissioner may make reciprocity agreements, arrangements or declarations.
- 20-4.4. Authority for reciprocity agreements; provisions; reciprocity standards.
- 20-4.5. Base state registration reciprocity.
- 20-4.6. Declarations of extent of reciprocity, when.
- 20-4.7. Extension of reciprocal privileges to lessees authorized.
- 20-4.8. Automatic reciprocity, when.
- 20-4.9. Suspension of reciprocity benefits.
- 20-4.10. Agreements to be written, filed and available for distribution.
- 20-4.11. Reciprocity agreements in effect at time of article.
- 20-4.12. Article part of and supplemental to motor vehicle registration law.

**Article 2.**

**Uniform Driver's License Act.**

- 20-11.1. [Repealed.]
- 20-13. Mandatory revocation of license of provisional licensee.
- 20-16.1. Mandatory suspension of driver's license upon conviction of excessive speeding and reckless driving.
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ARTICLE 1.

*Department of Motor Vehicles.*

§ 20-1. Department of Motor Vehicles created; powers and duties.

**Cross Reference.** — As to North Carolina Traffic Safety Authority, see §§ 143-392 to 143-395.

**Editor's Note.**—

Session Laws 1963, c. 1183, created a

Traffic Code Commission to study the motor vehicle laws and report to the Governor and the 1965 General Assembly. The Commission expires not later than June 30, 1965.

§ 20-2. Commissioner of Motor Vehicles.

In any action, proceeding, or matter of any kind, to which the Commissioner of Motor Vehicles is a party or in which he may have an interest, all pleadings, legal notices, proofs of claim, warrants for collection, certificates of tax liability, executions, and other legal documents may be signed and verified on behalf of the Commissioner by the assistant commissioner or by any director or assistant director of any division of the Department of Motor Vehicles or by any other agent or employee of the Department so authorized by the Commissioner of Motor Vehicles. (1941, c. 36, s. 2; 1945, c. 527; 1955, c. 472.)

**Editor's Note.**—

The 1955 amendment added in the second paragraph the provisions authorizing signature and verification on behalf of the Commissioner by any director or assistant

director of any division of the Department, and by any other agent or employee of the Department authorized by the Commissioner. As the first paragraph was not affected by the amendment it is not set out.

§ 20-3. Organization of Department.

**Editor's Note.**—The above catchline has been reprinted to correct an error.

§ 20-3.1. Purchase and use of airplanes.—The Department of Motor Vehicles shall not purchase or use additional airplanes without the express authorization of the General Assembly. (1963, c. 911, s. 1½.)

**Editor's Note.** — The act inserting this section became effective July 1, 1963.

ARTICLE 1A.

*Reciprocity Agreements as to Registration and Licensing.*

§ 20-4.1. Declaration of policy.—It is the policy of this State to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of motor vehicle reciprocal registration agreements, arrangements and declarations with other states, provinces, territories and countries with respect to vehicles registered in this and such other states, provinces, territories and countries thus contributing to the economic and social development and growth of this State. (1961, c. 642, s. 1.)

**Editor's Note.** — The act inserting this article became effective July 1, 1961.

§ 20-4.2. **Definitions.**—As used in this article:

- (1) "Commercial vehicle" means any vehicle which is operated interstate in furtherance of any commercial enterprise.
- (2) "Commissioner" means the Commissioner of Motor Vehicles of North Carolina.
- (3) "Department" means the Department of Motor Vehicles of North Carolina.
- (4) "Jurisdiction" means and includes a state, district, territory or possession of the United States, a foreign country and a state or province of a foreign country.
- (5) "Properly registered," as applied to place of registration, means:
  - a. The jurisdiction where the person registering the vehicle has his legal residence, or
  - b. In the case of a commercial vehicle, including a leased vehicle, the jurisdiction in which it is registered if the commercial enterprise in which such vehicle is used has a place of business therein, and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled in or from such place of business, and, the vehicle has been assigned to such place of business, or
  - c. In the case of a commercial vehicle, including leased vehicles, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by said jurisdiction.
  - d. In case of doubt or dispute as to the proper place of registration of a vehicle, the Department shall make the final determination, but in making such determination, may confer with departments of the other jurisdictions affected. (1961, c. 642, s. 1.)

§ 20-4.3. **Commissioner may make reciprocity agreements, arrangements or declarations.**—The Commissioner of Motor Vehicles shall have the authority to execute or make agreements, arrangements or declarations to carry out the provisions of this article. (1961, c. 642, s. 1.)

§ 20-4.4. **Authority for reciprocity agreements; provisions; reciprocity standards.**—(a) The Commissioner may enter into an agreement or arrangement with the duly authorized representatives of another jurisdiction, granting to vehicles or to owners of vehicles which are properly registered or licensed in such jurisdiction and for which evidence of compliance is supplied, benefits, privileges and exemptions from the payment, wholly or partially, of any taxes, fees, or other charges imposed upon such vehicles or owners with respect to the operation or ownership of such vehicles under the laws of this State. Such an agreement or arrangement shall provide that vehicles properly registered or licensed in this State when operated upon highways of such other jurisdiction shall receive exemptions, benefits and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in such jurisdiction when operated in this State. Each such agreement or arrangement shall, in the judgment of the Commissioner, be in the best interest of this State and the citizens thereof and shall be fair and equitable to this State and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this State from the uninterrupted flow of commerce.

(b) When the Commissioner enters into a reciprocal registration agreement or arrangement with another jurisdiction which has a motor vehicle tax, license or fee which is not subject to waiver by a reciprocity agreement, the Commissioner is

empowered and authorized to provide as a condition of the agreement or arrangement that owners of vehicles licensed in such other jurisdiction shall pay some equalizing tax or fee to the Department. The failure of any owner or operator of a vehicle to pay the taxes or fees provided in the agreement or arrangement shall prohibit them from receiving any benefits therefrom and they shall be required to register their vehicles and pay taxes as if there was no agreement or arrangement. (1961, c. 642, s. 1.)

§ 20-4.5. **Base state registration reciprocity.**—An agreement or arrangement entered into, or a declaration issued under the authority of this article may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction which vehicles otherwise would be required to be registered or licensed in some other state; and in such event the exemptions, benefits and privileges extended by such agreement, arrangement or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction. (1961, c. 642, s. 1.)

§ 20-4.6. **Declarations of extent of reciprocity, when.**—In the absence of an agreement or arrangement with another jurisdiction, the Commissioner may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits and privileges to be extended to vehicles properly registered or licensed in such other jurisdiction, or to the owners of such vehicles, which shall, in the judgment of the Commissioner, be in the best interest of this State and the citizens thereof and which shall be fair and equitable to this State and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this State from the uninterrupted flow of commerce. (1961, c. 642, s. 1.)

§ 20-4.7. **Extension of reciprocal privileges to lessees authorized.**—An agreement or arrangement entered into, or a declaration issued under the authority of this article, may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits and privileges extended by such agreement, arrangement or declaration. (1961, c. 642, s. 1.)

§ 20-4.8. **Automatic reciprocity, when.**—On and after July 1, 1961, if no agreement, arrangement or declaration is in effect with respect to another jurisdiction as authorized by this article, any vehicle properly registered or licensed in such other jurisdiction and for which evidence of compliance supplied shall receive, when operated in this State, the same exemptions, benefits and privileges granted by such other jurisdiction to vehicles properly registered in this State. Reciprocity extended under this section shall apply to commercial vehicles only when engaged exclusively in interstate operations. (1961, c. 642, s. 1.)

§ 20-4.9. **Suspension of reciprocity benefits.**—Agreements, arrangements or declarations made under the authority of this article may include provisions authorizing the Department to suspend or cancel the exemptions, benefits or privileges granted thereunder to a vehicle which is in violation of any of the conditions or terms of such agreements, arrangements or declarations or is in violation of the laws of this State relating to motor vehicles or rules and regulations lawfully promulgated thereunder. (1961, c. 642, s. 1.)

§ 20-4.10. **Agreements to be written, filed and available for distribution.**—All agreements, arrangements or declarations or amendments thereto shall be in writing and shall be filed in the office of the Commissioner. Copies thereof shall be made available by the Commissioner upon request and upon payment of a fee therefor in an amount necessary to defray the costs of reproduction thereof. (1961, c. 642, s. 1.)

§ 20-4.11. **Reciprocity agreements in effect at time of article.**—All reciprocity registration agreements, arrangements and declarations relating to vehicles in force and effect at the time this article becomes effective shall continue in force and effect until specifically amended or revoked as provided by law or by such agreements or arrangements. (1961, c. 642, s. 1.)

§ 20-4.12. **Article part of and supplemental to motor vehicle registration law.**—This article shall be, and construed as, a part of and supplemental to the motor vehicle registration law of this State. (1961, c. 642, s. 1.)

## ARTICLE 2.

### *Uniform Driver's License Act.*

#### § 20-5. Title of article.

**Legislative Purpose.** — This article was designed under the police power in furtherance of the safety of the users of the State's highways. *Harrell v. Scheidt*, 243 N. C. 735, 92 S. E. (2d) 182 (1956).

**And Authority.**—The General Assembly has full authority to prescribe the conditions upon which licenses to operate automobiles are issued, and to designate the agency through which, and the conditions upon which licenses, when issued shall be suspended or revoked. *Honeycutt v.*

*Scheidt*, 254 N. C. 607, 119 S. E. (2d) 777 (1961).

**Department Given Exclusive Power to Issue, Suspend and Revoke Licenses.**—This article vests exclusively in the State Department of Motor Vehicles the issuance, suspension and revocation of licenses to operate motor vehicles. *Honeycutt v. Scheidt*, 254 N. C. 607, 119 S. E. (2d) 777 (1961); *Gibson v. Scheidt*, 259 N. C. 339, 130 S. E. (2d) 679 (1963).

§ 20-6. **Definitions.**—Terms used in this article shall be construed as follows, unless another meaning is clearly apparent from the language or context or unless such construction is inconsistent with the manifest intention of the legislature.

“Highway” shall include any trunk line highway, State aid road or other public highway, road, street, avenue, alley, driveway, parkway, or place, under the control of the State or any political subdivision thereof, dedicated, appropriated or opened to public travel or other use.

“Motor vehicle” shall mean every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle.

“Nonresident” shall mean any person whose legal residence is in some state other than North Carolina or in a foreign country.

“Operator” shall mean any person other than a “chauffeur” who shall operate a motor vehicle or who shall be in the driver's seat of a motor vehicle when the engine is running or who shall steer or direct the course of a motor vehicle which is being towed or pushed by another motor vehicle.

“Chauffeur” shall mean every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives any motor vehicle when in use for the transportation of persons or property for compensation and the driver, other than the owner of a private hauler, of any property hauling vehicle or combination of vehicles licensed for more than 26,000 pounds gross weight and the driver of any passenger carrying vehicle of over nine (9) passenger capacity except the driver of a church, or a school bus who holds a valid operator's license.

“Person” shall include any individual, corporation, association, co-partnership, company, firm or other aggregation of individuals.

“Vehicle” shall include any device suitable for use on the highways for the con-

veyance, drawing or other transportation of persons or property, except those propelled or drawn by muscular power or those used exclusively upon tracks.

"Department" shall mean the Department of Motor Vehicles.

As applied to operators' and chauffeurs' licenses issued under this article, the words:

"Suspension" shall mean the licensee's privilege to drive a vehicle is temporarily withdrawn.

"Revocation" shall mean that the licensee's privilege to drive a vehicle is terminated for the period stated in the order of revocation.

"Cancelled" shall mean that a license which was issued through error or fraud has been declared void and terminated. A new license may be obtained only as permitted in this article (1935, c. 52, s. 1; 1941, c. 36; 1943, c. 787, s. 1; 1951, c. 1202, s. 1; 1953, cc. 683, 841; 1955, c. 1187, s. 1; 1957, c. 997; 1963, c. 160.)

**Editor's Note.—**

The first 1953 amendment, effective July 1, 1953, inserted in the definition of "chauffeur" the words "church or Sunday school busses." And the second 1953 amendment rewrote the definition of "motor vehicle."

The 1955 amendment changed the definition of "chauffeur," and omitted any reference to Sunday school bus.

The 1957 amendment substituted "20,000" for "15,000" in line five of the paragraph defining "Chauffeur."

The 1963 amendment substituted

"26,000" for "20,000" in the paragraph defining "chauffeur."

For brief comment on the 1951 and 1953 amendments of this article, see 29 N. C. Law Rev. 405; 31 N. C. Law Rev. 412.

**Farm tractors are not to be considered motor vehicles within the provisions of the Uniform Drivers' License Act. Brown v. Fidelity & Cas. Co., 241 N. C. 666, 86 S. E. (2d) 433 (1955).**

**Applied in State v. Moore, 247 N. C. 368, 101 S. E. (2d) 26 (1957).**

**Quoted in Morrissey v. Crabtree, 143 F. Supp. 105 (1956).**

**§ 20-7. Operators' and chauffeurs' licenses; expiration; examinations; fees.**

(c) No person shall hereafter be issued an operator's license until it is determined that such person is physically and mentally capable of safely operating motor vehicles over the highways of the State. In determining whether or not a person is physically and mentally capable of safely operating motor vehicles over the highways of the State, the Department shall require such person to demonstrate his capability by passing an examination, which may include road tests, oral and in the case of literate applicants written tests, and tests of vision, as the Department may require. Provided, however, that persons sixty (60) years of age and over, when being examined as herein provided, shall not be required to parallel park a motor vehicle as part of any such examination.

(d) The Department shall cause each person who has heretofore been issued an operator's license to be examined or re-examined, as the case may be, to determine whether or not such person is physically and mentally capable of safely operating motor vehicles over the highways of the State. Those persons found, as a result of such examination or re-examination, to be capable of safely operating motor vehicles over the highways of the State shall be reissued operators' licenses; and those persons found to be incapable of safely operating motor vehicles over the highways of the State shall not be reissued operators' licenses. The examination required by this subsection may include such road tests, oral and in the case of literate applicants written tests, and tests of vision, as the Department may require. The Department may once reissue operators' licenses without examination to licensed operators who have passed an operator's examination given by the Department subsequent to July 1st, 1945, and prior to July 1st, 1947. Provided, however, that persons sixty (60) years of age and over, when being examined as herein provided, shall not be required to parallel park a motor vehicle as part of any such examination.

(e) The Department is hereby authorized to grant unlimited licenses or licenses containing such limitations as it may deem advisable. Such limitation or limitations shall be noted on the face of the license, and it shall be unlawful for the holder of a license so limited to operate a motor vehicle without complying with the limitations, and the operation of a motor vehicle without complying with the limitations by a person holding a license with such limitations shall be the equivalent of operating a motor vehicle without a chauffeur's or operator's license. If any applicant shall suffer from any physical defect or disease which affects his or her operation of a motor vehicle, the Department may require to be filed with it a certificate of such applicant's condition signed by some medical authority of the applicant's community designated by the Department. This certificate shall in all cases be treated as confidential. Nothing in this subsection shall be construed to prevent the Department from refusing to issue a license, either limited or unlimited, to any person deemed to be incapable of operating a motor vehicle with safety to himself and to the public: Provided, that nothing herein shall prohibit deaf persons from operating motor vehicles who in every other way meet the requirements of this section.

(f) The operators' licenses issued under this section shall automatically expire on the birthday of the licensee in the fourth year following the year of issuance; and no new license shall be issued to any operator after the expiration of his license until such operator has again passed the examination specified in this section. Any operator may at any time within sixty days prior to the expiration of his license apply for a new license and if the applicant meets the requirements of this article, the Department shall issue a new license to him. A new license issued within sixty days prior to the expiration of an applicant's old license or within twelve months thereafter shall automatically expire four years from the date of the expiration of the applicant's old license.

Provided, that any person serving in the armed forces of the United States on active duty and holding a valid operator's license properly issued under this section and stationed outside of the State of North Carolina may renew his license by making application to the Department by mail. In such cases, the Department may waive the examination ordinarily required for the renewal of an operator's license, and may require in lieu thereof such statement as to the physical condition of the applicant and his ability to operate a motor vehicle safely as it may deem appropriate. Provided further, that the foregoing proviso shall not affect the validity of licenses extended under chapter 1284 of the Session Laws of 1953, but that all such licenses continued in force by the provisions of chapter 1284 of the Session Laws of 1953 shall expire on July 1, 1955.

(g) Every chauffeur's license issued under this section shall automatically expire on the birthday of the licensee in the second year following the year of issuance and chauffeurs shall renew their licenses every two (2) years after an examination which may include road tests, oral and, in the case of literate applicants, written tests, and tests of vision as the Department may require: Provided, that the Commissioner may, in proper cases, waive the examination required by this subsection: Provided, further, that no chauffeur's license issued hereunder shall expire in less than six months from the date of issuance.

(i) The fee for issuance or reissuance of an operator's license shall be two dollars and fifty cents (\$2.50) and the fee for issuance or reissuance of a chauffeur's license shall be four dollars (\$4.00).

(l) Any person who, except for lack of instruction in operating a motor vehicle would be qualified to obtain an operator's license under this article, may apply for a temporary learner's permit, and the Department shall issue such permit, entitling the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the highways for a period of thirty (30) days. Any such learner's permit may be renewed or a new permit issued for an additional

period of thirty (30) days. Such person must, while operating a motor vehicle over the highways, be accompanied by a licensed operator or chauffeur who is actually occupying a seat beside the driver.

(l-1) The Department upon receiving proper application may in its discretion issue a restricted instruction permit effective for a school year or a lesser period to an applicant who is enrolled in a driver training program as provided for in G.S. 20-88.1 even though the applicant has not yet reached the legal age to be eligible for an operator's license. Such instruction permit shall entitle the permittee when he has such permit in his immediate possession to operate a motor vehicle subject to the restrictions imposed by the Department. The restrictions which the Department may impose on such permits include but are not limited to restrictions to designated areas and highways and restrictions prohibiting operation except when an approved instructor is occupying a seat beside the permittee.

(n) Any person convicted of violating any provision of this section shall be guilty of a misdemeanor and punished in the discretion of the court: Provided, that no person shall be convicted of operating a motor vehicle without an operator's or chauffeur's license if he produces in court at the time of his trial upon such charge an expired operator's or chauffeur's license and a renewal operator's or chauffeur's license issued to him within thirty (30) days of the expiration date of the expired license and which would have been a defense to the charge had it been issued prior to the time of the alleged offense. (1935, c. 52; s. 2; 1943, c. 649, s. 1; c. 787, s. 1; 1947, c. 1067, s. 10; 1949, c. 583, ss. 9, 10; c. 826, ss. 1, 2; 1951, c. 542, ss. 1, 2; c. 1196, ss. 1-3; 1953, cc. 839, 1284, 1311; 1955, c. 1187, ss. 2-6; 1957, c. 1225; 1963, cc. 754, 1007, 1022; 1965, c. 410, s. 5.)

#### Editor's Note.—

This section was amended three times by the Session Laws of 1953. Chapter 839 deleted former subsection (n), which set expiration dates for licenses issued prior to July 1, 1947, changed the designation of former subsection (o) to (n), and rewrote the proviso in that subsection. Chapter 1311 again rewrote the proviso in former subsection (o). Chapter 1284 directed that a proviso be added to subsection (n) of § 20-7 of the 1951 Cumulative Supplement. As former subsection (n) was deleted by the first 1953 amendment, Chapter 839, this proviso has been set out as the second paragraph of subsection (f).

The 1955 amendment inserted the second sentence of subsection (e), rewrote the second paragraph of subsection (f) and deleted the words "during daylight hours" at the end of the first sentence of subsection (l). It also inserted subsection (l-1) and rewrote subsection (n). As to subsection (f) the amendment is effective as of the ratification of the amendatory act, May 23, 1955; as to the other subsections the amendment is effective as of July 1, 1955. Subsection (n) as it stood before the amendment remains applicable to offenses committed before July 1, 1955.

§ 20-8. Persons exempt from license.—The following are exempt from license hereunder:

- (1) Any person while operating a motor vehicle the property of, and in the service of the Army, Navy or Marine Corps of the United States.

The 1957 amendment rewrote subsection (i). Prior to the amendment the fee for each license, with or without an examination, was \$2.00.

The first 1963 amendment rewrote subsection (n). The second 1963 amendment, effective July 1, 1963, added the provisos as to parallel parking to subsections (c) and (d). The third 1963 amendment, effective July 1, 1963, rewrote subsection (g) to provide for expiration of chauffeurs' licenses every second year instead of annually. It also increased the fee for a chauffeur's license in subsection (i) from \$2.00 to \$4.00.

The 1965 amendment, effective July 1, 1965, substituted "as provided for in G.S. 20-88.1" for "approved by the Department" in the first sentence of subsection (l-1).

Only the subsections affected by the amendments are set out.

For comment on the 1953 amendments, see 31 N. C. Law Rev. 412.

Cited in *Brown v. Fidelity & Cas. Co.*, 241 N. C. 666, 86 S. E. (2d) 433 (1955); *Beaver v. Scheidt*, 251 N. C. 671, 111 S. E. (2d) 881 (1960); *Parks v. Washington*, 255 N. C. 478, 122 S. E. (2d) 70 (1961).



- This shall not be construed to exempt any chauffeurs or operators of the United States Civilian Conservation Corps motor vehicles;
- (2) Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway;
  - (3) A nonresident who is at least sixteen (16) years of age and who has in his immediate possession a valid operator's license issued to him in his home state or country, may operate a motor vehicle in this State only as an operator;
  - (4) A nonresident who is at least eighteen (18) years of age and who has in his immediate possession a valid chauffeur's license issued to him in his home state or country may operate a motor vehicle in this State either as an operator or chauffeur;
  - (5) Any nonresident who is at least eighteen (18) years of age, whose home state or country does not require the licensing of operators may operate a motor vehicle as an operator only, for a period of not more than ninety (90) days in any calendar year if the motor vehicle so operated is duly registered in the home state or country of such nonresident;
  - (6) Any nonresident who is at least eighteen (18) years of age, whose home state or country does not require the licensing of chauffeurs may operate a motor vehicle as a chauffeur for a period of not more than ten days in any calendar year if the motor vehicle so operated is duly registered in the home state or country of such nonresident. (1935, c. 52, s. 3; 1963, c. 1175.)

**Editor's Note.—**

The 1963 amendment, effective July 1, 1963, deleted "except any such person must be licensed as a chauffeur hereunder before accepting employment as a chauffeur from a resident of this State" at the end of subdivision (4).

**Quoted**, as to subdivision (2), in *Brown v. Fidelity & Cas. Co.*, 241 N. C. 666, 86 S. E. (2d) 433 (1955).

**Quoted**, as to subdivision (2), in *Brown v. Fidelity & Cas. Co.*, 241 N. C. 666, 86 S. E. (2d) 433 (1955).

**§ 20-9. What persons shall not be licensed.**

(c) The Department shall not issue an operator's or chauffeur's license to any person who is an habitual drunkard, or is an habitual user of narcotic drugs or barbiturates, whether or not such use be in accordance with the prescription of a physician.

(f) The Department shall not issue an operator's or chauffeur's license to any person whose license or driving privilege is in a state of suspension or revocation in any jurisdiction, if the acts or things upon which the suspension or revocation in such other jurisdiction was based would constitute lawful grounds for suspension or revocation in this State had those acts or things been done or committed in this State.

(1953, c. 773; 1955, c. 1187, s. 7.)

**Editor's Note.—**

The 1953 amendment rewrote subsection (c). The 1955 amendment, effective July 1, 1955, rewrote subsection (f) and

made it applicable to "driving privilege" As the rest of the section was not affected by the amendments it is not set out.

**§ 20-10. Age limits for drivers of public passenger-carrying vehicles.**

**Local Modification.—**Cumberland: 1965, c. 1152, s. 3.

**§ 20-11. Application of minors.—**(a) The Department shall not grant the application of any minor between the ages of sixteen (16) and eighteen (18) years for an operator's license or a learner's permit unless such application is signed both by the applicant and by the parent, guardian, husband, wife or employer of the

applicant, or, if the applicant has no parent, guardian, husband, wife or employer residing in this State, by some other responsible adult person. It shall be unlawful for any person to sign the application of a minor under the provisions of this section when such application misstates the age of the minor and any person knowingly violating this provision shall be guilty of a misdemeanor.

The Department shall not grant the application of any minor between the ages of sixteen (16) and eighteen (18) years for an operator's license unless such minor presents evidence of having satisfactorily completed the driver training and safety education courses offered at the public high schools as provided in G.S. 20-88.1.

(b) The Department may grant an application for a temporary learner's permit of any minor under the age of sixteen, who otherwise meets the requirements for licensing under this section, when such application is signed by both the applicant and his or her parent or guardian. Such temporary learner's permit shall entitle the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the highways during daylight hours for a period of thirty days or until he becomes sixteen years of age, whichever is the longer period, while such minor is accompanied by a parent or guardian who is licensed under this chapter to operate a motor vehicle and who is actually occupying a seat beside the driver. Provided, however, a learner's permit as herein provided shall be issued only to those applicants who have reached the age of fifteen and one-half years. In the event a minor issued a temporary learner's permit under this subsection operates a motor vehicle in violation of any provision herein, the learner's permit shall be cancelled. (1935, c. 52, s. 6; 1953, c. 355; 1955, c. 1187, s. 8; 1963, c. 968, ss. 2, 2A; 1965, c. 410, s. 3; c. 1171.)

**Editor's Note.** — The 1953 amendment made this section applicable to a learner's permit, added the requirement of signing by the applicant and made other changes.

The 1955 amendment, effective July 1, 1955, added the second sentence.

The 1963 amendment, effective Nov. 1, 1963, added the former second and third paragraphs.

The first 1965 amendment, effective July 1, 1965, rewrote the former second and third paragraphs to constitute the present second paragraph of what is now subsection (a). The second 1965 amendment, effective July 1, 1965, redesignated the former section as subsection (a) and added subsection (b).

§ 20-11.1: Repealed by Session Laws 1965, c. 410, s. 4, effective July 1, 1965.

§ 20-12. **Instruction.**—Any licensed operator or chauffeur may instruct a person who is sixteen or more years of age in the operation of a motor vehicle. Any person so instructing another shall be seated as to be within reach of the controls of the motor vehicle and shall be responsible for the operation thereof. (1935, c. 52, s. 7; 1953, c. 356.)

**Editor's Note.** — The 1953 amendment formerly appearing after the word "age" in deleted the words "during daylight hours" line two.

§ 20-13. **Mandatory revocation of license of provisional licensee.**—(a) The operator's license of any person shall be suspended by the Department without preliminary hearing upon notice to the Department of such person's conviction of a motor vehicle moving violation, as specified in subsection (b), committed while such person was still a provisional licensee. A provisional licensee is any licensee who has not attained his eighteenth birthday. A motor vehicle moving violation, as used herein, does not include overloads, over length, over width, over height, illegal parking, carrying concealed weapon, improper plates, improper registration, improper muffler, public drunk within a vehicle, possession of liquor, improper display of license plates or dealer tags, or unlawful display of emblems and insignia.

(b) The basis for departmental action, and the period of suspension, shall be as follows:

- (1) For conviction of a second motor vehicle moving violation, in any twelve-month period, thirty (30) days;
- (2) For conviction of a third such violation, in any twelve-month period, three (3) months;
- (3) For conviction of a fourth such violation, in any twelve-month period, one (1) year;
- (4) For conviction of one such violation in connection with a motor vehicle accident resulting in personal injury or property damage of one hundred dollars (\$100.00) or more, sixty (60) days.

(c) In the event of conviction of two or more motor vehicle moving offenses committed on a single occasion, a licensee shall be charged, for purposes of this section, with only one moving offense.

(d) The suspension provided for in this section shall be in addition to any other remedies which the Department may have against a licensee under other provisions of law; however, when the license of any person is subject to suspension under this section and at the same time is also subject to suspension or revocation under other provisions of law, such suspensions or revocations shall run concurrently.

(e) For the purpose of this section the word "conviction" shall include a plea of guilty or nolo contendere, or a determination of guilt by a jury or by a court, and it includes a forfeiture of bail or collateral deposited to secure appearance in court of the defendant, unless the forfeiture has been vacated. The provisions of this section shall not apply if prayer for judgment is continued upon conviction.

(f) Upon receipt of notice on conviction of a licensee's first motor vehicle moving offense, committed while such licensee was a provisional licensee, the Department shall mail to the licensee at his last known address a letter of warning, but failure of the licensee to receive such letter of warning shall not prevent the suspension of his license under this section.

(g) Operators whose licenses have been suspended under the provisions of this section shall not be required to maintain proof of financial responsibility upon reissuance of the license solely because of suspension pursuant to this section, except as provided under article 13 of this chapter. The registered owner's liability insurance policy shall insure said licensee who is a member of said registered owner's household or anyone who is in lawful possession of said automobile. (1963, c. 968, s. 1; 1965, c. 897.)

**Editor's Note.**—The act inserting this section is effective as of Nov. 1, 1963.

The 1965 amendment added subsection (g).

Former § 20-13, which derived from

Public Laws 1935, c. 52, § 8, and related to expiration of operators' and chauffeurs' licenses, was repealed by Session Laws 1947, c. 1067, § 11.

**§ 20-16. Authority of Department to suspend license.**—(a) The Department shall have authority to suspend the license of any operator or chauffeur with or without preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

- (1) Has committed an offense for which mandatory revocation of license is required upon conviction;
- (2) Has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage, which accident is obviously the result of the negligence of such driver, and where such property damage has not been compensated for;
- (3) Is an habitually reckless or negligent driver of a motor vehicle;
- (4) Is incompetent to drive a motor vehicle;
- (5) Has, under the provisions of subsection (c) of this section, within a three-year period, accumulated twelve (12) or more points, or eight (8) or more points in the three-year period immediately following

the reinstatement of a license which has been suspended or revoked because of a conviction for one or more traffic offenses ;

- (6) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him ;
- (7) Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation ;
- (8) Has been convicted of illegal transportation of intoxicating liquors ;
- (9) Has, within a period of twelve (12) months, been convicted of two or more charges of speeding in excess of fifty-five (55) and not more than seventy-five (75) miles per hour, or of one or more charges of reckless driving and one or more charges of speeding in excess of fifty-five (55) and not more than seventy-five (75) miles per hour ;
- (10) Has been convicted of operating a motor vehicle at a speed in excess of seventy-five (75) miles per hour ; or
- (11) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a condition of suspension of the sentence is that the operator or chauffeur not operate a motor vehicle for a period of time.

(b) Pending an appeal from a conviction of any violation of the motor vehicle laws of this State, no driver's or chauffeur's license shall be suspended by the Department of Motor Vehicles because of such conviction or because of evidence of the commission of the offense for which the conviction has been had.

(c) The Department shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this article as an operator or chauffeur and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission for the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws :

Schedule of Point Values

Passing stopped school bus .....	5
Reckless driving .....	4
Hit and run, property damage only .....	4
Following too close .....	4
Driving on wrong side of road .....	4
Illegal passing .....	4
Running through stop sign .....	3
Speeding in excess of 55 miles per hour .....	3
Failing to yield right of way .....	3
Running through red light .....	3
No operator's license or license expired more than one year .....	3
Failure to stop for siren .....	3
Driving through safety zone .....	3
No liability insurance .....	3
Failure to report accident where such report is required .....	3
All other moving violations .....	2

The [above] provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina.

No points shall be assessed for conviction of the following offenses :

- Over loads
- Over length
- Over width
- Over height

Illegal parking  
 Carrying concealed weapon  
 Improper plates  
 Improper registration  
 Improper muffler  
 Public drunk within a vehicle  
 Possession of liquor  
 Improper display of license plates or dealers' tags  
 Unlawful display of emblems and insignia.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever a licensee accumulates as many as four points hereunder, the Department shall mail a letter of warning to the licensee at his last-known address, but failure to receive such warning letter shall not prevent a suspension under this subsection. Whenever a licensee accumulates as many as seven points, the Department may request the licensee to attend a conference regarding such licensee's driving record. The Department may also afford the licensee who has accumulated as many as seven points an opportunity to attend a driver improvement clinic operated by the Department and, upon the successful completion of the course taught at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one such deduction of points shall be made on behalf of any licensee.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than sixty (60) days; the second such suspension shall not exceed six (6) months, and any subsequent suspension shall not exceed one year.

Whenever the operator's or chauffeur's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Department, a period of probation may be substituted for suspension or for any unexpired period of suspension under G. S. 20-16 (a) (5) and this subsection. Such period of probation shall not exceed one year, and any violation of probation during the probation period shall result in a suspension for the period originally provided for under this subsection or for the remainder of any unexpired suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation.

(d) Upon suspending the license of any person as hereinbefore in this section authorized, the Department shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing, unless a preliminary hearing was held before his license was suspended, as early as practical within not to exceed twenty (20) days after receipt of such request in the county wherein the licensee resides unless the Department and the licensee agree that such hearing may be held in some other county, and such notice shall contain the provisions of this section printed thereon. Upon such hearing the duly authorized agents of the Department may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a re-examination of the licensee. Upon such hearing the

Department shall either rescind its order of suspension, or good cause appearing therefor, may extend the suspension of such license. Provided further upon such a hearing, preliminary or otherwise, involving subdivisions (9) and (10) of subsection (a) of G. S. 20-16, the Department may for good cause appearing in its discretion substitute a period of probation for suspension or for any unexpired period of suspension. Probation shall mean any written agreement between the suspended driver and a duly authorized representative of the Department of Motor Vehicles and such period of probation shall not exceed one (1) year, and any violation of the probation agreement during the probation period shall result in a suspension for the period originally provided for or for the remainder of any unexpired suspension period. The authorized agents of the Department shall have the same powers in connection with a preliminary hearing prior to suspension as this subsection provides in connection with hearings held after suspension. (1935, c. 52, s. 11; 1947, c. 893, ss. 1, 2; 1947, c. 1067, s. 13; 1949, c. 373, ss. 1, 2; 1949, c. 1032, s. 2; 1953, c. 450; 1955, c. 1152, s. 15; c. 1187, ss. 9-12; 1957, c. 499, s. 1; 1959, c. 1242, ss. 1-2; 1961, c. 460, ss. 1, 2(a); 1963, c. 1115; 1965, c. 130.)

**Cross Reference.—**

See note to § 20-17.

**Editor's Note.—**

The 1953 amendment substituted "a period of twelve (12) months" for "one (1) year" in subdivision (9) of subsection (a).

The first 1955 amendment deleted the words "except as provided in § 20-231" before the word "require" near the end of the second sentence of subsection (d). The second 1955 amendment, effective July 1, 1955, inserted the words "with or" in the opening paragraph of subsection (a) and the words "made or" in subdivision (6) of subsection (a), and added subdivision (11) of subsection (a). It also inserted the words "unless a preliminary hearing was held before his license was suspended" in the first sentence of subsection (d), and added the last sentence of subsection (d).

The 1957 amendment rewrote subdivision (11) of subsection (a).

The 1959 amendment rewrote subdivision 5 of subsection (a), renumbered subsection (c) as (d) and inserted new subsection (c).

Section 3 of the 1959 amendatory act provides that it "is in addition to all other laws relating to the suspension or revocation of operators' and chauffeurs' licenses."

The 1961 amendment, effective July 1, 1961, substituted "three-year period" for "two-year period" in subdivision (5) of subsection (a). It also rewrote the part of subsection (c) designated "Schedule of Point Values" and inserted the paragraph following the Schedule of Point Values.

Section 4 of the 1961 amendatory act provides: "Section 1 of this act shall be effective on and after July 1, 1961 as to convictions occurring on and after said date, while G. S. 20-16 (a) (5) as the same has

heretofore been written shall remain in effect as to convictions occurring before July 1, 1961. Convictions occurring before July 1, 1961 shall not be affected by this act nor shall points therefor be accumulated for more than twenty-four (24) months, but points assessed for convictions occurring on and after July 1, 1961 may be accumulated with points assessed for convictions occurring prior to July 1, 1961, for purposes of suspension under the provisions of G. S. 20-16 (a) (5) as the same is hereby rewritten or as has heretofore been written."

The 1963 amendment, effective July 1, 1963, inserted the fourth and fifth sentences of subsection (d).

Prior to the 1965 amendment, subdivision (6) of subsection (a) read "Has made or permitted an unlawful or fraudulent use of such license."

For article on administrative hearing for suspension of driver's license, see 30 N. C. Law Rev. 27.

**Former Subsection (a) 5 Unconstitutional.** — Before its amendment in 1959, subsection (a) 5 of this section provided for suspension of the license of a driver who was "an habitual violator of the traffic laws." This provision was held to be an unconstitutional grant of legislative power to the Department of Motor Vehicles, since it did not contain any fixed standard or guide to which the Department must conform but on the contrary left it to the sole discretion of the Commissioner of the Department to determine when a driver was an habitual violator of the traffic laws. *Harvel v. Scheidt*, 249 N. C. 699, 107 S. E. (2d) 549 (1959), holding also that a point system set up and used by the Department did not furnish an adequate standard or guide.

**Operation of Motor Vehicle on Highway Is a Personal Privilege.**—A license to operate motor vehicles on the public highways of North Carolina is a personal privilege and property right which may not be denied a citizen of this State who is qualified therefor under its statutes. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

**Albeit a Conditional One.**—The right of a citizen to travel upon the public highways is a common right, but the exercise of that right may be regulated or controlled in the interest of public safety under the police power of the State. The operation of a motor vehicle on such highways is not a natural right. It is a conditional privilege, which may be suspended or revoked under the police power. *Honeycutt v. Scheidt*, 254 N. C. 607, 119 S. E. (2d) 777 (1961).

**And Licensee May Not Be Deprived of Such Privilege Except as Provided.**—A license to operate a motor vehicle may be suspended or revoked only in accordance with statutory provisions as they are written and construed in this jurisdiction. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

A license to operate a motor vehicle is a privilege in the nature of a right of which the licensee may not be deprived save in the manner and upon the conditions prescribed by statute. *Gibson v. Scheidt*, 259 N. C. 339, 130 S. E. (2d) 679 (1963).

**Power to suspend or revoke a driver's license, etc.**—

See *Winesett v. Scheidt*, 239 N. C. 190, 79 S. E. (2d) 501 (1954); *Fox v. Scheidt*, 241 N. C. 31, 84 S. E. (2d) 259 (1954); *State v. Cole*, 241 N. C. 576, 86 S. E. (2d) 203 (1955); *Harrell v. Scheidt*, 243 N. C. 735, 92 S. E. (2d) 182 (1956).

When a person is convicted of a criminal offense, the court has no authority to pronounce judgment suspending or revoking his operator's license or prohibiting him from operating a motor vehicle during a specified period. *State v. Cole*, 241 N. C. 576, 86 S. E. (2d) 203 (1955).

**Suspension of License a Civil Proceeding.**—A proceeding to suspend an operator's license under this section is civil and not criminal in its nature. *Honeycutt v. Scheidt*, 254 N. C. 607, 119 S. E. (2d) 777 (1961).

**Extraterritorial Jurisdiction Not Conferred.**—The words "other satisfactory evidence" in this section refer to the form of notice of conviction in another state, and confer no extraterritorial jurisdiction of the offense itself. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

This section and § 20-23 do not con-

template a suspension or revocation of license by reason of a conviction in North Carolina of an alleged offense committed beyond its borders. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

**But Evidence Relative to Offenses outside State May Be Considered.**—It is proper for the Department's hearing agent to hear and consider evidence bearing on guilt and innocence, among other things, relative to offenses outside the State, as assist him in reaching a decision in the exercise of discretionary authority. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

**Effect of Point System on Subsection (a) (9).**—The provisions of the 1959 amendment, establishing the point system, do not purport to repeal, modify or change in any manner the provisions of subsection (a) (9) of this section. *Honeycutt v. Scheidt*, 254 N. C. 607, 119 S. E. (2d) 777 (1961).

Hence, in cancelling the points accumulated over the period stipulated in subsection (c) of this section, upon which a suspension may be ordered, such cancellation does not cancel or change the number of convictions upon which a license may be suspended under the provisions of subsection (a) (9). *Honeycutt v. Scheidt*, 254 N. C. 607, 119 S. E. (2d) 777 (1961).

The Department of Motor Vehicles properly suspends a motor vehicle operator's license upon proof that the licensee had been convicted of speeding 60 miles per hour in a 50 mile per hour zone on two separate occasions within a twelve month period, even though one of the occasions had theretofore been used as the basis for a prior suspension of the license. *Honeycutt v. Scheidt*, 254 N. C. 607, 119 S. E. (2d) 777 (1961).

**Revocation or Suspension Not Mandatory for Reckless Driving.**—The offense of reckless driving in violation of § 20-140 is not an offense for which, upon conviction, the revocation or suspension of an operator's license is mandatory. In re Bratton, 263 N.C. 70, 138 S.E.2d 809 (1964).

**Court May Make Surrender of License a Condition to Suspension of Sentence.**—While the Department of Motor Vehicles is given the exclusive authority to suspend or revoke a driver's license, a court, either upon a plea of guilty or nolo contendere, may make the surrender of defendant's driver's license a condition upon which prison sentence or other penalty is suspended. *Winesett v. Scheidt*, 239 N. C. 190, 79 S. E. (2d) 501 (1954).

**Effect of Conviction or Plea of Nolo Contendere to Offense Requiring Manda-**

**tory Revocation.**—Where the Department of Motor Vehicles suspends or revokes a driver's license under the provisions of this section, the Department must notify the licensee, and upon request afford him a hearing which is de novo, with right of appeal as prescribed by this section, and where the Department elects to proceed under this section it may not contend that the licensee has no right of appeal because of a conviction of or a plea of nolo contendere to an offense requiring mandatory revocation of license. *Winesett v. Scheidt*, 239 N. C. 190, 79 S. E. (2d) 501 (1954).

For note as to effect of plea of nolo contendere, see 32 N. C. Law Rev. 549.

**Conviction Must Be Followed by Appealable Judgment.**—In view of the provision in § 20-24 (c) to the effect that a "conviction," when used in this article, shall mean a final conviction, it would seem that before a license may be revoked pursuant to the provisions of this section, there must be a conviction of two or more offenses enumerated in subsection (a) (9) of this section, followed by a judgment from which an appeal might have been or may be taken. *Barbour v. Scheidt*, 246 N. C. 169, 97 S. E. (2d) 855 (1957).

**Conviction Is Not Final Where Prayer for Judgment Is Continued on Payment of Costs.**—Where, in prosecutions for speeding, prayer for judgment is continued upon payment of the costs, there are no final convictions within the purview of § 20-24 (c), and defendant's license to drive away may not be revoked therefor pursuant to this section. *Barbour v. Scheidt*, 246 N. C. 169, 97 S. E. (2d) 855 (1957).

**§ 20-16.1. Mandatory suspension of driver's license upon conviction of excessive speeding and reckless driving.**—Notwithstanding any other provisions of this article, the Department shall suspend for a period of thirty days the license of any operator or chauffeur without preliminary hearing on receiving a record of such operator's or chauffeur's conviction of exceeding by more than fifteen miles per hour the speed limit, either within or outside the corporate limits of a municipality, if such person was also driving at a speed in excess of fifty-five miles per hour at the time of the offense. Upon conviction of a similar second or subsequent offense which offense occurs within one year of the first or prior offense, the license of such operator or chauffeur shall be suspended for sixty days, provided such first or prior offense occurs subsequent to July 1, 1953.

Notwithstanding any other provisions of this article, the Department shall suspend for a period of sixty days the license of any operator or chauffeur without preliminary hearing on receiving a record of such operator's or chauffeur's conviction of having violated the laws against speeding described in the preceding paragraph and of having violated the laws against reckless driving on the same occasion as the speeding offense occurred.

The provisions of this section shall not prevent the suspension or revocation of a license for a longer period of time where the same may be authorized by other provisions of law.

**"Satisfactory Evidence."**— This section uses the phrase "satisfactory evidence." Satisfactory evidence is such as a reasonable mind might accept as adequate to support a conclusion. It is equivalent to sufficient evidence, which is defined to be such evidence as in amount is adequate to justify the court or jury in adopting the conclusion in support of which it was adduced. *Winesett v. Scheidt*, 239 N. C. 190, 79 S. E. (2d) 501 (1954).

**When Licensee Entitled to Review.**—A licensee is entitled to a review whenever the suspension, cancellation, or revocation of a license is made in the discretion of the Department of Motor Vehicles, whether under this section, or § 20-23, or any other provision of the statute. *Carmichael v. Scheidt*, 249 N. C. 472, 106 S. E. (2d) 685 (1959).

**Remedy for Improper Deprivation of License.**—If a person has been improperly deprived of his license by the Department of Motor Vehicles due to mistake in law or fact, his remedy is to apply for a hearing as provided by subsection (d) of this section, or by petitioning the superior court pursuant to § 20-25. At a hearing under either of these statutory provisions, he would be permitted to show that the suspension was erroneous. One cannot contemptuously ignore the quasi-judicial determinations made by the Department of Motor Vehicles. *Beaver v. Scheidt*, 251 N. C. 671, 111 S. E. (2d) 881 (1960).

Cited in *Shue v. Scheidt*, 252 N. C. 561, 114 S. E. (2d) 237 (1960).



Operators or chauffeurs whose licenses have been suspended under the provisions of this section shall not be required to maintain proof of financial responsibility upon reissuance of the license solely because of suspension pursuant to this section. (1953, c. 1223; 1955, c. 1187, s. 15; 1959, c. 1264, s. 4; 1965, c. 133.)

**Editor's Note.**—The act inserting this section became effective July 1, 1953.

The 1955 amendment, effective May 23, 1955, inserted the words "or chauffeurs" in the first line of the last paragraph.

The 1959 amendment, effective Oct. 1, 1959, rewrote the first sentence.

The 1965 amendment again rewrote the first sentence.

**The operation of a motor vehicle on a public highway is not a natural right.** It is a conditional privilege which the State in the interest of public safety acting under its police power may regulate or control, and suspend or revoke the driver's license. *Shue v. Scheidt*, 252 N. C. 561, 114 S. E. (2d) 237 (1960).

**This section was enacted to promote highway safety** by providing for the mandatory suspension of a driver's license upon conviction of excessive speeding and reckless driving. *Shue v. Scheidt*, 252 N. C. 561, 114 S. E. (2d) 237 (1960).

**And Not to Punish Licensee.**—The suspension or revocation of a driver's license is no part of the punishment for the violation or violations of traffic laws. The purpose of the suspension or revocation of a driver's license is to protect the public and

not to punish the licensee. *Shue v. Scheidt*, 252 N. C. 561, 114 S. E. (2d) 237 (1960).

**It Applies to Violation of § 20-141 (d).**—This section applies where a driver is convicted of driving his passenger automobile at a speed of 75 miles per hour on a public highway in a 45-mile per hour speed zone established under subsection (d) of § 20-141, as such driving is a violation of subdivision (4) of subsection (b) of § 20-141. *Shue v. Scheidt*, 252 N. C. 561, 114 S. E. (2d) 237 (1960), decided prior to the 1965 amendment to this section.

**License Must Be Suspended on Receipt of Record of Conviction.**—It is mandatory for the Department of Motor Vehicles to suspend for thirty days the license of any operator on receiving a record of such operator's conviction of any offense listed in this section. *Gibson v. Scheidt*, 259 N. C. 339, 130 S. E. (2d) 679 (1963).

**Nolo Contendere Has Same Effect as Conviction.**—As a basis for suspension or revocation of an operator's license, a plea of nolo contendere has the same effect as a conviction or plea of guilty of such offense. *Gibson v. Scheidt*, 259 N. C. 339, 130 S. E. (2d) 679 (1963).

**§ 20-16.2. Operation of motor vehicle deemed consent to alcohol test; manner of administering; refusal to undergo.**—(a) Any person who operates a motor vehicle upon the public highways of this State or any area enumerated in G. S. 20-139 shall be deemed to have given consent, subject to the provisions of G. S. 20-139.1, to a chemical test of his breath for the purpose of determining the alcoholic content of his blood for any offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of intoxicating liquor. The test or tests shall be administered upon request of a law enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle upon the public highways of this State or any area enumerated in G. S. 20-139 while under the influence of intoxicating liquor.

(b) If a person under arrest refuses to submit to a chemical test under the provisions of G.S. 20-16.2, evidence of refusal shall be admissible in any criminal action growing out of an alleged violation of driving a motor vehicle upon the public highways of this State or any area enumerated in G.S. 20-139 while under the influence of intoxicating liquor. Provided: That before evidence of refusal shall be admissible in evidence in any such criminal action the court, upon motion duly made in apt time by the defendant, shall make due inquiry in the absence of the jury as to the character of the alleged refusal and the circumstances under which the alleged refusal occurred; and both the State and the accused shall be entitled to offer evidence upon the question of whether or not the accused actually refused to submit to the chemical test provided in G.S. 20-139.1. (1963, c. 966, s. 1; 1965, c. 1165.)

**Editor's Note.**—The act inserting this section is effective as of Jan. 1, 1964.

The 1965 amendment added the proviso in subsection (b).

### § 20-17. Mandatory revocation

**In General.**—It is mandatory for the Department to revoke the license of any operator upon receiving a record of such operator's conviction of any offense listed in this section. *Gibson v. Scheidt*, 259 N. C. 339, 130 S. E. (2d) 679 (1963)

**Revocation of License Not Part of Court's Punishment.**—The revocation of a license to operate a motor vehicle is not a part of, nor within the limits of punishment to be fixed by the court, wherein the offender is tried. When the conviction has become final, the revocation of the license by the Department of Motor Vehicles is a measure flowing from the police power of the State designed to protect users of the State's highways. *Harrell v. Scheidt*, 243 N. C. 735, 92 S. E. (2d) 182 (1956).

**Ministerial Duty.** — Mandatory revocation of an operator's license under this section is the performance of a ministerial duty *Fox v. Scheidt*, 241 N. C. 31, 84 S. E. (2d) 259 (1954).

The record of a conviction, which has become final, suffices to invoke the ministerial duty of performing the mandatory requirement of the statute by the Department of Motor Vehicles. *Harrell v. Scheidt*, 243 N. C. 735, 92 S. E. (2d) 182 (1956).

**No action or order of the court is required** to put the revocation of the license into effect. *Harrell v. Scheidt*, 243 N. C. 735, 92 S. E. (2d) 182 (1956); *Barbour v. Scheidt*, 246 N. C. 169, 97 S. E. (2d) 855 (1957).

**"Forthwith" does not mean the absolute exclusion of any interval of time**, but means only that no unreasonable length of time shall intervene before performance. *State v. Ball*, 255 N. C. 351, 121 S. E. (2d) 604 (1961).

This section does not require the Commissioner to act instantaneously. *State v. Ball*, 255 N. C. 351, 121 S. E. (2d) 604 (1961).

The provisions of subsection (6) of this section are mandatory. *Snyder v. Scheidt*, 246 N. C. 81, 97 S. E. (2d) 461 (1957).

The word "conviction," as used in subsection (6), refers to a final conviction by a court of competent jurisdiction. *Snyder v. Scheidt*, 246 N. C. 81, 97 S. E. (2d) 461 (1957)

**Applies Only to Conviction in North Carolina Court.**—The mandatory provision of this section applies only to a conviction

For comment on chemical tests and implied consent, see 42 N.C.L. Rev. 841 (1964).

### of license by Department.

in a North Carolina court. *Carmichael v. Scheidt*, 249 N. C. 472, 106 S. E. (2d) 685 (1959).

**Date of Offense, Not Date of Conviction, Controls.**—Subsection (6) of this section directs the revocation of a driver's license for one year upon his conviction of two charges of reckless driving committed within a period of twelve months, and if both offenses were committed within a twelve-month period, it is immaterial that the conviction of the second offense was entered more than twelve months after the first. The date of the offense, not the date of the conviction, is the determinative factor. *Snyder v. Scheidt*, 246 N. C. 81, 97 S. E. (2d) 461 (1957).

**Period of Revocation.**—Where there is mandatory revocation under subsection 2 of this section, the period of revocation shall be as provided in § 20-19. *Carmichael v. Scheidt*, 249 N. C. 472, 106 S. E. (2d) 685 (1959).

### Review of Revocation.—

In accord with original. See *Winesett v. Scheidt*, 239 N. C. 190, 79 S. E. (2d) 501 (1954); *Fox v. Scheidt*, 241 N. C. 31, 84 S. E. (2d) 259 (1954); *Harrell v. Scheidt*, 243 N. C. 735, 92 S. E. (2d) 182 (1956).

The mandatory provision of this section is not subject to judicial review. *Carmichael v. Scheidt*, 249 N. C. 472, 106 S. E. (2d) 685 (1959).

**Notice and Record Showing Revocation under Section.**—An official notice and record of "revocation of license" for the specified reason of "conviction of involuntary manslaughter" mailed to a driver by the Department of Motor Vehicles, was held to show that the license was revoked under this section rather than suspended under § 20-16, and did not support a finding by the trial court that the license was suspended under the latter statute. *Mintz v. Scheidt*, 241 N. C. 268, 84 S. E. (2d) 882 (1954).

**Revocation Not Mandatory for Reckless Driving.**—The offense of reckless driving in violation of § 20-140 is not an offense for which, upon conviction, the revocation or suspension of an operator's license is mandatory. In re *Bratton*, 263 N.C. 70, 138 S.E.2d 809 (1964).

**Department Not Estopped to Assert That It Acted under Section.**—Where the Department of Motor Vehicles revokes a

driver's license under the mandatory provisions of this section, the Department will not be stopped from asserting that it was acting under the provisions of this section by reason of a letter subsequently written to the licensee granting him a hearing under § 20-16 (c), since in such instance a hearing is authorized by law. *Mintz v. Scheidt*, 241 N. C. 268, 84 S. E. (2d) 882 (1954).

**Plea of Nolo Contendere.**—This section mandatorily required the Department of Motor Vehicles to revoke the petitioner's license upon receipt of the record from the superior court of his plea of nolo contendere, which in that case for the purposes of that case was equivalent to a conviction to the charge of driving a motor vehicle while under the influence of intoxicating liquor upon the public highways. *Fox v. Scheidt*, 241 N. C. 31, 84 S. E. (2d) 259 (1954).

As a basis for suspension or revocation of an operator's license, a plea of nolo contendere has the same effect as a conviction or plea of guilty of such offense. *Gibson v. Scheidt*, 259 N. C. 339, 130 S. E. (2d) 679 (1963).

A plea of nolo contendere to a charge of manslaughter resulting from the operation of an automobile supports the revocation of the driver's license under the mandatory provisions of this section. *Mintz v. Scheidt*, 241 N. C. 268, 84 S. E. (2d) 882 (1954).

**§ 20-17.1. Revocation of licenses of mental incompetents and inebriates; procedure.**—(a) The Commissioner, upon receipt of notice that any person has been (1) legally adjudged to be insane, or a congenital idiot, an imbecile, epileptic or feeble-minded, or (2) committed to, or has entered, an institution as an inebriate or an habitual user of narcotic drugs shall forthwith revoke his license, but he shall not revoke the license if the person has been adjudged competent by judicial order or decree, or discharged as cured from an institution for the insane or feeble-minded, for the cure of inebriates, or for the treatment of habitual users of narcotic drugs, upon a certificate of the person in charge that the releasee is competent.

(b) In any case in which the person's license has been revoked or suspended prior to his release it shall not be returned to him unless the Commissioner is satisfied that he is competent to operate a motor vehicle with safety to persons and property and only then if he gives and maintains proof of financial responsibility.

(c) The clerk of the court in which any such adjudication is made shall forthwith send a certified copy of abstract thereof to the Commissioner.

(d) The person in charge of every institution of any nature for the care or cure of the insane, idiots, imbeciles, epileptic, feeble-minded, inebriates or habitual users of narcotic drugs, shall forthwith report to the Commissioner in sufficient detail for accurate identification the admission of every patient. (1947, c. 1006, s. 9; 1953, c. 1300, s. 36; 1955, c. 1187, s. 16.)

**Editor's Note.**—The 1953 act, effective January 1, 1954, re-enacted former § 20-232 and renumbered it as this section.

The 1955 amendment, effective July 1, 1955, deleted the words "and registration"

after the word "license" where it first appears in subsection (a) and the words "or registration" after the word "license" in the first line of subsection (b).

**§ 20-18. Conviction of offenses described in section 20-181 not ground for suspension or revocation.**—Conviction of offenses described in § 20-181 shall not be cause for the suspension or revocation of operator's or chauffeur's license under the terms of this article. (1939, c. 351, s. 2; 1955, c. 913, s. 1.)

**Editor's Note.**—The 1955 amendment, effective July 1, 1955, substituted "offenses described in § 20-181" for "the offense of failure to shift, depress, deflect, tilt or dim

the beams of the head lamps whenever a motor vehicle meets another vehicle on the highways of this State."

**§ 20-19. Period of suspension or revocation.**—(a) When a license is suspended under paragraph 9 of § 20-16 (a), the period of suspension shall

be in the discretion of the Department and for such time as it deems best for public safety but shall not exceed six (6) months.

(b) When a license is suspended under paragraph 10 of § 20-16 (a), the period of suspension shall be in the discretion of the Department and for such time as it deems best for public safety but shall not exceed a period of twelve (12) months.

(c) When a license is suspended under any other provision of this article which does not specifically provide a period of suspension, the period of suspension shall be not more than one year.

(d) When a license is revoked because of a second conviction for driving under the influence of intoxicating liquor or a narcotic drug, occurring within three years after a prior conviction, the period of revocation shall be four years; provided, that the Department may, after the expiration of two years, issue a new license upon satisfactory proof that the former licensee has been of good behavior for the past two years and that his conduct and attitude are such as to entitle him to favorable consideration and upon such terms and conditions which the Department may see fit to impose for the balance of said period of revocation; provided, that as to a license which has been revoked because of a second conviction for driving under the influence of intoxicating liquor or a narcotic drug prior to May 2, 1957, and which has not been restored, the Department may upon the application of the former licensee, and after the expiration of two years of such period of revocation, issue a new license upon satisfactory proof that the former licensee has been of good behavior for the past two years and that his conduct and attitude are such as to entitle him to favorable consideration and upon such terms and conditions which the Department may see fit to impose for the balance of a four-year revocation period, which period shall be computed from the date of the original revocation.

(e) When a license is revoked because of a third or subsequent conviction for driving under the influence of intoxicating liquor or a narcotic drug, occurring within five years after a prior conviction, the period of revocation shall be permanent; provided, that the Department may, after the expiration of three years, issue a new license upon satisfactory proof that the former licensee has been of good behavior for the past three years and that his conduct and attitude are such as to entitle him to favorable consideration; provided, that as to a license which has been revoked because of a third or subsequent conviction for driving under the influence of intoxicating liquor or a narcotic drug prior to May 2, 1957, and which license has not been restored, the Department may, upon application of the former licensee and after the expiration of three years of such period of revocation, issue a new license upon satisfactory proof that the former licensee has been of good behavior for the past three years and that his conduct and attitude are such as to entitle him to favorable consideration.

(f) When a license is revoked under any other provision of this article which does not specifically provide a period of revocation, the period of revocation shall be one year.

(g) When a license is suspended under paragraph 11 of § 20-16 (a), the period of suspension shall be for a period of time not in excess of the period of nonoperation imposed by the court as a condition of the suspended sentence; further, in such case, it shall not be necessary to comply with the Motor Vehicle Safety and Financial Responsibility Act in order to have such license returned at the expiration of the suspension period. (1935, c. 52, s. 13; 1947, c. 1067, s. 15; 1951, c. 1202, ss. 2-4; 1953, c. 1138; 1955, c. 1187, ss. 13, 17, 18; 1957, c. 499, s. 2; c. 515, s. 1; 1959, c. 1264, s. 11A.)

**Editor's Note.—**

The 1953 amendment rewrote subsections (c) and (f).

1955, rewrote subsections (a) and (b) and added subsection (g).

The first 1957 amendment substituted

The 1955 amendment, effective July 1,

"paragraph 11" for "paragraph 12" in line

one of subsection (g). The second 1957 amendment substituted "four years" for "three years" in line three of subsection (d) and added the proviso thereto. The amendment also substituted "three years" for "five years" in the first proviso of subsection (e) and added the second proviso. Section 2 of the second amendatory act provides that it shall not affect, except in the manner and to the extent provided in the act, any revocations which are in force on May 2, 1957.

The 1959 amendment, effective Oct. 1, 1959, inserted the words "occurring within three years after a prior conviction" beginning in line two of subsection (d). It also inserted the words "occurring within five years after a prior conviction" beginning in line two of subsection (e).

The provisions of subsection (f) of this section are mandatory. *Snyder v. Scheidt*, 246 N. C. 81, 97 S. E. (2d) 461 (1957).

**Warrant Need Not Charge Second Offense in Order to Support Three Year Revocation.** — Where defendant's driver's license had been suspended in 1947 for a period of one year for conviction of driving while under the influence of intoxicating liquor and in 1954 defendant pleads guilty to another such offense upon warrant not charging a second offense, the Department of Motor Vehicles, upon receipt of the report of the later conviction, must revoke defendant's license for the period provided by subsection (d) of this section. *Harrell v. Scheidt*, 243 N. C. 735, 92 S. E. (2d) 182 (1956).

### § 20-22. Suspending privileges of nonresidents and reporting convictions.

Cited in *Morrissey v. Crabtree*, 143 F. Supp. 105 (1956).

### § 20-23. Suspending resident's license upon conviction in another state.

**Cross Reference.**—See note to § 20-16.

**Section Is Not Mandatory.** — The Department of Motor Vehicles, under provisions of this section, is merely authorized, not directed, to suspend or revoke the license of any resident of this State upon receiving notice of the conviction of such person in another state of any offense therein which, if committed in this State, would be grounds for the suspension or revocation of the license of an operator or chauffeur. *Carmichael v. Scheidt*, 249 N. C. 472, 106 S. E. (2d) 685 (1959).

**Licensee May Show Invalidity of Out-of-State Conviction.** — Where order of the Department of Motor Vehicles perma-

Where there is mandatory revocation under subsection 2 of § 20-17, the period of revocation shall be as provided in this section. *Carmichael v. Scheidt*, 249 N. C. 472, 106 S. E. (2d) 685 (1959).

**Effective Date of Revocation.**—A revocation based on a second offense for driving while under the influence of intoxicating liquor or a narcotic drug must be for a period of three (now four) years, and the effective date of the revocation for such period should not begin prior to the date of the second conviction. Likewise, when a license is permanently revoked, the effective date of such revocation should not be earlier than the date of the conviction for the third offense. *Carmichael v. Scheidt*, 249 N. C. 472, 106 S. E. (2d) 685 (1959).

**Period of Suspension Runs from Date of Order by Department.**—When within five days from receipt of notice of conviction the Department ordered the revocation of an operator's license for one year, the revocation was in effect until the same date in the following year, and did not expire one year from the date of conviction or the date of receipt of notice by the Department. *State v. Ball*, 255 N. C. 351, 121 S. E. (2d) 604 (1961).

**Applied in** *Fox v. Scheidt*, 241 N. C. 31, 84 S. E. (2d) 259 (1954); *State v. Moore*, 247 N. C. 368, 101 S. E. (2d) 26 (1957); *Honeycutt v. Scheidt*, 254 N. C. 607, 119 S. E. (2d) 777 (1961); *Gibson v. Scheidt*, 259 N. C. 339, 130 S. E. (2d) 679 (1963).

nently revoking the license of a driver for a third conviction of such driver for operating a motor vehicle while under the influence of intoxicating liquor, is based in part upon notice of the licensee's conviction of that offense in another state, the licensee has the right to show, if he can, that the proceedings in such other state were irregular, invalid and insufficient to support the reported conviction, and is entitled to a hearing de novo in the superior court upon his petition for review. The sustaining of a demurrer to such petition is error, petitioner being entitled to an adjudication of the validity of the out-of-state conviction in order to

determine whether the revocation should be permanent or for the period of time prescribed by subsection (d) of § 20-19. *Carmichael v. Scheidt*, 249 N. C. 472, 106 S. E. (2d) 685 (1959).

**§ 20-23.1. Suspending or revoking operating privilege of person not holding license.**—In any case where the Department would be authorized to suspend or revoke the license of a person but such person does not hold a license, the Department is authorized to suspend or revoke the operating privilege of such a person in like manner as it could suspend or revoke his license if such person held an operator's or chauffeur's license, and the provisions of this chapter governing suspensions, revocations, issuance of a license, driving after license suspended or revoked, and filing of proof of financial responsibility shall apply in the discretion of the Department in the same manner as if the license had been suspended or revoked. (1955, c. 1187, s. 19.)

**§ 20-24. When court to forward license to Department and report convictions.**—(a) Whenever any person is convicted of any offense for which this article makes mandatory the revocation of the operator's or chauffeur's license of such person by the Department, the court in which such conviction is had shall require the surrender to it of all operators' and chauffeurs' licenses then held by the person so convicted and the court shall thereupon forward the same, together with a record of such conviction, to the Department.

The clerks of court, assistant clerks of court and deputy clerks of court in which any person is convicted, and as a result thereof the revocation or suspension of the operator's or chauffeur's license of such person is required under the provisions of this chapter, are hereby designated as agents of the Department of Motor Vehicles for the purpose of receiving all operators' and chauffeurs' licenses required to be surrendered under this section, and are hereby authorized to and shall give to such licensee a dated receipt for any such license surrendered, such receipt to be upon such form as may be approved by the Commissioner of Motor Vehicles. The original of such receipt shall be mailed forthwith to the Driver License Division of the Department of Motor Vehicles together with the operator's or chauffeur's license. Any operator's or chauffeur's license, which has been surrendered and for which a receipt has been issued as herein required, shall be revoked or suspended as the case may be as of the date shown upon the receipt issued to such person.

(b) Every court having jurisdiction over offenses committed under this article, or any other law of this State regulating the operation of motor vehicles on highways, shall forward to the Department a record of the conviction of any person in said court for a violation of any said laws, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted. Every court shall also forward to the Department a record of every conviction in which sentence is suspended on condition that the defendant not operate a motor vehicle for a period of time, and such report shall state the period of time for which such condition is imposed; provided that the punishment for the violation of this subsection shall be the same as provided in § 20-7 (n).

(1955, c. 1187, s. 14; 1959, c. 47; 1965, c. 38.)

**Local Modification.** — Hertford as to subsection (b): 1953, c. 1059; Washington, as to subsection (b): 1953, c. 765.

**Editor's Note.**—

The 1955 amendment, effective July 1, 1955, added the second sentence of subsection (b).

The 1959 amendment deleted from subsection (a) the former first sentence relating to notation of conviction entered on driver's license.

The 1965 amendment, effective July 1, 1965, added the second paragraph in subsection (a).

As only subsections (a) and (b) were affected by the amendments, the rest of the section is not set out.

**Meaning of Forfeiture of Bail, etc.**—

In accord with 2nd paragraph in original. See *In re Donnelly*, 260 N.C. 375, 132 S.E.2d 904 (1963).

Where no warrant is served, no legal

action is pending in court; and when no legal action is pending, there can be no valid judgment of forfeiture of bail. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

**Plea of Nolo Contendere.**—When the petitioner entered a plea of nolo contendere to the charge of a second offense of operating an automobile upon the public highways of the State, while under the influence of intoxicating liquor, which plea was accepted by the court, for the purposes of that case in that court, such plea was equivalent to a plea of guilty, or conviction by a jury, and subsection (a) of this section required that court to enter a notation of such conviction upon the license of petitioner to operate an automobile in North Carolina, and to compel the surrender to it of such license then held by petitioner, and thereupon to forward the license, together with a record of the conviction to the Department of Motor Veh-

icles. *Fox v. Scheidt*, 241 N. C. 31, 84 S. E. (2d) 259 (1954).

**When Conviction Final.**—The conviction alone, without the imposition of a judgment from which an appeal might be taken, is not a final conviction within the terms of subsection (c). *Barbour v. Scheidt*, 246 N. C. 169, 97 S. E. (2d) 855 (1957).

A conviction in a criminal case is not final within the meaning of subsection (c) of this section where no judgment is imposed on the verdict, but merely an order is entered continuing prayer for judgment upon payment of costs. *Barbour v. Scheidt*, 246 N. C. 169, 97 S. E. (2d) 855 (1957).

**Applied in** *State v. Ball*, 255 N. C. 351, 121 S. E. (2d) 604 (1961).

**Quoted in** *Harrell v. Scheidt*, 243 N. C. 735, 92 S. E. (2d) 182 (1956).

**Stated in** *Winesett v. Scheidt*, 239 N. C. 190, 79 S. E. (2d) 501 (1954).

### § 20-25. Right of appeal to court.

**But no discretionary, etc.—**

On appeal and hearing de novo in the superior court, that court is not vested with discretionary authority. It makes judicial review of the facts, and if it finds that the license of petitioner is in fact and in law subject to suspension or revocation the order of the Department must be affirmed, otherwise not. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

**By Trial De Novo.—**

In accord with 2nd paragraph in original. See *Fox v. Scheidt*, 241 N. C. 31, 84 S. E. (2d) 259 (1954).

**But Mandatory Revocations, etc.—**

In accord with original. See *Winesett v. Scheidt*, 239 N. C. 190, 79 S. E. (2d) 501 (1954); *Fox v. Scheidt*, 241 N. C. 31, 84 S. E. (2d) 259 (1954); *Mintz v. Scheidt*, 241 N. C. 268, 84 S. E. (2d) 882 (1954).

**Remedy for Improper Deprivation of License.**—If an individual has been improperly deprived of his license by the Department of Motor Vehicles due to a mistake of law or fact his remedy is to apply for a hearing as provided by § 20-16 (d) or by application to the superior court as permitted by this section. At a hearing held pursuant to either of these sections he would be permitted to show that the suspension was erroneous. He could not ignore the quasi-judicial determination made by the Department. *Beaver v. Scheidt*, 251 N. C. 671, 111 S. E. (2d) 881 (1960).

**Review of Revocation Based on Conviction of Offense in Another State.**—The fact that the Department of Motor Vehicles in the exercise of its discretion accepted the certification of a conviction in another state at its face value, did not foreclose the petitioner's right to review as provided in this section. In other words, the General Assembly has never made it mandatory on the Department to suspend or revoke the license of a resident of this State based on the conviction of such person in another state of any offense therein which, if committed in this State, would make the revocation mandatory. *Carmichael v. Scheidt*, 249 N. C. 472, 106 S. E. (2d) 685 (1959).

On appeal from a suspension of a resident's license under § 20-23, it is the conviction in another state that is under review in the superior court. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

The superior court of North Carolina may not determine the guilt of a license holder, with respect to offenses alleged to have been committed in another state, as the sole predicate for suspension or revocation of his license. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963).

**Applied in** *Barbour v. Scheidt*, 246 N. C. 169, 97 S. E. (2d) 855 (1957); *State v. Virgil*, 263 N.C. 73, 138 S.E.2d 777 (1964).

**§ 20-26. Records; copies furnished.**—(a) The Department shall keep a record of proceedings and orders pertaining to all operator's and chauffeur's licenses granted, refused, suspended or revoked.

(b) The Department shall furnish certified copies of license records required to be kept by subsection (a) of this section to State, county, municipal and court officials of this State for official use only, without charge.

(c) The Department shall furnish copies of license records required to be kept by subsection (a) of this section to other persons, firms and corporations for uses other than official upon prepayment of the fee therefor, according to the following schedule:

- (1) Limited extract copy of license record, for period up to three (3) years ..... \$ .50
- (2) Complete extract copy of license record ..... 1.00
- (3) Certified true copy of complete license record ..... 3.00

All fees received by the Department under the provisions of this subsection shall be paid into and become a part of the "Operator's and Chauffeur's License Fund." (1935, c. 52, s. 20; 1961, c. 307.)

**Editor's Note.**—The 1961 amendment re-wrote this section.

**§ 20-28. Unlawful to drive while license suspended or revoked.—**

(a) Any person whose operator's or chauffeur's license has been suspended or revoked other than permanently, as provided in this chapter, who shall drive any motor vehicle upon the highways of the State while such license is suspended or revoked shall be guilty of a misdemeanor and his license shall be suspended or revoked, as the case may be, for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense; provided, any person whose license has been permanently suspended or revoked under this section may apply for a new license after three years from the commencement of the permanent suspension or revocation. Upon the filing of such application, the Department may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has been of good behavior for a minimum of three years from the last date of suspension or revocation and that his conduct and attitude are such as to entitle him to favorable consideration.

Notwithstanding any other provisions of this section, in those cases of conviction of the offense provided in this section in which the judge and solicitor of the court wherein a conviction for violation of this section was obtained recommend in writing to the Department that the Department examine into the facts of the case and exercise discretion in suspending or revoking the driver's license for the additional periods provided by this section, the Department shall conduct a hearing and may impose a lesser period of additional suspension or revocation than that provided in this section or may refrain from imposing any additional period. Any person convicted of violating this section before or after May 14, 1959, shall be entitled to the benefit of the foregoing relief provisions.

Upon conviction, a violator of this section shall be punished by a fine of not less than two hundred dollars (\$200.00) or imprisonment in the discretion of the court, or both; provided, however, the restorer of a suspended or revoked operator's or chauffeur's license who operates a motor vehicle upon the streets or highways of the State without maintaining financial responsibility as provided by law shall be punished as for operating without an operator's license.

(b) Any person whose license has been permanently revoked, as provided in this article, who shall drive any motor vehicle upon the highways of the State while such license is permanently revoked shall be guilty of a misdemeanor and shall be imprisoned for not less than one year. (1935, c. 52, s. 22; 1945, c. 635; 1947, c. 1067, s. 16; 1955, c. 1020, s. 1; c. 1152, s. 18; c. 1187, s. 20; 1957, c. 1406; 1959, c. 515.)



**Editor's Note.—**

The 1955 amendments made changes in subsection (a).

The 1957 amendment inserted the first sentence of the second paragraph of subsection (a), changed the period of suspension or revocation for a second offense from three to two years and changed the time of applying for a new license from five to three years.

The 1959 amendment rewrote all of subsection (a) following the first sentence.

In the 1957 amendment of this section the General Assembly anticipated there would be hardship cases where the violation of subsection (a) would be technical rather than willful. *Gibson v. Scheidt*, 259 N. C. 339, 130 S. E. (2d) 679 (1963).

**Operation Must Have Occurred During Suspension or Revocation.**—To constitute a violation of subsection (a) the operation of a motor vehicle must occur "while such license is suspended or revoked," that is, during "the period of suspension or revocation. *State v. Sossamon*, 259 N. C. 374, 130 S. E. (2d) 638 (1963).

Subsection (a) deals solely and directly with the offense of driving while one's operator's license is suspended or revoked and contains provisions bearing directly upon periods of suspension and revocation

**§ 20-28.1. Conviction of moving violation committed while driving during period of suspension or revocation of license.**—(a) Upon receipt of notice of conviction of any motor vehicle moving violation committed while driving a motor vehicle, such offense having been committed while such person's operator's or chauffeur's license was in a state of suspension or revocation, the Department shall revoke the person's license effective on the date set for termination of the suspension or revocation which was in effect at the time of such offense.

(b) When a license is subject to revocation under this section, the period of revocation shall be as follows:

- (1) A first such revocation shall be for one year;
- (2) A second such revocation shall be for two years; and
- (3) A third or subsequent such revocation shall be permanent.

(c) Any person whose license has been permanently revoked under this section may apply for a new license after three years from the commencement of the permanent revocation. Upon the filing of such application, the Department may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has been of good behavior for a minimum of three years from the last date of revocation and that his conduct and attitude are such as to entitle him to favorable consideration. (1965, c. 286.)

**§ 20-29. Surrender of license.**

**Sufficiency of Warrant.**—A warrant under this section was fatally defective where it failed to aver that defendant refused to exhibit his license upon request while operating or in charge of a motor vehicle.

upon conviction. In *re Bratton*, 263 N.C. 70, 138 S.E.2d 809 (1964).

**Suspension or Revocation under Subsection (a) Not Proper without Conviction.**—Where plaintiff has never been convicted of or tried for the offense defined in subsection (a), unless and until he is so tried and convicted, subsection (a) vests no authority in the Department in respect of the suspension or revocation of his operator's license. *Gibson v. Scheidt*, 259 N. C. 339, 130 S. E. (2d) 679 (1963).

**A warrant is fatally defective which does not allege in words or in substance an essential element of the offense defined in subsection (a).** *State v. Sossamon*, 259 N. C. 374, 130 S. E. (2d) 638 (1963).

**Collateral Attack on Order of Revocation Not Permitted.**—Defendant could not, when on trial for the criminal offense of driving while his license was revoked, collaterally attack the record of revocation which did not on its face disclose invalidity. *State v. Ball*, 255 N. C. 351, 121 S. E. (2d) 604 (1961).

**Applied in** *State v. Meadows*, 234 N. C. 657, 68 S. E. (2d) 406 (1951); *Beaver v. Scheidt*, 251 N. C. 671, 111 S. E. (2d) 881 (1960); *State v. Sossamon*, 259 N. C. 378, 130 S. E. (2d) 640 (1963); *State v. Blackwelder*, 263 N.C. 96, 138 S.E.2d 787 (1964).

The warrant should also name the officer who demands the right to inspect the license. *State v. Danziger*, 245 N. C. 406, 95 S. E. (2d) 862 (1957).

**§ 20-37. Limitations on issuance of licenses.**

Stated in *Victory Cab Co. v. Charlotte*, 234 N. C. 572, 68 S. E. (2d) 433 (1951). Cited in *Morrissey v. Crabtree*, 143 F. Supp. 105 (1956).

ARTICLE 3.

*Motor Vehicle Act of 1937.*

Part 1. General Provisions.

**§ 20-38. Definitions of words and phrases.**

(1) Intersection.—The area embraced within the prolongation of the lateral curb lines or, if none, then the lateral boundary lines of two or more highways which join one another at any angle whether or not one such highway crosses the other.

Where a highway includes two roadways thirty (30) feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event that such intersecting highway also includes two roadways thirty (30) feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(q) Passenger Vehicles.—(1) Excursion passenger vehicles.

Passenger vehicles kept in use for the purpose of transporting persons on sight-seeing or travel tours.

(2) For hire passenger vehicles.

Passenger motor vehicles transporting passengers for compensation; but this classification shall not include motor vehicles of nine-passenger capacity or less operated by the owner where the cost of operation is shared by neighbor fellow workmen between their homes and the place of regular daily employment, when operated for not more than two trips each way per day, nor shall this classification include automobiles operated by the owner where the cost of operation is shared by the passengers on a "share the expense" plan, nor shall this classification include motor vehicles transporting students for the public school system when said motor vehicles are so transporting under contract with the State Board of Education, nor shall this classification include motor vehicles leased to the United States of America or any of its agencies when such lease agreement is on a nonprofit basis.

(3) Common carriers of passengers.

Passenger motor vehicles operated under a franchise certificate issued by the Utilities Commission under §§ 62-121.5 through 62-121.79, for operation on the public highways of this State between fixed termini or over a regular route for the transportation of persons or property for compensation.

(4) Motorcycle.

Every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

(5) U-drive-it passenger vehicles.

Passenger motor vehicles used for the purpose of rent or lease to be operated by the lessee; provided, this shall not include passenger motor vehicles of nine passenger capacity or less which are leased for a term of one year or more to the same person, firm, or corporation. Provided, further that passenger vehicles leased or rented to public school authorities for the purpose of driver-training instruction shall not be included in this designation.

(6) Private passenger vehicles.

All other passenger vehicles not included in the above definitions.

(r) Property-Hauling Vehicles.—(1) Contract carrier vehicles.

All motor vehicles used for the transportation of property for hire, but not licensed as common carriers of property under the provisions of §§ 62-121.5 through 62-121.79; provided, that motor vehicles operating as interstate common carriers of property under authority of the Interstate Commerce Commission shall be registered as contract carrier vehicles if they do contract property-hauling in North Carolina; provided, that the term "for hire" as used herein shall include every arrangement by which the owner of a motor vehicle uses, or permits such vehicle to be used, for the transportation of the property of another for compensation, subject to the following exemptions:

(A) The transportation of farm crops or products, including logs, bark, pulp and tannic acid wood delivered from farms and forest to the first or primary market, and the transportation of wood chips from the place where wood has been converted into chips to their first or primary market.

(B) The transportation of perishable foods which are still owned by the grower while being delivered to the first or primary market by an operator who has not more than one truck, truck-tractor or trailer in a for hire operation.

(C) The transportation of merchandise hauled for neighborhood farmers incidentally and not as a regular business in going to and from farms and primary markets.

(D) The transportation of T. V. A. or A. A. A. phosphate and/or agricultural limestone in bulk which is furnished as a grant of aid under the United States Agricultural Adjustment Administration.

(E) The transportation of fuel for the exclusive use of the public schools of the State.

(F) Motor vehicles whose sole operation in carrying the property of others is limited to the transportation of the United States mail pursuant to a contract made with the United States or the extension or renewal of such contract.

(G) Vehicles which are leased for a term of one year or more to the same person, firm or corporation when used exclusively by such person, firm or corporation in transporting its own property.

(2) Common carrier of property vehicles.

Every motor vehicle used for the transportation of property which is certified a common carrier by the Utilities Commission or the Interstate Commerce Commission.

(3) Private hauler vehicles.

All motor vehicles used for the transportation of property not falling within one of the above defined classifications; provided, self-propelled vehicles equipped with permanent living and sleeping facilities used exclusively for camping activities shall be classified as private passenger vehicles.

(4) Semi-trailer.

Every vehicle without motive power designed for carrying property or persons and for being drawn by a motor vehicle, and so constructed that part of its weight and/or its load rests upon or is carried by the pulling vehicle.

(5) Trailers.

Every vehicle without motive power designed for carrying property or persons wholly on its own structure and to be drawn by a motor vehicle. This shall include so-called pole trailers or a pair of wheels used primarily to balance a load, rather than for purposes of transportation.

(t) Owner.—A person or persons holding the legal title of a vehicle; or, in the event a vehicle is the subject of a chattel mortgage or an agreement for the conditional sale or lease thereof or other like agreement, with the right of purchase upon performance of the conditions stated in the agreement, and with the immediate right of possession vested in the mortgagor, conditional vendee or lessee, said mortgagor conditional vendee or lessee shall be deemed the owner for the purpose of this article. For the purposes of this article, the lessee of a

vehicle owned by the government of the United States shall be considered the owner of said vehicle

(y)1 Roadway.—That portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(bb) Special Mobile Equipment.—Every truck, truck-tractor, trailer or semi-trailer on which have been permanently attached cranes, mills, well boring apparatus, ditch digging apparatus, air compressors, electric welders or any similar type apparatus or which have been converted into living or office quarters, or other self-propelled vehicles which were originally constructed in a similar manner which are operated on the highway only for the purpose of getting to and from a non-highway job and not for the transportation of persons or property or for hire. This shall also include trucks on which special equipment has been mounted and used by American Legion or Shrine Temples for parade purposes, trucks or vehicles privately owned on which fire-fighting equipment has been mounted and which are used only for fire-fighting purposes, and vehicles on which are permanently mounted feed mixers, grinders and mills although there is also transported on the vehicle molasses or other similar type feed additives for use in connection with the feed mixing, grinding or milling process.

(hh) Security Agreement.—A written agreement which reserves or creates a security interest.

(ii) Security Interest.—An interest in a vehicle reserved or created by agreement and which secures payments or performance of an obligation. The term includes but is not limited to the interest of a chattel mortgagee, the interest of a vendor under a conditional sales contract, the interest of a trustee under a chattel deed of trust, and the interest of a lessor under a lease intended as security. A security interest is "perfected" when it is valid against third parties generally.

(jj) Manufacturer's Certificate.—A certification, on a form approved by the Department of Motor Vehicles, signed by the manufacturer, indicating the name of the person or dealer to whom the therein described vehicle is transferred, the date of transfer and that such vehicle is the first transfer of such vehicle in ordinary trade and commerce. The description of the vehicle shall include the make, model, year, type of body, identification number or numbers, and such other information as the Department may require.

(kk) Wreckers.—Every motor vehicle whose sole operation is moving disabled motor vehicles of an emergency nature to the nearest feasible point for repairs and/or storage and on which have been permanently attached cranes and are not so constructed to haul other property. Provided, further, that said wreckers shall be equipped with adequate brakes for units being towed. (1937, c. 407, s. 2; 1939, c. 275; 1941, cc. 22, 36, 196; 1943, cc. 201, 202; 1945, c. 414, s. 1; 1945, cc. 653, 838; 1947, c. 220, s. 1; 1949, cc. 814, 1287; 1951, c. 571; 1951, c. 705, s. 1; 1951, c. 770; 1951, c. 819, ss. 1, 2; 1951, c. 1023, s. 1; 1953, c. 472; c. 826, s. 1; c. 831, ss. 1, 2; c. 914; 1957, cc. 1087, 1150, 1231; 1959, c. 19; c. 1264, ss. 1.5, 11; 1961, c. 835, s. 1; c. 1172, s. 1; 1963, c. 435; c. 702, s. 1; 1965, c. 83; c. 678, s. 1; c. 1025.)

#### Editor's Note.—

The first 1953 amendment, which rewrote the last proviso of paragraph (1) of subsection (r), was superseded by the third 1953 amendment, which rewrote the whole paragraph and also subsection (t). The second 1953 amendment, which rewrote subsection (bb) and became effective July 1, 1953, by § 6 of the amendatory act was made applicable to all licenses for years beginning after Decem-

ber 31, 1953. The fourth 1953 amendment added near the end of paragraph (2) of subsection (q) the clause as to transporting students.

The first 1957 amendment added the second paragraph of subsection (1), and the third 1957 amendment inserted in line nine of subsection (bb) the words "or Shrine Temples."

The second 1957 amendment, effective January 1, 1958, and applicable for all tax

years beginning on and after such date, deleted from line one of paragraph (2) of subsection (q) the words "engaged in the business of" formerly appearing after "vehicles." It also inserted the first proviso in paragraph (1) of subsection (r) and rewrote paragraph (2).

The first 1959 amendment added in the last sentence of subsection (bb) the words "trucks or vehicles privately owned on which fire-fighting equipment has been mounted and which are used only for fire-fighting purposes."

The second 1959 amendment, effective June 20, 1959, added the last proviso to subdivision (5) of subsection (q), and the part of the amendment effective Oct. 1, 1959, substituted "nine-passenger" for "seven-passenger" in subdivision (2) of subsection (q).

The first 1961 amendment, effective July 1, 1961, added subsections (hh), (ii) and (jj). The second 1961 amendment, effective Jan. 1, 1962, amended subsection (bb) by adding the part of the last sentence relating to vehicles with "feed mixers, grinders and mills."

The first 1963 amendment added the proviso to the sentence under subdivision (3) of subsection (r). The second 1963 amendment, effective July 1, 1963, added subsection (kk).

The first 1965 amendment added at the end of paragraph (2) of subsection (q) the provision as to motor vehicles leased to the United States.

The second 1965 amendment, effective July 1, 1965, added subsection (y)1.

The third 1965 amendment added the provision pertaining to transportation of wood chips in paragraph (A) of subdivision (1) of subsection (r).

Only the subsections changed by the amendments are set out.

#### Motorcycle.—

The definition of the term "motorcycle" in this section does not describe the "mailster," a class of motor vehicle generally known as a "motor scooter." *LeCroy v. Nationwide Mutual Ins. Co.*, 251 N. C. 19, 110 S. E. (2d) 463 (1959).

The definition of the term "motorcycle" in this section is for regulation of license fees and has no application in an action based on an insurance contract's interpretation of word "automobile." *LeCroy v. Nationwide Mutual Ins. Co.*, 251 N. C. 19, 110 S. E. (2d) 463 (1959).

**Farm Tractor.** — Construing the definitions of "farm tractor" and "vehicle" together in *pari materia* it is apparent that the General Assembly intended that while

farm tractors are motor implements of husbandry, they are vehicles within the meaning of § 20-138 when operated upon a highway by one under the influence of intoxicating liquor or narcotic drugs. *State v. Green*, 251 N. C. 141, 110 S. E. (2d) 805 (1959).

#### Intersection.—

When the failure to explain the law so the jury could apply it to the facts is specifically called to the court's attention by a juror's request for information, it should tell the jury how to find the intersection of the streets as fixed by subsection (l) of this section and how, when the motorist reaches the intersection, he is required to drive in making a left turn. *Pearsall v. Duke Power Co.*, 258 N. C. 639, 129 S. E. (2d) 217 (1963).

#### Bicycle.—

In accord with 2nd paragraph in original. See *Oxendine v. Lowry*, 260 N.C. 709, 133 S.E.2d 687 (1963).

#### Residential District.—

Where there is testimony that the accident in suit occurred along a highway in a thickly populated area with residence and business establishments fronting thereon, at least some residences being side by side, the court is required to submit to the jury the question of whether the area was a residential district as defined by this section. *Goddard v. Williams*, 251 N. C. 128, 110 S. E. (2d) 820 (1959).

**A business district is to be determined on the basis of frontage actually occupied by buildings when their side lines are projected or extended to the street or highway, without taking into consideration the open spaces between the buildings, notwithstanding such spaces may be used for business purposes or incident to the operation of a business establishment.** *Hinson v. Dawson*, 241 N. C. 714, 86 S. E. (2d) 585 (1955).

**Frontage on Both Sides of Street Need Not Be Used for Business Purposes.**—A district is a business district within the purview of subsection (a) if 75% or more of the frontage for a distance of 300 feet or more on either side of the street or highway is occupied by buildings in use for business purposes, and it is not required that the frontage on both sides of the street or highway should be so used. *Hinson v. Dawson*, 241 N. C. 714, 86 S. E. (2d) 585 (1955).

**And Conditions on Intersecting Streets Are Not Considered.**—Whether a motorist is traveling in a business district within the purview of subsection (a) is to be determined with reference to the frontage

along the street or highway on which he is traveling, and conditions along intersecting streets or highways are to be excluded from consideration. *Hinson v. Dawson*, 241 N. C. 714, 86 S. E. (2d) 585 (1955).

A "business district" is determinable with reference to the status of the frontage on the street or highway on which the motorist is traveling. Conditions along intersecting streets or highways are excluded from consideration. *Black v. Penland*, 255 N. C. 691, 122 S. E. (2d) 504 (1961).

A building used for business purposes need not be in actual contact with the front property line, but fronts upon the street or highway within the purview of subsection (a) if the space intervening between the front of the building and the front property line and used as a means of access to the building is reasonable in extent. *Hinson v. Dawson*, 241 N. C. 714, 86 S. E. (2d) 585 (1955).

**Vehicles Leased for One Year or More.**—While it is true that paragraph (G) of subsection (r) (1) of this section was set out for the first time among the list of exemptions by Session Laws 1953, c. 831, it is also true that the act in its caption spelled out the intent and purpose of the act, which was to "rewrite the definition of owner of motor vehicles and contract carrier vehicles so as to clarify the licensing procedure for leased vehicles." To clarify does not mean to add, or to take from, but "to make clear." Therefore, the contention that the exemption existed under the statute prior to the 1953 amendment was held to have merit. *Equipment Finance Corp. v. Scheidt*, 249 N. C. 334, 106 S. E. (2d) 555 (1959).

Where the owner of trucks leased them to another corporation under an agreement requiring lessor to carry insurance

and maintain the vehicles and giving lessee control over the operation of the trucks with right to use same exclusively for the transportation and delivery of lessee's goods, the lessor was not a contract carrier within the meaning of this section and § 62-121.7 as they stood in 1949, since the lessor merely leased its vehicles and was not a carrier of any kind, and lessee was solely a private carrier, and therefore lessor was not liable for additional assessment at the "for hire" rates under the statute. *Equipment Finance Corp. v. Scheidt*, 249 N. C. 334, 106 S. E. (2d) 555 (1959).

Applied in *Jenkins v. Thomas*, 260 N. C. 768, 133 S.E.2d 694 (1963); *Nix v. Earley*, 263 N.C. 795, 140 S.E.2d 402 (1965).

Quoted in *Morrisey v. Crabtree*, 143 F. Supp. 105 (1956); *Shoe v. Hood*, 251 N. C. 719 112 S. E. (2d) 543 (1960).

Stated in *Rick v. Murphy*, 251 N. C. 162 110 S. E. (2d) 815 (1959).

Cited in *Jernigan v. Hanover Fire Ins Co.*, 235 N. C. 334, 69 S. E. (2d) 847 (1952); *Hawes v. Atlantic Refining Co.*, 236 N. C. 643, 74 S. E. (2d) 17 (1953); *State v. Smith*, 238 N. C. 82, 76 S. E. (2d) 363 (1953) (as to subsection (ff)); *Medlin v. Spurrier & Co.*, 239 N. C. 48, 79 S. E. (2d) 209 (1953) (as to subsection (w)); *Hudson v. Petroleum Transit Co.*, 250 N. C. 435, 108 S. E. (2d) 900 (1959); *Pruett v. Inman* 252 N. C. 520 114 S. E. (2d) 360 (1960); *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962) (as to subsections (w) and (cc)); *Griffin v. Pancoast*, 257 N. C. 52, 125 S. E. (2d) 310 (1962) (as to subsection (l)); *Hensley v. Wallen*, 257 N. C. 675, 127 S. E. (2d) 277 (1962) (as to subsections (a) and (w)); *Boykin v. Bisette*, 260 N. C. 295, 132 S.E.2d 616 (1963); *Parlier v. Barnes*, 260 N.C. 341, 132 S.E.2d 684 (1963); *Reeves v. Campbell*, 264 N.C. 224, 141 S.E.2d 296 (1965).

Part 2. Authority and Duties of Commissioner and Department.

§ 20-42. **Authority to administer oaths and certify copies of records.**—(a) Officers and employees of the Department designated by the Commissioner are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and shall charge for the acknowledgment of signatures a fee according to the following schedule:

- (1) One (1) signature ..... \$ .50
- (2) Two (2) signatures ..... .75
- (3) Three (3) or more signatures ..... 1.00

Funds received under the provisions of this subsection shall be used to defray a part of the costs of distribution of license plates, registration certificates and certificates of title issued by the Department.

(b) The Commissioner and such officers of the Department as he may design-

nate are hereby authorized to prepare under the seal of the Department and deliver upon request a certified copy of any record of the Department, charging a fee of fifty cents (50¢) for each document so certified, and every such certified copy shall be admissible in any proceeding in any court in like manner as the original thereof, without further certification (1937, c. 407, s. 7; 1955, c. 480; 1961, c. 861, s. 1.)

**Editor's Note.** — The 1955 amendment substituted "certified" for "authenticated" in line four of subsection (b) and added the words "without further certification" at the end of the subsection.

The 1961 amendment deleted the words "do so without fee" formerly appearing at the end of subsection (a) and added

that part of the subsection beginning with "charge for" in line three.

See Editor's Note to § 20-63.

**Applied** in *State v. Moore*, 247 N. C. 368, 101 S. E. (2d) 26 (1957).

**Cited** in *State v. Corl*, 250 N. C. 252, 108 S. E. (2d) 608 (1959); *State v. Knight*, 261 N.C. 17, 134 S.E.2d 101 (1964).

**§ 20-48. Giving of notice.**—Whenever the Department is authorized or required to give any notice under this chapter or other law regulating the operation of vehicles, unless a different method of giving such notice is otherwise expressly prescribed, such notice shall be given either by personal delivery thereof to the person to be so notified or by deposit in the United States mail of such notice in an envelope with postage prepaid, addressed to such person at his address as shown, by the records of the Department. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice in either such manner may be made by the certificate of any officer or employee of the Department or affidavit of any person over twenty-one years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof. (1937, c. 407, s. 13; 1955 c. 1187, s. 21.)

**Editor's Note.** — The 1955 amendment, effective July 1, 1955, substituted "chapter" for "article" in line two.

**§ 20-49. Police authority of Department.**

(i) For the purpose of determining compliance with the provisions of this chapter, to inspect all files and records of the persons hereinafter designated and required to be kept under the provisions of this chapter or of the registrations of the Department:

1. Persons dealing in or selling and buying new, used or junked motor vehicles and motor vehicle parts; and
2. Persons operating garages or other places where motor vehicles are repaired, dismantled, or stored. (1937 c. 407, s. 14; 1955, c. 554, s. 1.)

**Editor's Note.** — The 1955 amendment, effective July 1, 1955, added subsection (i). As the rest of the section was not affected by the amendment it is not set out.

Part 3. Registration and Certificates of Titles of Motor Vehicles.

**§ 20-50. Owner to secure registration and certificate of title.**—Except as otherwise provided in this article, every owner of a vehicle intended to be operated upon any highway of this State and required by this article to be registered shall, before the same is so operated, apply to the Department for and obtain the registration thereof, the registration plates therefor and a certificate of title therefor, and attach the registration plates to the vehicle, except when an owner is permitted to operate a vehicle under the registration provisions relating to manufacturers, dealers and nonresidents contained in 20-79, or under temporary registration plates as provided in this article: Provided that the Commissioner of Motor Vehicles or his duly authorized agent is empowered to grant a special one-way trip permit to move a vehicle without license upon good

cause being shown. It is further provided that when the owner of a vehicle leases such vehicle to a common carrier of passengers or property and it is actually used by such common carrier in the operation of its business, the registration plates may be obtained by the lessee, upon written consent of the owner, after the certificate of title has been obtained by the owner. The lessee shall make application on an appropriate form furnished by the Department and file such evidence of the lease as the Department may require. (1937, c. 407, s. 15; 1943, c. 648; 1945, c. 956, s. 3; 1947, c. 219, s. 2; 1953, c. 831, s. 3; 1957, c. 246, s. 2; 1961, c. 360, s. 1; 1963, c. 552, s. 1.)

**Editor's Note.—**

The 1953 amendment added the last two sentences.

The 1957 amendment inserted, after "20-79" in line eight, the words "or under temporary registration plates as provided in this article." Section 4 of the amendatory act made it effective from July 1, 1957, and applicable to all licenses for years beginning after December 31, 1957.

The 1961 amendment, effective Jan. 1, 1962, added the exception clause at the beginning of the section.

The 1963 amendment, effective July 1,

1963, deleted a proviso exempting certain trailers from the requirement of a certificate of title.

**Applied in** *Hawkins v. M & J Finance Corp.*, 238 N. C. 174, 77 S. E. (2d) 669 (1953).

**Stated in** *Southern Auto Finance Co. v. Pittman*, 253 N. C. 550, 117 S. E. (2d) 423 (1960); *Pilot Freight Carriers, Inc. v. Scheidt*, 263 N.C. 737, 140 S.E.2d 383 (1965).

**Cited in** *Community Credit Co. of Lenoir, Inc. v. Norwood*, 257 N. C. 87, 125 S. E. (2d) 369 (1962).

**§ 20-51. Exempt from registration.** — The following shall be exempt from the requirement of registration and certificate of title:

- (1) Any such vehicle driven or moved upon a highway in conformance with the provisions of this article relating to manufacturers, dealers, or non-residents.
- (2) Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another.
- (3) Any implement of husbandry, farm tractor, road construction or maintenance machinery or other vehicle which is not self-propelled that was designed for use in work off the highway and which is operated on the highway for the purpose of going to and from such non-highway projects.
- (4) Any vehicle owned and operated by the government of the United States.
- (5) Farm tractors equipped with rubber tires and trailers or semi-trailers when attached thereto and when used by a farmer, his tenant, agent, or employee in transporting his own farm implements, farm supplies, or farm products from place to place on the same farm, from one farm to another, from farm to market, or from market to farm. This exemption shall extend also to any tractor and trailer or semi-trailer while on any trip within a radius of ten miles from the point of loading. This section shall not be construed as granting any exemption to farm tractors and trailers or semi-trailers which are operated on a for-hire basis, whether money or some other thing of value is paid or given for the use of such tractors and trailers or semi-trailers.
- (6) Any trailer or semi-trailer attached to and drawn by a properly licensed motor vehicle when used by a farmer, his tenant, agent, or employee in transporting unginning cotton, peanuts, silage, or irrigation pipes and equipment owned by such farmer or tenant from place to place on the same farm, from one farm to another, from farm to gin, from farm to dryer, or from farm to market, and when not operated on a for-hire basis.
- (7) Those small farm trailers known generally as tobacco handling trailers, tobacco trucks or tobacco trailers when used by a farmer, his tenant,



agent or employee, when transporting or otherwise handling tobacco in connection with the pulling, tying or curing thereof. (1937, c. 407, s. 16; 1943, c. 500; 1949, c. 429; 1951, c. 705, s. 2; 1953, c. 826, ss. 2, 3; c. 1316, s. 1; 1961, cc. 334, 817; 1963, c. 145; 1965, c. 1146.)

**Editor's Note.—**

The first 1953 amendment rewrote subdivision (3) and deleted a former subdivision relating to a special mobile equipment.

The second 1953 amendment added subdivision (6).

The first 1961 amendment added subdivision (7). The second 1961 amendment inserted the provision as to silage in subdivision (6).

The 1963 amendment inserted the word "peanuts" and the words "from farm to dryer" in subdivision (6).

The 1965 amendment included irrigation pipes and equipment in subdivision (6).

Farm tractors are not to be considered motor vehicles within the statute relating to the registration and certificates of titles of motor vehicles. *Brown v. Fidelity & Cas. Co.*, 241 N. C. 666, 86 S. E. (2d) 433 (1955).

Cited in *Hawkins v. M & J Finance Corp.*, 238 N. C. 174, 77 S. E. (2d) 669 (1953).

§ 20-52. Application for registration and certificate of title. — (a) Every owner of a vehicle subject to registration hereunder shall make application to the Department for the registration thereof and issuance of a certificate of title for such vehicle upon the appropriate form or forms furnished by the Department, and every such application shall bear the signature of the owner written with pen and ink, and said signature shall be acknowledged by the owner before a person authorized to administer oaths, and said application shall contain:

- (1) The name, bona fide residence and mail address of the owner or business address of the owner if a firm, association or corporation;
- (2) A description of the vehicle, including, in so far as the hereinafter specified data may exist with respect to a given vehicle, the make, model, type of body, the serial number of the vehicle, the engine and other identifying numbers of the vehicle and whether new or used, and if a new vehicle, the date of sale and actual date of delivery of vehicle by the manufacturer or dealer to the person intending to operate such vehicle;
- (3) A statement of the applicant's title and of all liens or encumbrances upon said vehicle and the names and addresses of all lien holders in the order of their priority, and the amount, date and nature of the security agreement;
- (4) Such further information as may reasonably be required by the Department to enable it to determine whether the vehicle is lawfully entitled to registration and the owner entitled to a certificate of title.

(b) When such application refers to a new vehicle purchased from a manufacturer or dealer, such application shall be accompanied with a manufacturer's certificate of origin that is properly assigned to the applicant. If the new vehicle is acquired from a dealer or person located in another jurisdiction other than a manufacturer, the application shall be accompanied with such evidence of ownership as is required by the laws of that jurisdiction duly assigned by the disposer to the purchaser, or, if no such evidence of ownership be required by the laws of such other jurisdiction, a notarized bill of sale from the disposer. (1937, c. 407, s. 17; 1961, c. 835, ss. 2, 3.)

**Editor's Note.—**The 1961 amendment, effective July 1, 1961, rewrote subdivision (3) of subsection (a) and also subsection (b).

Cited in *Community Credit Co. of Le-noir, Inc. v. Norwood*, 257 N. C. 87, 125 S. E. (2d) 369 (1962).

§ 20-52.1. Manufacturer's certificate of transfer of new motor vehicle.—(a) Any manufacturer transferring a new motor vehicle to another shall,

at the time of the transfer, supply the transferee with a manufacturer's certificate of origin assigned to the transferee.

(b) Any dealer transferring a new vehicle to another dealer shall, at the time of transfer, give such transferee the proper manufacturer's certificate assigned to the transferee.

(c) Any dealer transferring a new vehicle to a consumer-purchaser shall, at the time of transfer, give the purchaser the proper manufacturer's certificate assigned to the transferee. (1961, c. 835, s. 4.)

**Editor's Note.**—The act inserting this section is effective as of July 1, 1961.

**§ 20-53. Application for specially constructed, reconstructed, or foreign vehicle.**

(c), (d) : Repealed by Session Laws 1965, c. 734, s. 2, effective Feb. 16, 1966. (1937, c. 407, s. 18; 1949, c. 675; 1953, c. 853; 1957, c. 1355; 1965, c. 734, s. 2.)

**Editor's Note.**—

The 1953 amendment inserted in former subsection (c) references to other designated employees of the Department of Motor Vehicles, and added a proviso at the end of the subsection. The 1957 amendment added former subsection (d).

The 1965 amendment, effective Feb. 16,

1966, repealed subsections (c) and (d), which related to the inspection and certification of foreign vehicles before registration.

As subsections (a) and (b) were not affected by the amendments, they are not set out.

**§ 20-56. Registration indexes.**

Stated in *Hawkins v. M & J Finance Corp.*, 238 N. C. 174, 77 S. E. (2d) 669 (1953).

**§ 20-57. The Department to issue certificate of title and registration card.**

(b) The registration card shall be delivered to the owner and shall contain upon the face thereof the name and address of the owner, space for owner's signature, the registration number assigned to the vehicle, and such description of the vehicle as determined by the Commissioner, and upon the reverse side a form for endorsement of notice to the Department upon transfer of the vehicle. Upon application to the Department, the registered owner may acquire additional copies of the registration card at a fee of fifty cents (50¢) each.

(c) Every owner upon receipt of a registration card, shall write his signature thereon with pen and ink in the space provided. Every such registration card shall at all times be carried in the vehicle to which it refers or in the vehicle to which transfer is being effected, as provided by G. S. 20-64 at the time of its operation, and such registration card shall be displayed upon demand of any peace officer or any officer of the Department: Provided, however, any person charged with failing to so carry such registration card shall not be convicted if he produces in court a registration card theretofore issued to him and valid at the time of his arrest: Provided further, that in case of a transfer of a license plate from one vehicle to another under the provisions of G. S. 20-72, evidence of application for transfer shall be carried in the vehicle in lieu of the registration card.

(d) The certificate of title shall contain upon the face thereof the identical information required upon the face of the registration card, and in addition thereto the date of issuance and all liens or encumbrances disclosed in the application for title. All such liens or encumbrances shall be shown in the order of their priority, according to the information contained in such application.

(1961, c. 360, s. 2; c. 835, s. 5; 1963, c. 552, s. 2.)

**Editor's Note.**—

The first 1961 amendment effective Jan. 1, 1962, rewrote subsection (c). And the

second 1961 amendment, effective July 1, 1961, rewrote subsection (d).

The 1963 amendment, effective July 1,

1963, added the second sentence of subsection (b) and the second proviso to subsection (c).

As the other subsections were not changed by the amendments they are not set out.

**§ 20-58. Perfection of security interests generally.**—(a) Except as provided in G. S. 20-58.9, a security interest in a vehicle of a type for which a certificate of title is required is not valid against creditors of the owner or subsequent transferees or lien holders of the vehicle unless perfected as provided in this chapter.

(b) A security interest is perfected by delivery to the Department of the existing certificate of title if the vehicle has been previously registered in this State, and if not, an application for a certificate of title containing the name and address of the lien holder, the date, amount and nature of his security agreement, and the required fee. The lien is perfected as of the time of its creation if the delivery of the certificate or application to the Department is completed within ten days thereafter, otherwise it is perfected as of the time of delivery.

(c) If a vehicle is subject to a security interest when brought into this State, the validity of the security interest is determined by the law of the jurisdiction where the vehicle was when the security interest attached, subject to the following:

- (1) If the vehicle is purchased for use and registration in North Carolina, the validity of the security interest in this State is determined by the law of this State.
- (2) If the security interest was perfected under the law of the jurisdiction where the vehicle was when the security interest attached, the following rules apply:
  - a. If the name of the lien holder is shown on an existing certificate of title issued by that jurisdiction, his security interest continues perfected in this State.
  - b. If the name of the lien holder is not shown on an existing certificate of title issued by that jurisdiction, the security interest continues perfected in this State for four months after vehicle is brought into this State, and also, thereafter if, within the four-month period, it is perfected in this State. The security interest may also be perfected in this State after the expiration of the four-month period; in that case perfection dates from the time of perfection in this State.
- (3) If the security interest was not perfected under the law of the jurisdiction where the vehicle was when the security interest attached, it may be perfected in this State; in that case, perfection dates from the time of perfection in this State. (1937, c. 407, s. 22; 1955, c. 554, s. 2; 1961, c. 835, s. 6.)

**Editor's Note.**—The 1961 amendment, effective July 1, 1961, struck out former G. S. 20-58, relating to release by lien holder to owner, and inserted in lieu thereof the present section and G. S. 20-58.1 through 20-58.10.

Former G. S. 20-58 had been amended in 1955 to make void liens of record more than five years from date of notice.

The 1961 amendatory act made extensive changes in the law with respect to the manner in which lienholder must give notice of liens on motor vehicles. The certificate of title issued by the Department now fixes

Stated in *Hawkins v. M & J Finance Corp.*, 238 N. C. 174, 77 S. E. (2d) 669 (1953).

Cited in *Community Credit Co. of Lenoir, Inc. v. Norwood*, 257 N. C. 87, 125 S. E. (2d) 369 (1962).

the priority of liens. It is no longer necessary to record the mortgage or other lien in the county where the debtor resides. *Community Credit Co. of Lenoir, Inc. v. Norwood*, 257 N. C. 87, 125 S. E. (2d) 369 (1962).

**Effective Date of Lien.**—The lien, if the agreement to pay is filed with the Department within ten days from its date, relates back to the day the lien was created. *Wachovia Bank & Trust Co. v. Wayne Fin. Co.*, 262 N.C. 711, 138 S.E.2d 481 (1964).

**Pledge Not Prohibited.**—No language of

the 1961 amendatory act expressly prohibits the creation of a pledge. *Wachovia Bank & Trust Co. v. Wayne Fin. Co.*, 262 N.C. 711, 138 S.E.2d 481 (1964).

**Thus, Mortgagee in Possession May Have Priority.**—The legislature did not intend to prevent a mortgagee who has actual possession of the pledged vehicle from acquiring a lien having priority over liens not then perfected. *Wachovia Bank & Trust Co. v. Wayne Fin. Co.*, 262 N.C. 711, 138 S.E.2d 481 (1964).

**§ 20-58.1. Liens created subsequent to original issuance of certificate of title.**—If an owner creates a security interest in a vehicle after the original issuance of a certificate of title to such vehicle.

- (1) The owner shall immediately execute an application, on a form the Department prescribes, to name the lien holder on the certificate, showing the name and address of the lien holder, the amount, date and nature of his security agreement, and cause the certificate, application and the required fee to be delivered to the lien holder.
- (2) The lien holder shall immediately cause the certificate, application and the required fee to be mailed or delivered to the Department.
- (3) If the certificate of title is in the possession of some prior lien holder, the new or subordinate lienor shall forward to the Department the required application for noting his lien, together with the required fee, and the Department when satisfied that the application is in order shall procure the certificate of title from the lien holder in whose possession it is being held, for the sole purpose of noting the new lien thereon. Upon request of the Department, a lien holder in possession of the certificate of title shall forthwith deliver or mail the certificate of title to the Department. The delivery of the certificate does not affect the rights of the first lien holder under his security agreement.
- (4) Upon receipt of the certificate of title, application and the required fee, the Department, if it finds the application in order, shall either endorse on the certificate, or issue a new certificate containing, the name and address of the new lien holder, and mail the certificate to the first lien holder named in it. The Department shall also notify the new lien holder of the fact that his lien has been noted upon the certificate of title. (1961, c. 835, s. 6.)

**§ 20-58.2. Certificate as notice of lien.**—A certificate of title to a vehicle, when issued by the Department showing a lien or encumbrance, shall be deemed adequate notice to all creditors and purchasers that a security interest exists in and against the motor vehicle, and recordation of such reservation of title, lien or encumbrance in the county wherein the purchaser or debtor resides or elsewhere shall not be necessary for the validity thereof. (1961, c. 835, s. 6.)

**Section Changes Place of Recordation.**—The place where the lien is to be recorded is changed by this section from the office of the register of deeds to the Department

**Duty of Officer to Report Levy; Levy Subordinate to Other Liens.**—When a levy has been made on an automobile pursuant to an execution, it is now the duty of the officer to report the levy to the Department of Motor Vehicles in a form prescribed by it. The levy so reported is subordinate to all liens theretofore noted on the certificate by the Department. *Community Credit Co. of Lenoir, Inc. v. Norwood*, 257 N. C. 87, 125 S. E. (2d) 369 (1962).

of Motor Vehicles. *Wachovia Bank & Trust Co. v. Wayne Fin. Co.*, 262 N.C. 711, 138 S.E.2d 481 (1964).

**§ 20-58.3. Assignment by lien holder.**—(a) A lien holder, other than one whose interest is dependent solely upon possession may assign, absolutely or otherwise, his security interest in the vehicle to a person other than the owner without affecting the interest of the owner or the validity of the security interest, but any person without notice of the assignment is protected in dealing

with the lien holder as the holder of the security interest and the lien holder remains liable for any obligations as lien holder until an assignment by the lien holder is delivered to the Department as provided in subsection (b).

(b) The assignee may, but need not to perfect the assignment, have the certificate of title endorsed or issued with the assignee named as lien holder, upon delivering to the Department with the required fee, the certificate of title and an assignment by the lien holder named in the certificate in the form the Department prescribes.

(c) The assignee of any lien properly assigned and noted on the certificate of title as described above shall be entitled to the same priority among the outstanding lienors and have all the other property rights therein as had formerly been held by his assignor. (1961, c. 835, s. 6.)

**§ 20-58.4. Release of security interest.**—(a) Upon the satisfaction of a security interest in a vehicle for which the certificate of title is in the possession of the lien holder, the lien holder shall within ten days after demand and, in any event, within thirty days, execute a release of his security interest, in the space provided therefor on the certificate or as the Department prescribes, and mail or deliver the certificate and release to the next lien holder named therein, or, if none, to the owner or other person authorized to receive the certificate for the owner.

(b) Upon the satisfaction of a security interest in a vehicle for which the certificate of title is in the possession of a prior lien holder, the lien holder whose security interest is satisfied shall within ten days execute a release of his security interest in such form as the Department prescribes and mail or deliver the same to the owner or other person authorized to receive the same for the owner.

(c) An owner, upon securing the release of any security interest in a vehicle shown upon the certificate of title issued therefor, may exhibit the documents evidencing such release, signed by the person or persons making such release, and the certificate of title to the Department which shall, when satisfied as to the genuineness and regularity of the release, issue to the owner either a new certificate of title in proper form or an endorsement or rider attached thereto showing the release of the security interest.

(d) If an owner exhibits documents evidencing the release of a security interest as provided in subsection (c) of this section but is unable to furnish the certificate of title to the Department because it is in possession of a prior lien holder, the Department, when satisfied as to the genuineness and regularity of the release, shall procure the certificate of title from the person in possession thereof for the sole purpose of noting thereon the release of the subsequent security interest, following which the Department shall return the certificate of title to the person from whom it was obtained and notify the owner that the release has been noted on the certificate of title.

(e) If it is impossible for the owner to secure from the lien holder the release contemplated by this section, the owner may exhibit to the Department such evidence as may be available showing satisfaction of the debt secured, together with a sworn affidavit by the owner that the debt has been satisfied, which the Department may treat as a proper release for purposes of this section when satisfied as to the genuineness, truth and sufficiency thereof. Prior to cancellation of a security interest under the provisions of this subsection, at least fifteen days' notice of the pendency thereof shall be given to the lien holder at his last known address by the Department by registered letter. (1961, c. 835, s. 6.)

**§ 20-58.5. Duration of security interests in favor of firms which cease to do business.**—Any security interest recorded in favor of a firm or corporation which, since the recording of such lien, has dissolved, ceased to do business, or gone out of business for any reason, and which remains of record as a security interest of such firm or corporation for a period of more than three

years from the date of the recording thereof, shall become null and void and of no further force and effect. (1961, c. 835, s. 6.)

**§ 20-58.6. Levy of execution or other proper court order as constituting security interest, etc.**—A levy made by virtue of an execution or some other proper court order, upon a vehicle for which a certificate of title has been issued by the Department, shall constitute a security interest, subsequent to all others theretofore recorded by the Department, if and when the officer making such levy makes a report to the Department in the form prescribed by the Department, that such levy has been made and that the vehicle levied upon has been seized by and is in the custody of such officer. If such security interest created thereby is thereafter satisfied, or should the vehicle thus levied upon and seized be thereafter released by such officer, he shall immediately report that fact to the Department. Any owner who, after such levy and seizure by an officer and before a report thereof by the officer to the Department, shall fraudulently assign or transfer his title to or interest in such vehicle or cause the certificate of title thereto to be assigned or transferred or cause a security interest to be shown upon such certificate of title shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00), or imprisoned for not less than ten days nor more than twelve months. (1961, c. 835, s. 6.)

**§ 20-58.7. Duty of lien holder to disclose information.**—A lien holder named in a certificate of title shall, upon written request of the owner or of another lien holder named on the certificate, disclose information as to his security agreement and the indebtedness secured by it. (1961, c. 835, s. 6.)

**§ 20-58.8. Cancellation of certificate.**—The cancellation of a certificate of title shall not, in and of itself, affect the validity of a security interest noted on it. (1961, c. 835, s. 6.)

**§ 20-58.9. Excepted liens and security interests.**—The provisions of G. S. 20-58 through 20-58.8 inclusive shall not apply to or affect:

- (1) A lien given by statute or rule of law for storage of a motor vehicle or to a supplier of services or materials for a vehicle;
- (2) A lien arising by virtue of a statute in favor of the United States, this State or any political subdivision of this State; or
- (3) A security interest in a vehicle created by a manufacturer or dealer who holds the vehicle for resale but a buyer in the ordinary course of trade from the manufacturer or dealer takes free of such security interest. (1961, c. 835, s. 6.)

**§ 20-58.10. Effective date of §§ 20-58 to 20-58.9.**—The provisions of G. S. 20-58 through 20-58.9 inclusive shall be effective and relate to the perfecting and giving notice of security interests entered into on and after January 1, 1962. (1961, c. 835, s. 6.)

Applied in *Community Credit Co. of Lenoir, Inc. v. Norwood*, 257 N. C. 87, 125 S. E. (2d) 369 (1962).

**§ 20-61. Owner dismantling or wrecking vehicle to return evidence of registration.**—Any owner dismantling or wrecking any vehicle shall forward to the Department the certificate of title, registration card and other proof of ownership, and the registration plates last issued for such vehicle, unless such plates are to be transferred to another vehicle of the same owner. In that event, the plates shall be retained and preserved by the owner for transfer to such other vehicle. No person, firm or corporation shall dismantle or wreck any motor vehicle without first complying with the requirements of this section. The Commissioner upon receipt of certificate of title and notice from the owner thereof

that a vehicle has been junked or dismantled may cancel and destroy such record of certificate of title. (1937, c. 407, s. 25; 1947, c. 219, s. 3; 1961, c. 360, s. 3.)

**Editor's Note.**— 1962, rewrote the former first sentence to  
The 1961 amendment, effective Jan. 1, appear as the present first two sentences.

**§ 20-63. Registration plates to be furnished by the Department; requirements; surrender and reissuance; displaying; preservation and cleaning; alteration or concealment of numbers; commission contracts for issuance.**—(a) The Department upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer or semi-trailer and for every other motor vehicle. Registration plates issued by the Department under this article shall be and remain the property of the State, and it shall be lawful for the Commissioner or his duly authorized agents to summarily take possession of any plate or plates which he has reason to believe is being illegally used, and to keep in his possession such plate or plates pending investigation and legal disposition of the same. Whenever the Commissioner finds that any registration plate issued for any vehicle pursuant to the provisions of this article has become illegible or is in such a condition that the numbers thereon may not be readily distinguished, he may require that such registration plate, and its companion when there are two registration plates, be surrendered to the Department. When said registration plate or plates are so surrendered to the Department, a new registration plate or plates shall be issued in lieu thereof without charge. The owner of any vehicle who receives notice to surrender illegible plate or plates on which the numbers are not readily distinguishable and who wilfully refuses to surrender said plates to the Department shall be guilty of a misdemeanor.

(d) Registration plates issued for a motor vehicle other than a motorcycle, trailer, or semi-trailer shall be attached thereto, one in the front and the other in the rear: Provided, that when only one registration plate is issued for a motor vehicle other than a truck-tractor, said registration plate shall be attached to the rear of the motor vehicle. The registration plate issued for a truck-tractor shall be attached to the front thereof.

(f) Operating with False Numbers.—Any person who shall wilfully operate a motor vehicle with a registration plate which has been repainted or altered or forged shall be guilty of a misdemeanor.

(h) Commission Contracts for Issuance of Plates and Certificates.—All registration plates, registration certificates and certificates of title issued by the Department, outside of those issued from the Raleigh offices of the said Department and those issued and handled through the U. S. mail, shall be issued insofar as practicable and possible through commission contracts entered into by the Department for the issuance of such plates and certificates in localities throughout North Carolina with persons, firms, corporations or governmental subdivisions of the State of North Carolina and the Department shall make a reasonable effort in every locality, except as hereinbefore noted, to enter into a commission contract for the issuance of such plates and certificates and a record of these efforts shall be maintained in the Department. In the event the Department is unsuccessful in making commission contracts as hereinbefore set out it shall then issue said plates and certificates through the regular employees of the Department. Whenever registration plates, registration certificates and certificates of title are issued by the Department through commission contract arrangements, the Department shall provide proper supervision of such distribution. Commission contracts entered into hereunder shall provide for the payment of compensation at the rate of twenty-two cents (22¢) per registration plate. Nothing contained in this subsection will allow or permit the operation of fewer outlets in any county in this State than are now being operated. (1937, c. 407, s. 27; 1943, c. 726; 1951, c. 102, ss. 1-3; 1955, c. 119, s. 1; 1961, c. 360, s. 4; c. 861, s. 2; 1963, c. 552, s. 6; c. 1071; 1965, c. 1088.)

**Editor's Note.—**

The 1955 amendment deleted the words "two registration plates" after the word "and" in line two of subsection (a). It also deleted a former proviso to the first sentence which authorized the Commissioner to provide for the issuance of only one registration plate for each vehicle in case of an actual or threatened shortage of metal.

The first 1961 amendment, effective Jan. 1, 1962, deleted from subsection (f) the words "or which was issued by the Commissioner for a motor vehicle other than the one on which used."

The second 1961 amendment, effective June 16, 1961, added subsection (h). Section 4 of the amendatory act provided that "the distribution of registration plates by the Department as provided for herein shall begin not later than July 1, 1963."

The first 1963 amendment, effective July 1, 1963, substituted "truck-tractor" for "motorcycle, trailer or semi-trailer" in the proviso and last sentence of subsection (d). It also substituted "front" for "rear" near the end of the last sentence of subsection (d).

The second 1963 amendment deleted from the first sentence of subsection (h) the words "which are not engaged in any commercial enterprise in competition with any other person, firm or corporation in said locality," following the words "persons, firms, corporations or governmental subdivisions of the State of North Carolina."

The 1965 amendment, effective July 1, 1965, substituted "shall provide for the payment of compensation at the rate of twenty-two cents (22¢) per registration plate" for former provisions allowing proration of compensation and fixing compensation at a maximum of seventeen cents per plate in subsection (h).

As the rest of the section was not changed, only subsections (a), (d), (f) and (h) are set out.

**Aiding and Abetting Unlawful Use of Plate.**—Guilt also attaches to anyone who knowingly aids and abets the unlawful use of a license plate. *Woodruff v. Holbrook*, 255 N. C. 740, 122 S. E. (2d) 709 (1961).

**§ 20-64. Transfer of registration plates to another vehicle.—(a)**

Except as otherwise provided in this article, registration plates shall be retained by the owner thereof upon disposition of the vehicle to which assigned, and may be assigned to another vehicle, belonging to such owner and of a like vehicle category within the meaning of G. S. 20-87 and 20-88, upon proper application to the Department and payment of a transfer fee and such additional fees as may be due because the vehicle to which the plates are to be assigned requires a greater registration fee than that vehicle to which the license plates were last assigned. In cases where the plate is assigned to another vehicle belonging to such owner, and is not of a like vehicle category within the meaning of G. S. 20-87 and 20-88, the owner shall surrender the plate to the Department and receive therefor a plate of the proper category, and the unexpired portion of the fee originally paid by the owner for the plate so surrendered shall be a credit toward the fee charged for the new plate of the proper category. Provided, that the owner shall not be entitled to a cash refund when the registration fee for the vehicle to which the plates are to be assigned is less than the registration fee for that vehicle to which the license plates were last assigned. Provided, however, registration plates may not be transferred under this section after December thirty-first of the year for which issued. An owner assigning or transferring plates to another vehicle as provided herein shall be subject to the same assessments and penalties for use of the plates on another vehicle or for improper use of the plates, as he could have been for the use of the plates on the vehicle to which last assigned. Provided, however, that upon compliance with the requirements of this section, the registration plates of vehicles owned by and registered in the name of a corporation may be transferred and assigned to a like vehicle category within the meaning of G. S. 20-87 and 20-88, upon the showing that the vehicle to which the transfer and assignment is to be made is owned by a corporation which is a wholly owned subsidiary of the corporation applying for such transfer and assignment.

(b) Upon a change of the name of a corporation or a change of the name



under which a proprietorship or partnership is doing business, the corporation, partnership or proprietorship shall forthwith apply for correction of the certificate of title of all vehicles owned by such corporation, partnership or proprietorship so as to correctly reflect the name of the corporation or the name under which the proprietorship or partnership is doing business, and pay the fees required by law.

(c) Upon a change in the composition of a partnership, ownership of vehicles belonging to such partnership shall not be deemed to have changed so long as one partner of the predecessor partnership remains a partner in the reconstituted partnership, but the reconstituted partnership shall forthwith apply for correction of the certificate of title of all vehicles owned by such partnership so as to correctly reflect the composition of the partnership and the name under which it is doing business, if any, and pay the fees required by law.

(d) When a proprietorship or partnership is incorporated, the corporation shall retain license plates assigned to vehicles belonging to it and may use the same, provided the corporation applies for and obtains transfers of the certificates of title of all vehicles and pays the fees required by law.

(e) Upon death of the owner of a registered vehicle, such registration shall continue in force as a valid registration until the end of the year for which the license is issued unless ownership of the vehicle passes or is transferred to any person other than the surviving spouse before the end of the year.

(f) Whenever the owner of a registered vehicle transfers or assigns his interest to another who licenses such vehicle in North Carolina in his name for the same license year, such transferor may, by surrendering the plate and registration certificate to the Department, secure a refund of the unexpired portion of such plate on a monthly basis, beginning the first day of the month following the transfer of interest, provided, that the annual license fee for such surrendered plates is sixty dollars (\$60.00) or more.

(g) The Commissioner of Motor Vehicles shall have the power to make such rules and regulations as he may deem necessary for the administration of transfers of license plates and vehicles under this article. (1937, c. 407, s. 28; 1945, c. 576, s. 1; 1947, c. 914, s. 1; 1951, c. 188; 1951, c. 819, s. 1; 1961, c. 360, s. 5; 1963, cc. 1067, 1190.)

**Editor's Note.—**

The 1961 amendment, effective Jan. 1, 1962, rewrote this section.

The first 1963 amendment, effective July 1, 1963, inserted the present second and third sentences in subsection (a).

The second 1963 amendment, effective July 1, 1963, added the proviso at the end of subsection (a).

**§ 20-64.1. Revocation of license plates by Utilities Commission.**

**Editor's Note.—**

In chapter 62 as rewritten by Session Laws 1963, c. 1165, the two acts are combined as article 12. §§ 62-259 through 62-

279. Section 62-278 in chapter 62 as rewritten is in substance a re-enactment of this section.

**§ 20-64.2. Permit for emergency use of registration plate.**—The Commissioner may, if in his opinion it is equitable, grant to the licensee a special permit for the use of a registration plate on a vehicle other than the vehicle for which the plate was issued, when the vehicle for which such plate was issued is undergoing repairs in a regular repair shop or garage.

Application for such permit shall be made on forms provided by the Department and must show, in addition to such other information as may be required by the Commissioner, that an emergency exists which would warrant the issuance of such permit.

Such permit shall be evidenced by a certificate issued by the Commissioner and which shall show the time of issuance, the person to whom issued, the motor number, serial number or identification number of the vehicle on which such plate

is to be used and shall be in the immediate possession of the person operating such vehicle at all times while operating the same. And such certificate shall be valid only so long as the vehicle for which the registration plate has been issued shall remain in the repair shop or garage but not to exceed a period of twenty (20) days from its issuance. The person to whom the permit provided in this section is issued shall be liable for any additional license fees or penalties that might accrue by reason of the provisions of §§ 20-86 and 20-96 of the General Statutes. (1957, c. 402.)

**§ 20-65. Expiration of registration.**—Every vehicle registration under this article and every registration card and registration plate issued hereunder shall expire at midnight on the thirty-first day of December of each year: Provided, however, that it shall not be unlawful to continue to operate any vehicle upon the highways of this State after the expiration of the registration of said vehicle, registration card and registration plate during the period between the thirty-first day of December and the fifteenth day of February, inclusive, if the license plate is registered to the vehicle on which it is being used prior to the thirty-first day of December. (1937, c. 407, s. 29; 1943, c. 592, s. 1; 1955, c. 554, s. 3; 1961, c. 360, s. 6.)

**Editor's Note.**—

The 1955 amendment, effective July 1, 1955, substituted "fifteenth day of February" for "thirty-first day of January" in line seven.

The 1961 amendment, effective Jan. 1, 1962, added at the end of the section the words "if the license plate is registered to the vehicle on which it is being used prior to the thirty-first day of December."

**§ 20-66. Application for renewal of registration.**—(a) Application for renewal of a vehicle registration shall be made by the owner upon proper application and by payment of the registration fee for such vehicle, as provided by law

(b) The Department may receive applications for renewal of registration and grant the same, and issue new registration cards and plates at any time prior to expiration of registration. (1937, c. 407, s. 30; 1955, c. 554, s. 3.)

**Editor's Note.**—The 1955 amendment, effective July 1, 1955, deleted, at the end of subsection (b), the words "but no person shall display upon a vehicle the new registration plates prior to December first."

**§ 20-66.1. Devices in lieu of registration plates for renewal of vehicle registration.**—The Department may issue one or more stickers, tabs, or other suitable devices for renewal of vehicle registration in lieu of new registration plates provided for under this article. Except where the physical differences between the stickers, tabs, or devices and registration plates by their nature render the provisions of this chapter inapplicable, all provisions of this chapter relating to registration plates shall apply to stickers, tabs, or devices. When issued, such stickers, tabs, or devices shall be displayed as prescribed by the commissioner. (1963, c. 552, s. 7.)

**Editor's Note.**—The act inserting this section became effective as of July 1, 1963.

**§ 20-67. Notice of change of address or name.**

(b) Whenever the name of any person who has made application for or obtained the registration of a vehicle or a certificate of title is thereafter changed by marriage or otherwise, such person shall thereafter forward or cause to be forwarded to the Department the certificate of title and to make application for correction of the certificate on forms provided by the Department. (1937, c. 407 s. 31; 1955, c. 554, s. 4.)

**Editor's Note.**—The 1955 amendment, effective July 1, 1955, rewrote subsection (b). As subsection (a) was not changed it is not set out.

**§ 20-68. Replacement of lost or damaged certificates, cards and plates.**—(a) In the event any registration card or registration plate is lost, mutilated, or becomes illegible, the owner or legal representative of the owner of the vehicle for which the same was issued, as shown by the records of the Department, shall immediately make application for and may obtain a duplicate or a substitute or a new registration under a new registration number, as determined to be most advisable by the Department, upon the applicant's furnishing under oath information satisfactory to the Department and payment of required fee.

(b) If a certificate of title is lost, stolen, mutilated, destroyed or becomes illegible, the first lien holder or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the Department, shall promptly make application for and may obtain a duplicate upon furnishing information satisfactory to the Department. It shall be mailed to the first lien holder named in it or, if none, to the owner. The Department shall not issue a new certificate of title upon application made on a duplicate until fifteen days after receipt of the application. A person recovering an original certificate of title for which a duplicate has been issued shall promptly surrender the original certificate to the Department. (1937, c. 407, s. 32; 1961, c. 360, s. 7; c. 835, s. 7.)

**Editor's Note.**—The first 1961 amendment, effective Jan. 1, 1962, struck out former subsection (b) and redesignated former subsection (c) as subsection (b). The second 1961 amendment, effective July 1, 1961, rewrote present subsection (b).

**§ 20-71. Altering or forging certificate of title, registration card or application, a felony.**— Any person who, with fraudulent intent, shall alter any certificate of title, registration card issued by the Department, or any application for a certificate of title or registration card, or forge or counterfeit any certificate of title or registration card purported to have been issued by the Department under the provisions of this article, or who, with fraudulent intent, shall alter, falsify or forge any assignment thereof, or who shall hold or use any such certificate, registration card, or application, or assignment, knowing the same to have been altered, forged or falsified, shall be guilty of a felony and upon conviction thereof shall be punished in the discretion of the court. (1937, c. 407, s. 35; 1959, c. 1264, s. 2.)

**Editor's Note.**— The 1959 amendment, effective Oct. 1, 1959, rewrote this section. *Applied in Smart Finance Co. v. Dick*, 256 N. C. 669, 124 S. E. (2d) 862 (1962).

**§ 20-71.1. Registration evidence of ownership; ownership evidence of defendant's responsibility for conduct of operation.**—(a) In all actions to recover damages for injury to the person or to property or for the death of a person, arising out of an accident or collision involving a motor vehicle, proof of ownership of such motor vehicle at the time of such accident or collision shall be prima facie evidence that said motor vehicle was being operated and used with the authority, consent, and knowledge of the owner in the very transaction out of which said injury or cause of action arose.

(b) Proof of the registration of a motor vehicle in the name of any person, firm, or corporation, shall for the purpose of any such action, be prima facie evidence of ownership and that such motor vehicle was then being operated by and under the control of a person for whose conduct the owner was legally responsible, for the owner's benefit, and within the course and scope of his employment. (1951, c. 494; 1961, c. 975.)

**Editor's Note.**—The 1961 amendment struck out the last part of the section which read as follows: "Provided, that no person shall be allowed the benefit of this section unless he shall bring his ac-

tion within one year after his cause of action shall have accrued."

For case note discussing cases arising under this section see 41 N. C. Law Rev. 124. For note on permissive user under the

omnibus clause, see 41 N. C. Law Rev. 232.

**Purpose of Section.**—The evident purpose of this section was to require that proof of ownership of an offending motor vehicle should be regarded as prima facie evidence that it was being operated at the time of the accident by the authority of the owner, doubtless having in view the decision in *Carter v. Thurston Motor Lines*, 227 N. C. 193, 41 S. E. (2d) 586 (1947), and to provide that, in the absence of proof of ownership, proof of motor vehicle registration in the name of a person would be prima facie evidence that the motor vehicle was being operated by one for whose conduct such person is legally responsible. *Travis v. Duckworth*, 237 N. C. 471, 75 S. E. (2d) 309 (1953).

**And Scope.**—This section applies in all actions to recover damages for injury to the person or to property, or for the death of a person, arising out of an accident or a collision involving a motor vehicle, and the rule of evidence established thereby applies whenever a factual determination as to alleged agency is to be made whether by the court to resolve a question of fact or by a jury to resolve an issue of fact. *Howard v. Sasso*, 253 N. C. 185, 116 S. E. (2d) 341 (1960).

The two subsections of this section are identical in their objective. While the language used in subsection (a) is not as apt as that used in subsection (b), the intent and meaning of the two are the same. *Hartley v. Smith*, 239 N. C. 170, 79 S. E. (2d) 767 (1954).

The legislature used the language "was being operated and used with the authority, consent, and knowledge of the owner" in subsection (a) of this section to connote "under the direction and control of the owner," and when one acts under the direction and control of another, he is agent or employee. It did not intend to give greater force and effect to mere proof of registration than to the admission or actual proof of ownership. In short, proof of registration is prima facie proof of ownership, under subsection (b), which in turn is prima facie proof of agency under subsection (a). *Hartley v. Smith*, 239 N. C. 170, 79 S. E. (2d) 767 (1954).

**Essential Meaning of This Section and § 1-105 the Same.** — Despite differences in the wording of this section and § 1-105 the essential meaning is the same. Section 1-105 requires an affirmative finding as to agency and this section establishes the rule that proof of ownership is prima facie evi-

dence of such agency. *Howard v. Sasso*, 253 N. C. 185, 116 S. E. (2d) 341 (1960).

**Proof of Ownership Sufficient to Support Service on Nonresident.**—Under this section ownership of a vehicle involved in an accident is sufficient proof of agency to support service of process on nonresident owner of motor vehicle whose agent is alleged to have negligently injured plaintiff by operation of the vehicle on North Carolina highways. *Todd v. Thomas*, 202 F. Supp. 45 (1962). See *Davis v. St. Paul-Mercury Indemnity Co.*, 294 F. (2d) 641 (1961). And see § 1-105 and note.

This section applies to an accident occurring prior to its effective date unless action was pending at the time of its effective date. *Spencer v. McDowell Motor Co.*, 236 N. C. 239, 72 S. E. (2d) 598 (1952).

**Proof of Ownership Alone Takes Case to Jury on Issue of Agency.**—Proof of ownership by the defendant of the motor vehicle involved in the injury complained of, by force of this section, must be regarded as sufficient to carry the case to the jury on the question of the legal responsibility of the defendant for the operation of the vehicle. *Travis v. Duckworth*, 237 N. C. 471, 75 S. E. (2d) 309 (1953); *Kellogg v. Thomas*, 244 N. C. 722, 94 S. E. (2d) 903 (1956); *Scott v. Lee*, 245 N. C. 68, 95 S. E. (2d) 89 (1956); *Johnson v. Wayne Thompson, Inc.*, 250 N. C. 665, 110 S. E. (2d) 306 (1959).

Under this section all now required for submission of the issue to the jury is that the injured party show ownership of the motor vehicle, which may be done prima facie by proof that the motor vehicle was registered in the name of the person sought to be charged. *Jyachosky v. Wensil*, 240 N. C. 217, 81 S. E. (2d) 644 (1954).

Under this section an admission of the ownership of one of the vehicles involved in a collision is sufficient to make out a prima facie case of agency sufficient to support, but not to compel, a verdict against the owner under the doctrine of respondeat superior for damages proximately caused by the negligence of the driver. *Hartley v. Smith*, 239 N. C. 170, 79 S. E. (2d) 767 (1954); *Elliott v. Killian*, 242 N. C. 471, 87 S. E. (2d) 903 (1955); *Davis v. Lawrence*, 242 N. C. 496, 87 S. E. (2d) 915 (1955); *Hatcher v. Clayton*, 242 N. C. 450, 88 S. E. (2d) 104 (1955); *Caughton v. Walker*, 243 N. C. 153, 90 S. E. (2d) 305 (1955).

While the vigor of the statute makes admitted ownership of a truck prima facie evidence that the operator was acting as the owner's agent or employee within the

scope of his employment, and sufficient to carry the case to the jury, it does not compel the finding by the jury that the driver was negligent or that he was the agent or employee of the owner and at the time acting within the scope of his employment. *Brothers v. Jernigan*, 244 N. C. 441, 94 S. E. (2d) 316 (1956).

The ultimate issue is for jury determination, notwithstanding the only positive evidence tends to show explicitly and clearly that the operator, whether driving with or without the owner's consent, was on a purely personal mission at the time of the collision. *Whiteside v. McC Carson*, 250 N. C. 673, 110 S. E. (2d) 295 (1959).

This section makes out a prima facie case of agency which will support, but does not compel, a verdict against defendant upon the principle of respondeat superior. *Chappell v. Dean*, 258 N. C. 412, 128 S. E. (2d) 830 (1963).

Where there is sufficient evidence of negligence of the operator of a motor vehicle to be submitted to the jury on that issue, evidence that the vehicle was registered in the name of the other defendant takes the issue of such other defendant's liability to the jury. *Ennis v. Dupree*, 258 N. C. 141, 128 S. E. (2d) 231 (1962).

Proof of registration or admission of ownership furnishes, by virtue of the statute, prima facie evidence that the driver is agent of the owner in the operation, and is sufficient to support, but not compel, a verdict on the agency issue. It takes the issue to the jury. Even so, plaintiff must allege, and has the burden of proving, agency. *Mitchell v. White*, 256 N. C. 437, 124 S. E. (2d) 137 (1962).

Where a judgment of compulsory nonsuit of plaintiff's action against a defendant who was the driver of the automobile involved in the action was improvidently entered, the trial court also erred in entering a judgment of compulsory nonsuit against another defendant, for the reason that the automobile was registered in the latter's name, and therefore plaintiff was entitled to go to the jury against him by virtue of the provisions of this section. *Hamilton v. McCash*, 257 N. C. 611, 127 S. E. (2d) 214 (1962).

By reason of this section, the agency issue is for determination by the jury under proper instructions. *Moore v. Crocker*, 264 N. C. 232, 141 S. E. (2d) 307 (1965).

**But Defendant May Be Entitled to Instruction.**—Where evidence discloses that an employee was driving the vehicle registered in the name of the employer, and there is evidence that the employee was driving on the occasion in question on a

purely personal mission without the knowledge or consent of the employer, the court properly submits the issue of the employer's liability to the jury under instructions that if the jury should find that employee was engaged in a purely personal mission without the knowledge or consent of the employer the jury should answer the issue in the negative. *Skinner v. Jernigan*, 250 N. C. 657, 110 S. E. (2d) 301 (1959).

Where plaintiff relies solely on the provisions of this section on the issue of respondeat superior and introduces no evidence, but defendant introduces evidence tending to show that the driver was on a purely personal mission of his own at the time of the accident, there is no evidence upon which the court may instruct the jury in plaintiff's favor on the issue, and the court's explanation of the rule of evidence prescribed by the statute is sufficient; but as to the defendant's evidence, the court is required, even in the absence of a request for special instructions, to give explicit instruction applying defendant's evidence to the issue and charging that if the jury should find the facts to be as defendant's evidence tends to show, the issue should be answered in the negative. *Whiteside v. McC Carson*, 250 N. C. 673, 110 S. E. (2d) 295 (1959).

In any case in which a plaintiff, as against the registered owner of a motor vehicle, relies solely upon this section to prove the agency of nonowner operator, and in which all of the positive evidence in the case is to the effect that the operator was on a mission of his own and not on any business for the registered owner, it is the duty of the trial judge, even if there is evidence that the registered owner gave the operator permission to use the vehicle, to instruct the jury that, if they believe the evidence and find the facts to be as the evidence tends to show, that is, that the operator was on a mission of his own, they will answer the agency issue in the negative. And it is prejudicial error for the court, in such circumstances, to fail to so instruct the jury, even if there is no special request therefor. *Chappell v. Dean*, 258 N. C. 412, 128 S. E. (2d) 830 (1963).

**And Section Applies Only Where Plaintiff Relies on Doctrine of Respondeat Superior.**—This section was designed and intended to apply, and does apply, only in those cases where the plaintiff seeks to hold an owner liable for the negligence of a nonowner operator under the doctrine of respondeat superior. *Roberts v. Hill*, 240 N. C. 373, 82 S. E. (2d) 373 (1954); *Jones v. Farm Bureau Mutual Automobile Ins. Co.*, 159 F. Supp. 404 (1958); *Howard v*

Sasso, 253 N. C. 185, 116 S. E. (2d) 341 (1960).

Where the theory of the complaint is that defendant was driving the car or that it was being driven by another under defendant's direction and control, and there is no allegation of agency or of negligence of an alleged agent, plaintiff cannot call to his aid the provisions of this section to prove that defendant himself was operating the car or had entrusted its operation to one he knew or should have known was likely to cause an accident by reason of incompetency, carelessness or recklessness. *Osborne v. Gilreath*, 241 N. C. 685, 86 S. E. (2d) 462 (1955).

**And does not apply where plaintiff attempts to prove owner liable under "family purpose doctrine."** *Fox v. Albea*, 250 N. C. 445, 109 S. E. (2d) 197 (1959).

**It Merely Creates a Rule of Evidence.**—This section was designed to create a rule of evidence. Its purpose is to establish a ready means of proving agency in any case where it is charged that the negligence of a nonowner operator causes damage to the property or injury to the person of another. It does not have, and was not intended to have, any other or further force or effect. *Hartley v. Smith*, 239 N. C. 170, 79 S. E. (2d) 767 (1954). See *Roberts v. Hill*, 240 N. C. 373, 82 S. E. (2d) 373 (1954); *Osborne v. Gilreath*, 241 N. C. 685, 86 S. E. (2d) 462 (1955); *Elliott v. Killian*, 242 N. C. 471, 87 S. E. (2d) 903 (1955); *Fox v. Albea*, 250 N. C. 445, 109 S. E. (2d) 197 (1959); *Lynn v. Clark*, 252 N. C. 239, 113 S. E. (2d) 427 (1960); *Howard v. Sasso*, 253 N. C. 185, 116 S. E. (2d) 341 (1960); *Taylor v. Parks*, 254 N. C. 266, 118 S. E. (2d) 779 (1961); *Chappell v. Dean*, 258 N. C. 412, 128 S. E. (2d) 830 (1963).

The presumption of this section relates to the rule of evidence and procedure rather than to substantive rights. *Randall Ins., Inc. v. O'Neill*, 258 N. C. 169, 128 S. E. (2d) 239 (1962).

This section creates a rule of evidence, and has no other or further force or effect. *Mitchell v. White*, 256 N. C. 437, 124 S. E. (2d) 137 (1962).

**Which Applies to Making Factual Determination as to Alleged Agency.**—The rule of evidence established by this section applies whenever a factual determination as to alleged agency is to be made, whether by the court to resolve a question of fact or by a jury to resolve an issue of fact. *Howard v. Sasso*, 252 N. C. 185, 116 S. E. (2d) 341 (1960).

**And Does Not Change Basic Rule as to Liability.**—This section did not change the

basic rule as to liability. It did establish a new rule of evidence, changing radically the requirements as to what the injured plaintiff must show in evidence in order to have his case passed on by the jury. *Jyachosky v. Wensil*, 240 N. C. 217, 81 S. E. (2d) 644 (1954).

**Presumption Is Not One of Law, and Does Not Shift Burden of Proof.**—Where the trial judge instructed the jury that proof of registration constitutes such prima facie evidence, and then stated: "... (T)hat is a rebuttable presumption and ... the defendant has the right and it is his duty to rebut this presumption of law," the quoted portion of the instruction is erroneous, since this section creates no presumption of law, and it does not shift the burden of the issue from plaintiff to defendant. *Chappell v. Dean*, 258 N. C. 412, 128 S. E. (2d) 830 (1963).

**Plaintiff Is Not Relieved of Alleging Ultimate Facts.**—The provisions of this section are a rule of evidence and do not relieve a plaintiff of alleging the ultimate facts on which to base a cause of actionable negligence. *Parker v. Underwood*, 239 N. C. 308, 79 S. E. (2d) 765 (1954).

**Both Negligence and Agency Must Be Alleged and Proved.**—This section was not enacted and designed to render proof unnecessary, nor does proof of registration or ownership make out a prima facie case for the jury on the issue of negligence. Neither is it sufficient to send the case to the jury, or to support a finding favorable to plaintiff under the negligence issue, or to support a finding against a defendant on the issue of negligence. It does not constitute evidence of negligence. It is instead directed solely to the question of agency of a nonowner operator of a motor vehicle involved in an accident. Non constat this section, it is still necessary for the party aggrieved to allege both negligence and agency in his pleading and to prove both at the trial. *Hartley v. Smith*, 239 N. C. 170, 79 S. E. (2d) 767 (1954).

This section establishes a rule of evidence, but does not relieve a plaintiff from alleging and proving negligence and agency. *Osborne v. Gilreath*, 241 N. C. 685, 86 S. E. (2d) 462 (1955).

This section does not relieve plaintiff of the duty to allege and the burden of proving agency. *Chappell v. Dean*, 258 N. C. 412, 128 S. E. (2d) 830 (1963).

This section presupposes a cause of action based on allegations of agency and of actionable negligence and therefore if the complaint fails to allege agency or actionable negligence, it is demurrable and is in-

sufficient to support a verdict for damages against the owner of the vehicle. *Lynn v. Clark*, 252 N. C. 289, 113 S. E. (2d) 427 (1960).

This section did not change the elements prerequisite to liability under the doctrine of respondeat superior. To establish liability under this doctrine, the injured plaintiff must allege and prove that the operator was the agent of the owner, and that this relationship existed at the time and in respect of the very transaction out of which the injury arose. *Whiteside v. McCarson*, 250 N. C. 673, 110 S. E. (2d) 295 (1959).

Allegations to the effect that the car involved in the accident was owned by the mother of the driver are insufficient to charge the mother with liability under this section, since the effect of the statute is solely to provide a ready means of proving agency and does not dispense with the necessity of allegations that the driver was the agent of the owner. *Lynn v. Clark*, 252 N. C. 289, 113 S. E. (2d) 427 (1960).

Proof that one owns a motor vehicle which is operated in a negligent manner, causing injury to another, is not sufficient to impose liability on the owner. The injured party, if he is to recover from the owner, must allege and prove facts (1) calling for an application of the doctrine of respondeat superior, or (2) negligence of the owner himself in (a) providing the driver with a vehicle known to be dangerous because of its defective condition, or (b) permitting a known incompetent driver to use the vehicle on the highway. *Beasley v. Williams*, 260 N.C. 561, 133 S.E.2d 227 (1963).

**And Section Creates No Presumption That Owner Was Driver.** — This section does not provide that proof of ownership of an automobile, or proof of the registration of an automobile in the name of any person, shall be prima facie evidence that the owner of the automobile, or the person in whose name it was registered, was the driver of the automobile at the time of a wreck. *Parker v. Wilson*, 247 N. C. 47, 100 S. E. (2d) 258 (1957), declining to adopt a rule holding that upon the facts of the instant case a rebuttable presumption or inference arose that defendant's testate was driving his automobile at the time of the fatal crash; *Johnson v. Fox*, 254 N. C. 454, 119 S. E. (2d) 185 (1961).

**Necessity for Evidence that Defendant Was Registered Owner.**—Where plaintiff offered no evidence to support her allegation that a parent was the registered owner of an automobile operated by his son, she

could not benefit by the presumption of agency created by this section. *Griffin v. Pancoast*, 257 N. C. 52, 125 S. E. (2d) 310 (1962).

In the absence of evidence that defendant is the owner of the vehicle, plaintiff is not entitled to the benefit of this section. *Freeman v. Biggers Bros.*, 260 N.C. 300, 132 S.E.2d 626 (1963).

**Owner-occupant of car ordinarily has the right to direct its operation by the driver.** *Randall v. Rogers*, 262 N.C. 544, 138 S.E.2d 248 (1964).

Hence, he is responsible for driver's negligence irrespective of agency, as such, and the provisions of this section. *Randall v. Rogers*, 262 N.C. 544, 138 S.E.2d 248 (1964).

**Presumption of Agency Rebuttable by Plaintiffs' Own Evidence.**—Where defendant admits that, at the time of the accident, he was the owner of one of the vehicles involved in the collision, but plaintiff elicits testimony from her own witnesses of declarations made by defendant to the effect that, at the time in question, the driver had taken defendants' automobile without defendant's authorization, knowledge, or consent, and was not at the time defendant's agent or employee, or acting in the course and scope of any employment by defendant, plaintiff's own evidence rebuts the presumption created by this section, and such evidence not being contradicted by any other evidence of either plaintiff or defendant, nonsuit on the issue of agency is proper. *Taylor v. Parks*, 254 N. C. 266, 118 S. E. (2d) 779 (1961).

**Effect of Evidence that Driver Was Co-owner with Registered Owner.**—Evidence that a vehicle operated by a woman was registered in the name of her husband is prima facie evidence that she was driving as his agent, but even so, parol evidence is competent to show that the husband and wife were in fact co-owners, and when there is such evidence, it is error for the court to peremptorily instruct the jury to answer the issue of agency in the affirmative. *Rushing v. Polk*, 258 N. C. 256, 128 S. E. (2d) 675 (1962).

**Name on Vehicle Is Prima Facie Evidence of Ownership.** — Where common carriers of freight are operating tractor-trailer units, on public highways, and such equipment bears the insignia or name of such carrier, and the motor vehicle is involved in a collision or inflicts injury upon another, evidence that the name of the defendant was painted or inscribed on the motor vehicle which inflicted the injury constitutes prima facie evidence that the

defendant whose name or identifying insignia appears thereon was the owner of such vehicle and that the driver thereof was operating it for and on behalf of the defendant. *Freeman v. Biggers Bros.*, 260 N.C. 300, 132 S.E.2d 626 (1963).

**Provided Name Is Identified with Defendant.**—Evidence of the color and size of a truck which struck plaintiff, and that it had on its doors signs reading "Biggers Brothers Wholesale Fruit and Produce," without evidence tending to identify the signs on the truck with defendant or with other trucks owned by defendant, or any evidence of the nature of defendant's business, was insufficient to establish ownership and invoke the benefit of this section. *Freeman v. Biggers Bros.*, 260 N.C. 300, 132 S.E.2d 626 (1963).

**License Plates As Prima Facie Evidence of Ownership.**—A prima facie case of ownership is made out by virtue of this section when license plates issued to driver are on the vehicle, even though the car described on the registration does not have the same body style as the vehicle actually being driven. *Rick v. Murphy*, 251 N. C. 162, 110 S. E. (2d) 815 (1959).

**Liability of Merchants and Mechanics.**—This section does not make the merchant who supplies parts, or the mechanic who performs work and supplies parts, responsible for the operation of a repaired or rebuilt motor vehicle. *Rick v. Murphy*, 251 N. C. 162, 110 S. E. (2d) 815 (1959), holding garage operator who supplied body from wrecked car he owned to be used with parts from customer's wrecked car to make a motor vehicle for the customer was not owner of such motor vehicle.

**Joinder for Contribution.**—Where, in an action by a passenger against the drivers involved in a collision, plaintiff makes out a prima facie case of negligence on the part of the driver of the car, proof or admissions that the additional defendant was the registered owner of the car establishes prima facie that the driver was such owner's agent and was acting in the course and scope of the employment, and entitles the defendants to have the owner of the car joined for contribution. *McPherson v. Haire*, 262 N.C. 71, 136 S.E.2d 224 (1964).

**Applied**, as to institution of action within one year, in *Hensley v. Harris*, 242 N. C. 599, 89 S. E. (2d) 155 (1955); *Knight v. Associated Transport, Inc.*, 255 N. C. 462, 122 S. E. (2d) 64 (1961); *Tharpe v. Newman*, 257 N. C. 71, 125 S. E. (2d) 315 (1962); *Hawley v. Indemnity Ins. Co. of North America*, 257 N. C. 381, 126 S. E. (2d) 161 (1962); *Salter v. Lovick*, 257 N. C. 619, 127 S. E. (2d) 273 (1962); *Smith v. Simpson*, 260 N.C. 601, 133 S.E.2d 474 (1963); *Yates v. Chappell*, 263 N.C. 461, 139 S.E.2d 728 (1965).

**Quoted in State v. Scoggin**, 236 N. C. 19, 72 S. E. (2d) 54 (1952); *Chatfield v. Farm Bureau Mut. Auto. Ins. Co.*, 208 F. (2d) 250 (1953).

**Cited in Northwest Cas. Co. v. Kirkman**, 119 F. Supp. 828 (1954); *Ransdell v. Young*, 243 N. C. 75, 89 S. E. (2d) 773 (1955); *Williamson v. Varner*, 252 N. C. 446, 114 S. E. (2d) 92 (1960); *Tart v. Register*, 257 N. C. 161, 125 S. E. (2d) 754 (1962); *Parlier v. Barnes*, 260 N.C. 341, 132 S.E.2d 684 (1963).

#### Part 4. Transfer of Title or Interest.

§ 20-72. **Transfer by owner.**—(a) Whenever the owner of a registered vehicle transfers or assigns his title or interests thereto, he shall remove the license plates and endorse upon the reverse side of the registration card issued for such vehicle the name and address of the transferee and the date of such transfer. Such registration card and plates shall be forwarded to the Department unless the plates are to be transferred to another vehicle as provided in G. S. 20-64. If they are to be transferred to and used with another vehicle, then the endorsed registration card and the plates shall be retained and preserved by the owner. If such registration plates are to be transferred to and used with another vehicle, then the owner shall make application to the Department for assignment of the registration plates to such other vehicle under the provisions of G. S. 20-64. Such application shall be made within twenty (20) days after the date on which such plates are last used on the vehicle to which theretofore assigned.

(b) In order to assign or transfer title or interest in any motor vehicle registered under the provisions of this article, the owner shall execute in the presence of a person authorized to administer oaths an assignment and warranty of title on the reverse of the certificate of title in form approved by the Department, in-



cluding in such assignment the name and address of the transferee; and no title to any other motor vehicle shall pass or vest until such assignment is executed and the motor vehicle delivered to the transferee. The provisions of this section shall not apply to any foreclosure or repossession under a chattel mortgage or conditional sales contract or any judicial sale.

Any person transferring title or interest in a motor vehicle shall deliver the certificate of title duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security interest is obtained in the motor vehicle from the transferee in payment of the purchase price or otherwise, the transferor shall deliver the certificate of title to the lienholder and the lienholder shall forward the certificate of title together with the transferee's application for new title and necessary fees to the Department within twenty (20) days. Any person who delivers or accepts a certificate of title assigned in blank shall be guilty of a misdemeanor.

(c) When the Department finds that any person other than the registered owner of a vehicle has in his possession a certificate of title to the vehicle on which there appears an endorsement of an assignment of title but there does not appear in the assignment any designation to show the name and address of the assignee or transferee, the Department shall be authorized and empowered to seize and hold said certificate of title until the assignor whose name appears in the assignment appears before the Department to complete the execution of the assignment or until evidence satisfactory to the Department is presented to the Department to show the name and address of the transferee. (1937, c. 407, s. 36; 1947, c. 219, ss. 4, 5; 1955, c. 554, ss. 5, 6; 1961, c. 360, s. 8; c. 835, s. 8; 1963, c. 552, ss. 3, 4.)

#### Editor's Note.—

The 1955 amendment, effective July 1, 1955, made changes in subsection (b) and added subsection (c).

The first 1961 amendment, effective Jan. 1, 1962, rewrote subsection (a), which until said date read as follows: (a) Whenever the owner of a registered vehicle transfers or assigns his title or interest thereto, he shall endorse upon the reverse side of the registration card issued for such vehicle the name and address of the transferee and the date of transfer, and shall immediately deliver such card and registration plates to the transferee, if such plates are subject to transfer with the vehicle as set out in § 20-64. If the registration plates are not subject to transfer the registration card and plates may be retained by the transferor of the vehicle and no endorsement would be necessary.

The second 1961 amendment, effective July 1, 1961, added to subsection (b) a provision that "Transfer of title to a motor vehicle by an owner is not effective until the provisions of this subsection have been complied with."

The 1963 amendment, effective July 1, 1963, substituted "card" for "certificate" in three places in subsection (a) and rewrote subsection (b).

For note as to the requirements of §§ 20-72 to 20-78, see 32 N. C. Law Rev. 545.

For case law survey on time of acquisition of title to motor vehicles, see 41 N. C. Law Rev. 444.

**Warranty of Title and Statement of Liens and Encumbrances.** — Prior to the 1963 amendment to this section subsection (b) made it the duty of the vendor of a registered vehicle to endorse his certificate of title to the transferee with a statement of all liens or encumbrances, to be verified by the oath of the owner. *Home Indemnity Co. v. West Trade Motors, Inc.*, 258 N. C. 647, 129 S. E. (2d) 248 (1963).

The seller of a motor vehicle was required to endorse, and deliver to or for the buyer, an assignment and warranty of title and a statement of all liens and encumbrances, even where a conditional sale was involved. *Seymour v. W. S. Boyd Sales Co., Inc.*, 257 N. C. 603, 127 S. E. (2d) 265 (1962), decided under this section as it stood before the 1963 amendment.

The effect of failure to list liens as required by this section before the 1963 amendment was a warranty that such liens did not exist. *Seymour v. W. S. Boyd Sales Co., Inc.*, 257 N. C. 603, 127 S. E. (2d) 265 (1962).

**Same—Strict Compliance Required.** — Strict compliance with the requirements of assignment and warranty of title and a statement of all liens and encumbrances is necessary in every sale of motor vehicles. *Seymour v. W. S. Boyd Sales Co., Inc.*

257 N. C. 603, 127 S. E. (2d) 265 (1962), decided under this section as it stood before the 1963 amendment.

**Purchaser Must Secure Old Certificate of Title and Apply for New One.**—This section and § 20-75 make it the duty of the purchaser to secure from his vendor the old certificate of title duly endorsed or assigned and to apply for a new certificate. They do not relate to the duty of the Department to issue a new certificate. *Community Credit Co. of Lenoir, Inc. v. Norwood*, 257 N. C. 87, 125 S. E. (2d) 369 (1962).

When a sale is made to a dealer, it is not necessary to transmit the certificate of title to the Department of Motor Vehicles until the dealer resells. *Home Indemnity Co. v. West Trade Motors, Inc.*, 258 N. C. 647, 129 S. E. (2d) 248 (1963).

**Vesting of Title.**—Under subsection (b) of this section as amended in 1961 and before its amendment in 1963 the vesting of title was deferred until the purchaser had the old certificate endorsed to him and made application for a new certificate.

**§ 20-73. New owner to secure new certificate of title.**—The transferee, within twenty (20) days after the purchase of any vehicle, shall present the certificate of title endorsed and assigned as hereinbefore provided, to the Department and make application for a new certificate of title for such vehicle except as otherwise permitted in G. S. 20-75 and 20-76. Any transferee willfully failing or refusing to make application for title shall be guilty of a misdemeanor. (1937, c. 407, s. 37; 1939, c. 275; 1947, c. 219, s. 6; 1961, c. 360, s. 9.)

**Editor's Note.**—

The 1961 amendment, effective Jan. 1, 1962, deleted the former provision as to transfer of registration.

**Burden Is on Vendee to Apply for New Certificate of Title.** — The burden is imposed on the vendee, or as this section describes him, transferee, to present the certificates and make application for a new certificate of title within twenty days, and a willful failure to do so is expressly declared to be a misdemeanor, and when the certificate of title is delivered to a lienholder, it is nonetheless the duty of the purchaser to see that the certificate is forwarded to the Department of Motor Vehicles. *Home Indemnity Co. v. West Trade*

*Community Credit Co. of Lenoir, Inc. v. Norwood*, 257 N. C. 87, 125 S. E. (2d) 369 (1962). See *Home Indemnity Co. v. West Trade Motors, Inc.*, 258 N. C. 647, 129 S. E. (2d) 248 (1963).

**No Lien Created by Chattel Mortgage Prior to Acquisition of Title.**—Where the purchaser of a motor vehicle executes a chattel mortgage which is registered prior to the acknowledgment of the assignment of the certificate of title by the seller and the forwarding of an application for a new certificate to the Department of Motor Vehicles, the chattel mortgage does not create a lien on the vehicle, since the purchaser, at the time it was executed, did not have title, and the instrument can operate only as a contract to execute a chattel mortgage upon the acquisition of title. *National Bank of Sanford v. Greensboro Motor Co.*, 264 N.C. 568, 142 S.E.2d 166 (1965). As to perfecting security interest, see § 20-58 et seq.

Applied in *Hawkins v. M & J Finance Corp.*, 238 N. C. 174, 77 S. E. (2d) 669 (1953) (as to subsection (b)).

*Motors, Inc.*, 258 N. C. 647, 129 S. E. (2d) 248 (1963).

**And Vendor Should Not Be Penalized for Vendee's Failure.**—There is nothing in the 1961 amendments to this part which suggests that dealer, a vendor, should be penalized and held liable because of the failure of a purchaser to perform his statutory duty. *Home Indemnity Co. v. West Trade Motors, Inc.*, 258 N. C. 647, 129 S. E. (2d) 248 (1963).

**Application Must Be in Proper Form.**—The statute necessarily implies that the application for a new certificate should be in proper form. *Community Credit Co. of Lenoir, Inc. v. Norwood*, 257 N. C. 87, 125 S. E. (2d) 369 (1962).

**§ 20-74. Penalty for failure to make application for transfer within the time specified by law.**—It is the intent and purpose of this article that every new owner or purchaser of a vehicle previously registered shall make application for transfer of title within twenty days after acquiring same, or see that such application is sent in by the lien holder with proper fees, and responsibility for such transfer shall rest on the purchaser. Any person, firm or corporation failing to do so shall pay a penalty of two dollars (\$2.00) in addition to the fees otherwise provided in this article. It is further provided that any dealer or owner who shall knowingly make any false statement in any application required

by this Department as to the date a vehicle was sold or acquired shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars (\$50.00) or imprisoned not more than thirty days. All moneys collected under this section shall go to the State highway fund. (1937, c. 407, s. 38; 1939, c. 275; 1961, c. 360, s. 10.)

**Editor's Note.**—

The 1961 amendment, effective Jan. 1, 1962, deleted the words "and registration" formerly following the word "title" in line three.

**Compliance with Registration Statutes Mandatory.**—It is manifest both from the express language of the registration statutes and from this companion penal enforcement provision that compliance with

the registration statutes is mandatory and calls for substantial observance. *Hawkins v. M & J Finance Corp.*, 238 N. C. 174, 77 S. E. (2d) 669 (1953)

**Burden Is on Vendee to Apply for New Certificate of Title.**—See note to § 20-73.

**Cited in Community Credit Co. of Le-noir, Inc. v. Norwood**, 257 N. C. 87, 125 S. E. (2d) 369 (1962).

**§ 20-75. When transferee is a dealer.**—When the transferee of any vehicle registered under the foregoing provision of this article is a licensed dealer who holds the same for resale and operates the same only for purpose of demonstration under a dealer's number plate, such transferee shall not be required to register such vehicle nor forward the certificate of title to the Department as provided in § 20-73. To assign or transfer title or interest in such vehicle, the dealer shall execute in the presence of a person authorized to administer oaths a reassignment and warranty of title on the reverse of the certificate of title in form approved by the Department, including in such reassignment the name and address of the transferee, and title to such vehicle shall not pass or vest until such reassignment is executed and the motor vehicle delivered to the transferee.

The dealer transferring title or interest in a motor vehicle shall deliver the certificate of title duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security interest in the motor vehicle is obtained from the transferee in payment of the purchase price or otherwise, the dealer shall deliver the certificate of title to the lienholder and the lienholder shall forward the certificate of title together with the transferee's application for new certificate of title and necessary fees to the Department within twenty (20) days. Any person who delivers or accepts a certificate of title assigned in blank shall be guilty of a misdemeanor. (1937, c. 407, s. 39, 1961, c. 835, s. 9; 1963, c. 552, s. 5.)

**Cross Reference.**—See notes to §§ 20-72, 20-73.

**Editor's Note.**—The 1963 amendment, effective July 1, 1963, rewrote this section, eliminating a sentence which had been added by the 1961 amendment.

The custom of used car dealers to accept a blank endorsement of the title by the owner and to transfer title directly to

a purchaser upon an anonymous notarization, is violative of the letter and spirit of our motor vehicle registration statutes and may not be asserted as ground for equitable estoppel. *Hawkins v. M & J Finance Corp.*, 238 N. C. 174, 77 S. E. (2d) 669 (1953)

**Cited in Rushing v. Polk**, 258 N. C. 256, 128 S. E. (2d) 675 (1962).

**§ 20-76. Title lost or unlawfully detained; bond as condition to issuance of new certificate.**—(a) Whenever the applicant for the registration of a vehicle or a new certificate of title thereto is unable to present a certificate of title thereto by reason of the same being lost or unlawfully detained by one in possession, or the same is otherwise not available, the Department is hereby authorized to receive such application and to examine into the circumstances of the case, and may require the filing of affidavits or other information; and when the Department is satisfied that the applicant is entitled thereto and that § 20-72 has been complied with it is hereby authorized to register such vehicle and issue a new registration card, registration plate or plates and certificates of title to the person entitled thereto, upon payment of proper fees.

(b) Whenever the applicant for a new certificate of title is unable to satisfy the Department that he is entitled thereto as provided in subsection (a) of this section, the applicant may nevertheless obtain issuance of a new certificate of title by filing a bond with the Department as a condition to the issuance thereof. The bond shall be in the form prescribed by the Department and shall be executed by the applicant. It shall be accompanied by the deposit of cash with the Department, be executed as surety by a person, firm or corporation authorized to conduct a surety business in this State or be in the nature of a real estate bond as described in G. S. 20-279.24 (a). The bond shall be in an amount equal to one and one-half times the value of the vehicle as determined by the Department and conditioned to indemnify any prior owner or lien holder, any subsequent purchaser of the vehicle or person acquiring any security interest therein, and their respective successors in interest, against any expense, loss or damage, reason of the issuance of the certificate of title to the vehicle or on account of any defect in or undisclosed security interest in the right, title and interest of the applicant in and to the vehicle. Any person damaged by issuance of the certificate of title shall have a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of three years or prior thereto if the vehicle is no longer registered in this State and the currently valid certificate of title is surrendered to the Department, unless the Department has been notified of the pendency of an action to recover on the bond. (1937, c. 407, s. 40; 1947, c. 219, s. 7; 1961, c. 360, s. 11; c. 835, s. 10.)

**Editor's Note.—**

The first 1961 amendment, effective Jan. 1, 1962, substituted the word "fees" for the words "fee for duplicate title and/or replacement" formerly appearing at the end of subsection (a).

The second 1961 amendment, effective July 1, 1961, designated the former section as subsection (a) and added subsection (b).

**§ 20-77. Transfer by operation of law; liens.**—(a) Whenever the title or interest of an owner in or to a vehicle shall pass to another by operation of law, as upon order in bankruptcy, execution sale, repossession upon default in performing the terms of a lease or executory sales contract, or otherwise than by voluntary transfer, the transferee shall secure a new certificate of title upon proper application, payment of the fees provided by law, and presentation of the last certificate of title, if available and such instruments or documents of authority or certified copies thereof as may be sufficient or required by law to evidence or effect a transfer of interest in or to chattels in such cases.

(b) In the event of transfer as upon inheritance, devise or bequest, the Department shall, upon receipt of a certified copy of a will, letters of administration and/or a certificate from the clerk of the superior court showing that the motor vehicle registered in the name of the decedent owner has been assigned to his widow as part of her year's support, transfer both title and license as otherwise provided for transfers. However, if no administrator has qualified or the clerk of the superior court refuses to issue a certificate, the Department may upon affidavit showing satisfactory reasons therefor effect such transfer; provided, that if a decedent dies intestate leaving surviving a spouse and a minor child or children, or a spouse and a child or children mentally incompetent, whether of age or not, and no guardian has been appointed for said child or children, the surviving spouse shall be authorized to transfer the interest of the child or children in said motor vehicle, as provided in this subsection, to a purchaser thereof, but the new title so issued shall not affect the validity nor be in prejudice of any creditor's lien.

(c) **Mechanic's or Storage Lien.**—In any case where a vehicle is sold under a mechanic's or storage lien, the Department shall be given a twenty-day notice as provided in § 20-114.

(d) The owner of a garage, storage lot or other place of storage shall have a lien for his lawful and reasonable storage charges on any motor vehicle deposited in his place of storage by the owner or any other person having lawful authority to make such storage, and may retain possession of the motor vehicle until such storage charges are paid. If the storage charges are not paid when due, the garage owner or other storage keeper may satisfy said lien as follows:

- (1) The garage owner or storage keeper shall give written notice to the person who made the storage, to the registered owner, if known, and to any other persons known to claim any lien on or other interest in the motor vehicle. Such notice shall be given by delivery to the person, or by registered letter addressed to the last known place of business or abode of the person to be notified.
- (2) The notice shall contain a description of the motor vehicle; an itemized statement of the claim for storage charges; a demand that the storage charges be paid on or before a day specified, not less than ten days from the delivery of the notice if it is personally delivered or from the time when the notice should reach its destination according to the due course of post if the notice is sent by mail; and a statement that unless the storage claim is paid on or before the day specified, the motor vehicle will be advertised for sale and sold at auction at a specified time and place.
- (3) If payment is not made by the day specified in the notice, a sale of the motor vehicle may be had to satisfy the lien. The sale shall be held at the place where the vehicle was stored, or if such place is manifestly unsuitable for the purpose, at the courthouse in the county where vehicle was stored. The advertisement of such sale shall contain the name and address of the registered owner of the vehicle, if known or ascertainable; the name and address of the person who made the storage; a description of the motor vehicle, including the make, year of make, model, motor number, serial number and license number, if any; a statement of the amount of storage charges; and the place, date and hour of sale. The advertisement shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than three conspicuous public places in such place. A copy of said advertisement shall be sent to the Commissioner of Motor Vehicles at least twenty days prior to the sale. From the proceeds of the sale the garage owner or storage keeper shall satisfy his lien, including the reasonable charges of notice, advertisement and sale. The balance, if any, shall be held by the garage owner or storage keeper and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the motor vehicle. If no claim is made for said balance within ten days the garage owner or storage keeper shall immediately pay such balance into the office of the clerk of the superior court of the county wherein the sale was held, and the clerk shall hold said money for twelve months for delivery on demand to person entitled thereto, and if no claim is made within said period, said balance shall escheat to the University of North Carolina.
- (4) At any time before the motor vehicle is so sold any person claiming a right of property or possession therein may pay the garage owner or storage keeper the amount necessary to satisfy his lien and to pay

the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment, and upon receiving such payment, the garage owner or storage keeper shall deliver the motor vehicle to the person making such payment if he is a person entitled to the possession thereof.

- (5) An operator of a place of business for garaging, repairing, parking or storing vehicles for the public, in which a vehicle remains unclaimed for thirty (30) days, shall within five (5) days after the expiration of that period, report the vehicle as unclaimed to the Department.

A vehicle left by any person whose name and address are known to, or are furnished from a reliable method of identification to, the operator or his employee is not considered unclaimed. A person who fails to report a vehicle as unclaimed in accordance with this section forfeits all liens for storage, and, in addition thereto, the failure to make the report required by this section shall constitute a misdemeanor punishable by a fine not to exceed fifty dollars (\$50.00) or thirty (30) days imprisonment, or both, in the discretion of the court.

Where no specific agreement is made at the time of storage regarding the time when storage charges shall be due, such charges shall be due ninety days after the storage commenced.

(e) Any person, who shall sell a vehicle to satisfy a mechanic's or storage lien or any person who shall sell a vehicle as upon order in bankruptcy, execution sale, repossession upon default in performing the terms of a lease or executory sales contract, or otherwise by operation of law, shall remove any license plates attached thereto and return them to the Department. (1937, c. 407, s. 41; 1943, c. 726; 1945, cc. 289, 714; 1955, c. 296, s. 1; 1959, c. 1264, s. 3; 1961, c. 360, ss. 12, 13.)

**Editor's Note.—**

The 1955 amendment substituted "sale" for "license" in line eleven of subdivision (3) of subsection (d).

The 1959 amendment, effective Oct. 1, 1959, added subdivision (5) of subsection (d).

The 1961 amendment, effective Jan. 1, 1962, changed subsection (a) by deleting the former provisions as to transfer of registration. It also added subsection (e).

**§ 20-78. When Department to transfer registration and issue new certificate; recordation.**—(a) The Department, upon receipt of a properly endorsed certificate of title, application for transfer thereof and payment of all proper fees, shall issue a new certificate of title as upon an original registration. The Department, upon receipt of an application for transfer of registration plates, together with payment of all proper fees, shall issue a new registration card transferring and assigning the registration plates and numbers thereon as upon an original assignment of registration plates.

(1961, c. 360, s. 14.)

**Editor's Note.—**

The 1961 amendment, effective Jan. 1, 1962 rewrote subsection (a). As only this subsection was affected by the amendment the rest of the section is not set out.

Applied in *Hawkins v. M & J Finance Corp.*, 238 N. C. 174, 77 S. E. (2d) 669 (1953).

Cited in *Morrissey v. Crabtree*, 143 F. Supp. 105 (1956).

**Part 5. Issuance of Special Plates.**

**§ 20-79. Registration by manufacturers and dealers.**

(b) Every manufacturer of or dealer in motor vehicles shall obtain and have in his possession a certificate of title issued by the Department to such manufacturer or dealer of each vehicle, owned and operated upon the highways by such manufacturer or dealer, except that a certificate of title shall not be required or issued for any new vehicle to be sold as such by a manufacturer or

dealer prior to the sale of such vehicle by the manufacturer or dealer; and except that any dealer or any employee of any dealer may operate any motor vehicle, trailer or semi-trailer, the property of the dealer, for the purpose of furthering the business interest of the dealer in the sale, demonstration and servicing of motor vehicles, trailers and semi-trailers, of collecting accounts, contacting prospective customers and generally carrying out routine business necessary for conducting a general motor vehicle sales business: Provided, that no use shall be made of dealer's demonstration plates on vehicles operated in any other business dealers may be engaged in: Provided further, that dealers may allow the operation of motor vehicles owned by dealers and displaying dealer's demonstration plates in the personal use of persons other than those employed in the dealer's business: Provided further, that said persons shall, at all times while operating a motor vehicle under the provisions of this section, have in their possession a certificate on such form as approved by the Commissioner from the dealer, which shall be valid for not more than ninety-six hours.

(1959, c. 1264, s. 3.5; 1961, c. 360, s. 15.)

**Editor's Note.—**

The 1959 amendment, effective Oct. 1, 1959, substituted "ninety-six" for "forty-eight" in line twenty of subsection (b).

The 1961 amendment, effective Jan. 1, 1962, deleted at the end of subsection (b) a proviso relating to operation of vehicles with dealer's demonstration plates for a

limited period after sale. As only this subsection was changed the rest of the section is not set out.

**Cited in** *Hawkins v. M & J Finance Corp.*, 238 N. C. 174, 77 S. E. (2d) 669 (1953); *Smart Finance Co. v. Dick*, 256 N. C. 669, 124 S. E. (2d) 862 (1962).

**§ 20-79.1. Use of temporary registration plates or markers by purchasers of motor vehicles in lieu of dealers' plates.**—(a) The Department may, subject to the limitations and conditions hereinafter set forth, deliver temporary registration plates or markers designed by said Department to a dealer duly registered under the provisions of this article who applies for at least twenty-five such plates or markers and who encloses with such application a fee of one dollar (\$1.00) for each plate or marker for which application is made. Such application shall be made upon a form prescribed and furnished by the Department. Dealers, subject to the limitations and conditions hereinafter set forth, may issue such temporary registration plates or markers to owners of vehicles, provided that such owners shall comply with the pertinent provisions of this section.

(b) Every dealer who has made application for temporary registration plates or markers shall maintain in permanent form a record of all temporary registration plates or markers delivered to him, and shall also maintain in permanent form a record of all temporary registration plates or markers issued by him, and in addition thereto, shall maintain in permanent form a record of any other information pertaining to the receipt or the issuance of temporary registration plates or markers that the Department may require. Each record shall be kept for a period of at least one (1) year from the date of entry of such record. Every dealer shall allow full and free access to such records during regular business hours to duly authorized representative of the Department and to peace officers.

(c) Every dealer who issues temporary registration plates or markers shall also issue a temporary registration certificate upon a form furnished by the Department and deliver with the registration plate or marker to the owner and shall on the day that he issued such plate or marker, send to the Department a copy of the temporary registration issuance.

(d) A dealer shall not issue, assign, transfer, or deliver temporary registration plates or markers to anyone other than a bona fide purchaser or owner of a vehicle being sold by such dealer, nor shall a dealer issue a temporary registration plate or marker without first obtaining from said purchaser or owner a written application for the titling and registration of the purchased vehicle with the prescribed

fees therefor, which application and fees the said dealer shall immediately forward to the Department by mail or messenger or by messenger to a local license agency; nor shall a dealer issue a temporary registration plate to anyone purchasing a vehicle that has unexpired registration plates, which registration plates are to be transferred to such purchaser; nor shall a dealer lend to anyone or use on any vehicle that he may own, temporary registration plates or markers: Provided that dealers are hereby authorized to issue temporary markers to nonresidents for the purpose of removing a vehicle purchased in this State, without collecting a registration fee or requiring an application for titling and registration. It shall be unlawful for any person to issue any temporary registration plate or marker containing any misstatement of fact or knowingly insert any false information upon the face thereof.

(e) Every dealer who issues temporary plates or markers shall insert clearly and indelibly on the face of each temporary registration plate or marker the date of issuance and expiration, the make, motor and serial numbers of the vehicle for which issued and such other information as the Department may require.

(f) If the Department finds that the provisions of this section or the directions of the Department are not being complied with by the dealer, he may suspend, after a hearing, the right of a dealer to issue temporary registration plates or markers.

(g) Every person to whom temporary registration plates or markers have been issued shall permanently destroy such temporary registration plates or markers immediately upon receiving the annual registration plates from the Department: Provided, that if the annual registration plates are not received within twenty (20) days of the issuance of the temporary registration plates or markers, the owner shall, notwithstanding, immediately upon the expiration of such twenty (20)-day period, permanently destroy the temporary registration plates or markers.

(h) Temporary registration plates or markers shall expire and become void upon the receipt of the annual registration plates from the Department, or upon the rescission of a contract to purchase a motor vehicle, or upon the expiration of twenty (20) days from the date of issuance, depending upon whichever event shall first occur. No refund or credit or fees paid by dealers to the Department for temporary registration plates or markers shall be allowed, except in the event that the Department discontinues the issuance of temporary registration plates or markers or unless the dealer discontinues business. In this event the unissued registration plates or markers with the unissued registration certificates shall be returned to the Department and the dealer may petition for a refund.

(i) A temporary registration plate or marker may be used on the vehicle for which issued only and may not be transferred, loaned, or assigned to another. In the event a temporary registration plate or marker or temporary registration certificate is lost or stolen, the owner shall permanently destroy the remaining plate or marker or certificate and no operation of the vehicle for which the lost or stolen registration certificate, registration plate or marker has been issued shall be made on the highways until the regular license plate is received and attached thereto.

(j) The Commissioner of Motor Vehicles shall have the power to make such rules and regulations, not inconsistent herewith, as he shall deem necessary for the purpose of carrying out the provisions of this section.

(k) The provisions of §§ 20-63, 20-71, 20-110 and 20-111 shall apply in like manner to temporary registration plates or markers as is applicable to nontemporary plates. (1957, c. 246, s. 1; 1963, c. 552, s. 8.)

**Editor's Note.**—Section 4 of the act inserting this section provides that it shall be effective from July 1, 1957, and shall apply to all licenses for years which begin after December 31, 1957. The 1963 amendment, effective July 1,



1963, added the proviso to the first sentence of subsection (d).

Trade Motors, Inc., 258 N. C. 647, 129 S. E. (2d) 248 (1963).

Cited in Home Indemnity Co. v. West

§ 20-79.2. **Transporter registration.**—(a) A person engaged in a business requiring the limited operation of motor vehicles to facilitate the foreclosure or repossession of such motor vehicles may apply to the Commissioner for special registration to be issued to and used by such person upon the following conditions:

- (1) **Application for Registration.**—Only one application shall be required from each person, and such application for registration under this section shall be filed with the Commissioner of Motor Vehicles in such form and detail as the Commissioner shall prescribe, setting forth:
  - a. The name and residence address of applicant; if an individual, the name under which he intends to conduct business; if a partnership, the name and residence address of each member thereof, and the name under which the business is to be conducted; if a corporation, the name of the corporation and the name and residence address of each of its officers.
  - b. The complete address or addresses of the place or places where the business is to be conducted.
  - c. Such further information as the Commissioner may require.
- (2) **Applications for registration under this section shall be verified by the applicant, and the Commissioner may require the applicant for registration to appear at such time and place as may be designated by the Commissioner for examination to enable him to determine the accuracy of the facts set forth in the written application, either for initial registration or renewal thereof.**
- (3) **Fees.**—The annual fee for such registration under this section or renewal thereof shall be fifteen dollars (\$15.00), plus an annual fee of five dollars (\$5.00) for each set of plates. The application for registration and number plates shall be accompanied by the required annual fee. There shall be no refund of registration fee or fees for number plates in the event of suspension, revocation or voluntary cancellation of registration. There shall be no quarterly reduction in fees under this section.
- (4) **Issuance of Certificate.**—If the Commissioner approves the application, he shall issue a registration certificate in such form as he may prescribe. A registrant shall notify the Commissioner of any change of address of his principal place of business within thirty (30) days after such change is made, and the Commissioner shall be authorized to cancel the registration upon failure to give such notice.
- (5) **Use.**—Transporter number plates issued under this section may be transferred from vehicle to vehicle, but shall be used only for the limited operation of vehicles in connection with foreclosure or repossession of vehicles owned or controlled by the registrant.
- (6) **Suspension, Revocation or Refusal to Issue or to Renew a Registration.**—The Commissioner may deny the application of any person for registration under this section and may suspend or revoke a registration or refuse to issue a renewal thereof if he determines that such applicant or registrant has:
  - a. Made a material false statement in his application;
  - b. Used or permitted the use of number plates contrary to law;
  - c. Been guilty of fraud or fraudulent practices; or
  - d. Failed to comply with any of the rules and regulations of the Commissioner for the enforcement of this section or with any provisions of this chapter applicable thereto.

(b) The Commissioner of Motor Vehicles may make all rules and regulations he may deem necessary for the proper administration of this section, particularly with regard to the requirements of evidence of financial responsibility of applicants for transporter plates. (1961, c. 360, s. 21.)

**Editor's Note.**—The act inserting this section is effective Jan. 1, 1962.

§ 20-80. **National guard plates.**—The Commissioner shall cause to be made each year a sufficient number of automobile license plates to furnish each officer of the North Carolina national guard with a set thereof, said license plates to be in the same form and character as other license plates now or hereafter authorized by law to be used upon private passenger vehicles registered in this State, except that such license plates shall bear on the face thereof the following words, "National Guard." The said license plates shall be issued only to officers of the North Carolina national guard, and for which license plates the Commissioner shall collect fees in an amount equal to the fees collected for the licensing and registration of private vehicles. The Adjutant General of North Carolina shall furnish to the Commissioner each year, prior to the date that licenses are issued, a list of the officers of the North Carolina national guard, which said list shall contain the rank of each officer listed in the order of his seniority in the service, and the said license plates shall be numbered, beginning with the number two hundred and one and in numerical sequence thereafter up to and including the number sixteen hundred, according to seniority, the senior officer being issued the license bearing the numerals two hundred and one. (1937, c. 407, s. 44; 1941, c. 36; 1949, c. 1130, s. 7; 1955, c. 490; 1961, c. 360, s. 16.)

**Editor's Note.**—The 1955 amendment substituted "sixteen" for "eleven" in line sixteen. 1962, struck out the former last sentence, which related to cancellation and reissue of plates upon sale of a vehicle.

The 1961 amendment, effective Jan. 1,

§ 20-81. **Official license plates.**—Official license plates issued as a matter of courtesy to State officials shall be subject to the same transfer provisions as provided in G. S. 20-64. (1937, c. 407, s. 45; 1961, c. 360, s. 17.)

**Editor's Note.**—The 1961 amendment, effective Jan. 1, 1962, substituted "G. S. 20-64" for "§ 20-80" formerly appearing at the end of the section.

§ 20-81.1. **Special plates for amateur radio operators.**—(a) Every owner of a motor vehicle which is primarily used for pleasure or communication purposes who holds an unrevoked and unexpired amateur radio license of a renewable nature, issued by the Federal Communications Commission, shall, upon payment of registration and licensing fees for such vehicle as required by law and an additional fee of one dollar (\$1.00), be issued plates of similar size and design as the regular registration plates provided for by G. S. 20-63 or other provisions of law, upon which shall be inscribed, in lieu of the usual registration number, the official amateur radio call letters of such persons as assigned by the Federal Communications Commission.

(b) Application for special registration plates shall be made on forms which shall be provided by the Department of Motor Vehicles and shall contain proof satisfactory to the Department that the applicant holds an unrevoked and unexpired official amateur radio license and shall state the call letters which have been assigned to the applicant. Applications must be filed prior to 60 days before the day when regular registration plates for the year are made available to motor vehicle owners.

(c) Special registration plates issued pursuant to this section shall be replaced annually to the same extent as regular registration plates are replaced. These plates shall be valid during the year for which issued. If the amateur radio license of a person holding a special plate issued pursuant to this section shall be cancelled or rescinded by the Federal Communications Commission, such per-

son shall immediately return the special plates to the Department of Motor Vehicles.

(d) The provisions of this section shall apply to calendar years beginning after December 31, 1955. The Department of Motor Vehicles is authorized to, and shall, make such provisions prior to January 1, 1956, as are necessary for the issuance for the year 1956 of the special plates provided for in this section. (1951, c. 1099; 1955, c. 291; 1961, c. 360, s. 18.)

**Editor's Note.**—The 1955 amendment re-wrote this section.

The 1961 amendment, effective Jan. 1, 1962, deleted the words "in addition to the registration plates required by law" formerly following the words "be issued"

in subdivision (1), now subsection (a), struck out former subdivision (2) and relettered former subdivisions (3), (4) and (5) as subsections (b), (c) and (d) respectively.

**§ 20-81.2. Special plates for historic vehicles.**—Notwithstanding any other provisions of this chapter, special license plates shall be issued upon application with respect to any motor vehicle of the age of thirty-five years or more from the date of manufacture. Such license plates shall be of the same colors as the regular license plates and shall be issued in a separate numerical series. On the plate there shall be printed the words "Horseless Carriage", the license plate serial number, the words "North Carolina" or the letters "N. C.", and the appropriate calendar year. In lieu of other registration fees, the annual license registration fee for such vehicle shall be five dollars (\$5.00). All other provisions of this chapter not inconsistent herewith shall be applicable to such motor vehicles.

The Commissioner of Motor Vehicles is hereby authorized to make such rules as, in his discretion, may seem necessary with respect to applications for special plates, time for making applications and other matters necessary for the efficient administration of this section. (1955, c. 1339.)

**§ 20-82. Manufacturer or dealer to keep record of vehicles received or sold.**—Every manufacturer or dealer shall keep a record of all vehicles received or sold containing such information regarding same as the Department may require. (1937, c. 407, s. 46; 1965, c. 106.)

**Editor's Note.**—The 1965 amendment, which referred to this section as "G. S. 20-82, as the same appears in the 1963 Cumulative Supplement," deleted the former first and second sentences, requiring every

manufacturer or dealer to make a monthly report to the Department of the sale or transfer of any motor vehicle, trailer or semi-trailer.

Part 6 Vehicles of Nonresidents of State. etc.

**§ 20-83. Registration by nonresidents.**—(a) When a resident carrier of this State interchanges a properly licensed trailer or semi-trailer with another carrier who is a resident of another state, and adequate records are on file in his office to verify such interchanges, the North Carolina licensed carrier may use the trailer licensed in such other state the same as if it is his own during the time the nonresident carrier is using the North Carolina licensed trailer.

(1957, c. 681, s. 1; 1961, c. 642, s. 4.)

**Local Modification.**—

By virtue of Session Laws 1955, c. 554, s. 7 the reference in the recompiled volume to Public Laws 1941, c. 99, s. 2, should be deleted.

**Editor's Note.**—

The 1957 amendment added the above

paragraph as the second paragraph of subsection (a).

The 1961 amendment, effective July 1, 1961, repealed the first paragraph of subsection (a). As only this subsection was changed the rest of the section is not set out.

**§ 20-84. Vehicles owned by State, municipalities or orphanages, etc.**—The Department, upon proper proof being filed with it that any motor

vehicle for which registration is herein required is owned by the State or any department thereof, or by any county, township, city or town, or by any board of education, or by any orphanage or civil air patrol, or incorporated emergency rescue squad, shall collect one dollar for the registration of such motor vehicles, but shall not collect any fee for application for certificate of title in the name of the State or any department thereof, or by any county, township, city or town, or by any board of education or orphanage: Provided, that the term "owned" shall be construed to mean that such motor vehicle is the actual property of the State or some department thereof or of the county, township, city or town, or of the board of education, and no motor vehicle which is the property of any officer or employee of any department named herein shall be construed as being "owned" by such department. Provided, that the above exemptions from registration fees shall also apply to any church owned bus used exclusively for transporting children and parents to Sunday School and church services and for no other purpose.

In lieu of the annual one dollar (\$1.00) registration provided for in this section, the Department may for the license year 1950 and thereafter provide for a permanent registration of the vehicles described in this section and issue permanent registration plates for such vehicles. The permanent registration plates issued pursuant to this paragraph shall be of a distinctive color and shall bear thereon the word "permanent." Such plates shall not be subject to renewal and shall be valid only on the vehicle for which issued. For the permanent registration and issuance of permanent registration plates provided for in this paragraph, the Department shall collect a fee of one dollar (\$1.00) for each vehicle so registered and licensed.

The provisions of this section are hereby made applicable to vehicles owned by a rural fire department, agency or association.

The Department of Motor Vehicles shall issue to the North Carolina Tuberculosis Association, Incorporated, or any local chapter or association of said corporation, for a fee of one dollar (\$1.00) for each plate a permanent registration plate which need not be thereafter renewed for each motor vehicle in the form of a mobile X-ray unit which is owned by said North Carolina Tuberculosis Association, Incorporated, or any local chapter or local association thereof and operated exclusively in this State for the purpose of diagnosis, treatment and discovery of tuberculosis. The initial one dollar (\$1.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plates issued for such vehicle operated as a mobile X-ray unit, and such plates need not thereafter be renewed, and such plates should be valid only on the vehicle for which issued and then only so long as the vehicle shall be operated for the purposes above described and for which the plates were originally issued. (1937, c. 407, s. 48; 1939, c. 275; 1949, c. 583, s. 1; 1951, c. 388; 1953, c. 1264; 1955, cc. 368, 382.)

**Editor's Note.—**

The 1953 amendment inserted "or civil air patrol" in line four of the first paragraph.

The first 1955 amendment added the

fourth paragraph, and the second 1955 amendment inserted the words "or incorporated emergency rescue squad" in the first sentence of the first paragraph.

### Part 6.1. Automobile Utility Trailers.

**§ 20-84.2. Definition, classification, licensing and registration.—**The term "automobile utility trailer" when used herein shall mean and include any trailers suitable for towing by a private passenger automobile, the use of which is confined to the private hauling by private passenger automobile of personal property for intrastate or interstate use. The term "automobile utility trailer" shall not include trailers or semitrailers rented or leased to any person for use by such lessee in the furtherance of or incident to any commercial or industrial

enterprise or for use in connection with any business or occupation carried on in intrastate or interstate commerce by the lessee.

Passenger automobile utility trailers owned or operated by any nonresident person or firm engaged in the business of leasing such trailers for use in intrastate or interstate commerce shall be extended full reciprocity and exempted from registration fees only in instances where:

- (1) Such person or firm has validly licensed all automobile utility trailers owned by him in the state wherein the owner actually resides; provided, that such state affords equal recognition, either in fact or in law, to such trailers licensed in the State of North Carolina and operating similarly within the owner's state of residence; and further provided, that such person or firm is not engaged in this State in the business of renting automobile utility trailers; except, that this subdivision (1) shall not apply to any intrastate rental of an auto utility trailer where the destination rental station is more distant from the licensing state than the originating rental station; or where
- (2) Such person or firm has validly licensed in the State of North Carolina the average number of automobile utility trailers operated in and through the State during the preceding licensing year. In such instance, said person shall register with the Department of Motor Vehicles the fact that he is engaged in such business and shall file data in such form and verified in such manner as shall be required by the Department, estimating the average number of automobile utility trailers he operates in and through the State during the year. The Department may, in its discretion, then determine the average number of trailers used by the owner during the licensing year in and through the State and such determination shall be final. Upon payment by the owner of the prescribed fee, the Department shall issue registration certificates and license plates for the average number of automobile utility trailers used by the owner. Thereafter, all trailers properly identified and licensed in any state, territory, province, county or the District of Columbia, and belonging to such owner, shall be permitted to operate in this State on an interstate or intrastate basis; provided, that such trailers are towed by private passenger cars fully registered and licensed in this State or in another state and legally operated in this State under the reciprocity laws of this State. Except, this subdivision (2) shall not apply to any intrastate rental of an auto utility trailer where the destination rental station is more distant from the licensing state than the originating rental station. (1959, c. 1066.)

Part 7. Title and Registration Fees.

§ 20-85. Schedule of fees.—There shall be paid to the Department for the issuance of certificates of title, transfer of registration and replacement of registration plates fees according to the following schedules:

(1) Each application for certificate of title .....	\$1.00
(2) Each application for duplicate or corrected certificate of title ....	1.00
(3) Each application of repossessor for certificate of title .....	1.00
(4) Each transfer of registration .....	1.00
(5) Each set of replacement registration plates .....	1.00
(6) Each application for duplicate registration certificate .....	.50
(7) Each application for recording supplementary lien .....	1.00
(8) Each application for removing a lien from a certificate of title	1.00

The fees collected under subdivisions (7) and (8) of this section shall be

placed in a special fund designated the "Lien Recording Fund" and shall be used under the direction and supervision of the Assistant Director of the Budget for the administration of the laws of this State relating to the perfection of security interest in vehicles. (1937, c. 407, s. 49; 1943, c. 648; 1947, c. 219, s. 9; 1955, c. 554, s. 4; 1961, c. 360, s. 19; c. 835, s. 11.)

**Editor's Note.—**

The 1955 amendment, effective July 1, 1955, inserted the words "or corrected" in subdivision (2).

The first 1961 amendment, effective Jan. 1, 1962, added subdivision (6).

The second 1961 amendment, effective July 1, 1961, increased the fees in subdivisions (1), (2) and (3). It also added subdivisions (7) and (8) and the last paragraph.

**§ 20-86. Penalty for engaging in a "for hire" business without proper license plates.**—Any person, firm or corporation engaged in the business of transporting persons or property for compensation, except as otherwise provided in this article, shall, before engaging in such business, pay the license fees prescribed by this article and secure the license plates provided for vehicles operated for hire. Any person, firm or corporation operating vehicles for hire without having paid the tax prescribed or using private plates on such vehicles shall be liable for an additional tax of twenty five dollars (\$25.00) for each vehicle in addition to the normal fees provided in this article; provided, that when the vehicle subject to for hire license has attached thereto a trailer or semitrailer, each unit in the combination, including the tractor, trailer and/or semitrailer, shall be subject to the additional tax as herein prescribed; provided, further that the additional tax herein provided shall not apply to trailers having a gross weight of 3,000 pounds or less. (1937, c. 407, s. 50; 1965, c. 659.)

**Editor's Note.**—The 1965 amendment, effective July 1, 1965, added the proviso at the end of the last sentence.

**§ 20-87. Passenger vehicle registration fees.**

(a) Common Carriers of Passengers.—Common carriers of passengers shall pay an annual license tax of forty-five cents (45¢) per hundred pounds weight of each vehicle unit, and in addition thereto one and one-half per cent (1½%) of the gross revenue derived from such operation: Provided, said additional one and one-half per cent (1½%) shall not be collectible unless and until and only to the extent that such amount exceeds the license tax of forty-five cents (45¢) per hundred pounds: Provided further, that common carriers of passengers operating from a point or points in this State to another point or other points in this State shall be liable for a tax of one and one-half per cent (1½%) on the gross revenue earned in such intrastate hauls. Common carriers of passengers operating between a point or points within this State and a point or points without this State shall be liable for a one and one-half per cent (1½%) tax only on that proportion of the gross revenue earned between terminals in this State and terminals outside this State that the mileage in North Carolina bears to the total mileage between the respective terminals. Common carriers of passengers operating through this State from a point or points outside this State to a point or points outside this State shall be liable for a one and one-half per cent (1½%) tax on that proportion of the gross revenue earned between such terminals as the mileage in North Carolina bears to the total mileage between the respective terminals. In no event shall the tax paid by such common carriers of passengers be less than forty-five cents (45¢) per hundred pounds weight for each vehicle. The tax prescribed in this subsection is levied as compensation for the use of the highways of this State and for the special privileges extended such common carriers of passengers by this State.

(b) U-Drive-It Passenger Vehicles.—U-drive-it passenger vehicles shall pay the following tax:

Motorcycles: 1-passenger capacity .....	\$12.00
2-passenger capacity .....	15.00
3-passenger capacity .....	18.00

Automobiles: \$30.00 per year for each vehicle of nine passenger capacity or less, and vehicles of over nine passenger capacity shall be classified as busses and shall pay \$1.90 per hundred pounds empty weight of each vehicle.

(i) House Trailers—In lieu of other registration and license fees levied on house trailers under this section or § 20-88 of the General Statutes, the registration and license fee on house trailers shall be three dollars (\$3.00) for the license year or any portion thereof.

(j) Special Mobile Equipment.—The tax for special mobile equipment shall be three dollars (\$3.00) for the license year or any portion thereof; provided, that vehicles on which are permanently mounted feed mixers, grinders and mills and on which are also transported molasses or other similar type feed additives for use in connection with the feed mixing, grinding or milling process shall be taxed an additional sum of twenty-five dollars (\$25.00) for the license year or any portion thereof, in addition to the basic three dollar (\$3.00) tax provided for herein. (1937, c. 407, s. 51; 1939, c. 275; 1943 c. 648; 1945, c. 564, s. 1; 1945, c. 576, s. 2; 1947, c. 220, s. 3; 1947, c. 1019, ss. 1-3; 1949, c. 127; 1951, c. 819, ss. 1, 2; 1953, c. 478; 1953, c. 826, s. 4; 1955, c. 1313, s. 2; 1957, c. 1340, s. 3; 1961, c. 1172, s. 1a; 1965, c. 927.)

**Cross Reference.**—As to liability insurance required of persons engaged in the business of renting motor vehicles, see § 20-281 et seq.

**Editor's Note.—**

The first 1953 amendment, which added subsection (i), became effective July 1, 1953, and applies to all registrations and licenses for years beginning after December 31, 1953.

The second 1953 amendment added subsection (j). Section 6 of the amendatory act made it effective July 1, 1953 and applicable to all licenses for years beginning after December 31, 1953.

The 1955 amendment, effective July 1, 1955, substituted "three per cent" for "six per cent" throughout subsection (a).

The 1957 amendment substituted "forty-five cents" for "ninety cents" and "one and one-half per cent" for "three per cent" throughout subsection (a).

The 1961 amendment, effective Jan. 1, 1962, added the proviso to subsection (j).

The 1965 amendment, effective July 1, 1965, substituted "\$30.00" for "\$60.00" in subsection (b).

As only the subsections mentioned were affected by the amendments the rest of the section is not set out.

**Cited in** Victory Cab Co. v. Charlotte, 234 N. C. 572, 68 S. E. (2d) 433 (1951); Airlines Transp., Inc. v. Tobin, 198 F (2d) 249 (1952); Pilot Freight Carriers, Inc. v. Scheidt, 263 N.C. 737, 140 S.E.2d 383 (1965).

§ 20-88. **Property hauling vehicles.**—(a) Determination of Weight. — For the purpose of licensing, the weight of self-propelled property-carrying vehicles shall be the empty weight and heaviest load to be transported, as declared by the owner or operator; provided, that any determination of weight shall be made only in units of one thousand pounds or major fraction thereof, weights of over five hundred pounds counted as one thousand and weights of five hundred pounds or less disregarded. The declared gross weight of self-propelled property-carrying vehicles operated in conjunction with trailers or semitrailers shall include the empty weight of the vehicles to be operated in the combination and the heaviest load to be transported by such combination at any time during the registration period, except that the gross weight of a trailer or semitrailer is not required to be included when the operation is to be in conjunction with a self-propelled property-carrying vehicle which is licensed for six thousand (6,000) pounds or less gross weight and the gross weight of such combination does not exceed nine thousand (9,000) pounds, except wreckers as defined under G. S. 20-38 (kk).

(b) There shall be paid to the Department annually, as of the first day of January, for the registration and licensing of self-propelled property-carrying ve-

hicles, fees according to the following classification and schedule and upon the following conditions:

SCHEDULE OF WEIGHTS AND RATES

	Rates Per Hundred Pounds Gross Weight			
	<i>Farmer</i>	<i>Private Hauler</i>	<i>Contract Carrier</i>	<i>Common Carrier of Property (Deposit)</i>
Not over 4,500 pounds	\$0.15	\$0.30	\$0.75	\$0.60
4,501 to 8,500 pounds inclusive	.20	.40	.75	.60
8,501 to 12,500 pounds inclusive	.25	.50	1.00	.60
12,501 to 16,500 pounds inclusive	.35	.70	1.15	.60
Over 16,500 pounds	.40	.80	1.40	.60

- (1) The minimum fee for a vehicle licensed under this subsection shall be ten dollars (\$10.00) at the farmer rate and twelve dollars (\$12.00) at the private hauler, contract carrier and common carrier rates.
- (2) The term "farmer" as used in this subsection means any person engaged in the raising and growing of farm products on a farm in North Carolina not less than ten acres in area, and who does not engage in the business of buying products for resale.
- (3) License plates issued at the farmer rate shall be placed upon trucks and truck tractors that are operated exclusively in the carrying or transportation of applicant's farm products, raised or produced on his farm, and farm supplies and not operated in hauling for hire.
- (4) Farm products means any food crop, cattle, hogs, poultry, dairy products, flower bulbs (but does not mean nursery products) and other agricultural products designed to be used for food purposes, including in the term farm products also cotton, tobacco, logs, bark, pulpwood, tannic acid wood and other forest products.
- (5) The Department shall issue necessary rules and regulations providing for the recall, transfer, exchange or cancellation of "farmer" plates, when vehicle bearing such plates shall be sold or transferred.
- (6) There shall be paid to the Department annually as of the first of January, the following fees for "wreckers" as defined under § 20-38(kk): a wrecker fully equipped weighing seven thousand pounds or less, fifty dollars (\$50.00); wreckers weighing in excess of seven thousand pounds shall pay one hundred dollars (\$100.00). Fees to be prorated quarterly. Provided, further, that nothing herein shall prohibit a licensed dealer from using a dealer's license plate to tow a vehicle for a customer.

(c) There shall be paid to the Department annually, as of the first day of January, for the registration and licensing of trailers or semitrailers, three dollars (\$3.00) for any part of the license year for which said license is issued.

(1953, c. 568; 1953, c. 694, s. 1; 1953, c. 1122; 1955, c. 554, s. 8; 1957, c. 681, s. 2; c. 1215; 1959, c. 571; 1961, c. 685; 1963, c. 501; c. 702, ss. 2, 3.)

**Editor's Note.—**

The first 1953 amendment, effective January 1, 1954, inserted in the former last sentence of subsection (c) the words "flower bulbs (but does not mean nursery products)," now found in subdivision (4) of subsection (b).

The second 1953 amendment rewrote subsection (a). Section 5 of the amenda-

tory act made it effective July 1, 1953, and applicable to all licenses for years beginning after December 31, 1953.

The third 1953 amendment inserted in subsection (c) the words "including in the term 'farm products' also cotton, tobacco, logs, bark, pulpwood, tannic acid wood, and other forest products" now found in subdivision (4) of subsection (b).



The 1955 amendment, effective July 1, 1955, added a proviso at the end of the second sentence of subsection (a), deleted in 1961.

The first 1957 amendment added the former second paragraph to subsection (a). The second 1957 amendment, effective June 10, 1957, and applicable to licenses issued for calendar years beginning January 1, 1958, deleted from subsection (c) the former provision that "persons applying for 'farmer' license under the provisions of this section shall not be entitled to the benefits of § 20-95."

The 1959 amendment, effective for licensing years beginning on and after Jan. 1, 1960, rewrote the provisions of subsection (c).

The 1961 amendment, effective Jan. 1, 1962, rewrote subsections (a), (b) and (c).

The first 1963 amendment added the next-to-last exception clause to the last sentence of subsection (a) and the second 1963 amendment, effective July 1, 1963, added the last exception clause thereto. The second 1963 amendment also added subdivision (6) at the end of subsection (b).

As only subsections (a), (b) and (c) were affected by the amendments, the rest of the section is not set out.

"Terminals."—The word "terminal," as used in subsection (e), means the point of

origin or place where the carrier took possession of the shipment, or the point to which the transportation company makes delivery, the final destination of the shipment. *Pilot Freight Carriers, Inc. v. Scheidt*, 263 N.C. 737, 140 S.E.2d 383 (1965).

**Computation of Tax.**—Until the legislature prescribes some other rule for measurement, the tax must be computed by ascertaining the miles actually traveled by outbound shipments from the place where the carrier takes possession of the shipment, the point of origin, to the State line; and for inbound shipments, the miles actually traveled from the State line to the place where the carrier surrenders possession of the shipment to the consignee, the point of destination. The miles the shipment actually moves in this State is the numerator. The total miles actually traveled by the shipment from the point of origin to the point of destination is the denominator. That fraction determines the portion of the revenue derived from each shipment which is subject to North Carolina's six per cent tax. *Pilot Freight Carriers, Inc. v. Scheidt*, 263 N.C. 737, 140 S.E.2d 383 (1965).

Cited in *Equipment Finance Corp. v. Scheidt*, 249 N. C. 334, 106 S. E. (2d) 555 (1959).

**§ 20-88.1. Driver Training and Safety Education Fund.**—Beginning July 1, 1958, each and every passenger or property-carrying vehicle registering with the Department of Motor Vehicles, for which the registration tax is now being paid at the annual rate of ten dollars (\$10.00) or more, shall pay an additional annual registration tax of one dollar (\$1.00). The revenue derived from the additional tax of one dollar (\$1.00) shall be placed in a separate fund to finance a program of driver training and safety education at the public high schools of the State, and the amounts so collected shall be transferred periodically to the account of the State Board of Education. In accordance with criteria and standards approved by the State Board of Education, the State Superintendent of Public Instruction shall organize and administer a program of driver education to be offered at the public high schools of the State for all persons of provisional license age. Such courses as shall be developed shall be made available to all physically and mentally qualified persons of provisional license age, including public school students, nonpublic school students and out of school youths under 18 years of age. In addition to the revenue derived from the annual additional registration tax of one dollar (\$1.00), the State Board of Education shall use for such purpose all funds appropriated to it for said purpose, and may use all other funds which may become available for its use for said purpose. (1957, c. 682, s. 1; 1965, c. 410, s. 1.)

**Editor's Note.**—Section 2 of the act inserting this section, which provided that no credit for courses in driver training should be allowed towards meeting graduation requirements, was repealed by s. 2 of c. 410, Session Laws 1965.

The 1965 amendment, effective July 1, 1965, rewrote this section, with the exception of the first two sentences therein, and substituted "July" for "January" near the beginning of the first sentence.

§ 20-90. **Due date of franchise tax.**—The additional tax on common carriers of passengers and common carriers of property shall become due and payable on or before the thirtieth day of the month following the month in which it accrues.

(1955, c. 1313, s. 2.)

**Editor's Note.**—

The 1955 amendment, effective July 1, 1955, deleted the words "six per cent" before the word "additional" in line one, and

substituted "thirtieth" for "twentieth" in line three. As only the first paragraph was affected by the amendment the rest of the section is not set out.

§ 20-91. **Records and reports required of franchise carriers.**

(b) All common carriers of passengers and common carriers of property shall, on or before the thirtieth day of each month, make a report to the Department of gross revenue earned and gross mileage operated during the month previous, in such manner as the Department may require and on such forms as the Department shall furnish.

(1955, c. 1313, s. 2.)

**Editor's Note.**—

The 1955 amendment, effective July 1, 1955, substituted "thirtieth" for "twenti-

eth" in line two of subsection (b). As the rest of the section was not affected by the amendment it is not set out.

§ 20-94. **Partial payments.**—In the purchase of licenses, where the gross amount of the license to any one owner amounts to more than four hundred dollars (\$400.00), half of such payment may, if the Commissioner is satisfied of the financial responsibility of such owner, be deferred until June first in any calendar year upon the execution to the Commissioner of a draft upon any bank or trust company upon terms to be provided by the Commissioner in an amount equivalent to one-half of such tax, plus a carrying charge of one-half of one per cent ( $\frac{1}{2}$  of 1%): Provided, that any person using any tag so purchased after the first day of June in any such year, without having first provided for the payment of such draft shall be guilty of a misdemeanor. No further license plates shall be issued to any person executing such a draft after the due date of any such draft so long as such draft or any portion thereof remains unpaid. Any such draft being dishonored and not paid shall be subject to the penalties prescribed in § 20-178 and shall be immediately turned over by the Commissioner to his duly authorized agents and/or the State Highway Patrol, to the end that this provision may be enforced. When the owner of the vehicles for which a draft has been given sells or transfers ownership to all vehicles covered by the draft, such draft shall become payable immediately, and such vehicles shall not be transferred by the Department until the draft has been paid. (1937, c. 407, s. 58; 1943, c. 726; 1945, c. 49 ss. 1, 2; 1947, c. 219, s. 10; 1953, c. 192.)

**Editor's Note.**—

The 1953 amendment inserted the sentence immediately following the proviso.

§ 20-96. **Overloading.**—It is the intent of this section that every owner of a motor vehicle shall procure license in advance to cover the empty weight and maximum load which may be carried. Any owner failing to do so, and whose vehicle shall be found in operation on the highway over the weight for which such vehicle is licensed, shall pay the penalties prescribed in § 20-118. Nonresidents operating under the provisions of § 20-83 shall be subject to the additional tax provided in this section when their vehicles are operated in excess of the licensed weight or regardless of the licensed weight, in excess of the maximum weight provided for in § 20-118. Any resident or nonresident owner of a vehicle that is found in operation on a highway designated by the State Highway Commission as a light traffic highway and along which signs are posted showing the maximum legal weight on said highway with a load in excess of the weight posted for said

highway, shall be subject to the penalties provided in § 20-118. Any person who shall wilfully violate the provisions of this section shall be guilty of a misdemeanor in addition to being liable for the additional tax herein prescribed.

Any peace officer who discovers a property hauling vehicle being operated on the highways with an overload as described in this section or which is equipped with improper registration plates, or the owner of which is liable for any overload penalties or assessments applicable to the vehicle and due and unpaid for more than thirty (30) days, is hereby authorized to seize said property hauling vehicle and hold the same until the overload has been removed or proper registration plates therefor have been secured and attached thereto and the overloading penalty provided in this section and § 20-118 has been paid. Any peace officer seizing a property hauling vehicle under this provision, may, when necessary, store said vehicle and the owner thereof shall be responsible for all reasonable storage charges thereon. When any property hauling vehicle is seized, held, unloaded or partially unloaded under this provision, the load or any part thereof shall be cared for by the owner or operator of the vehicle without any liability on the part of the officer or of the State of any municipality because of damage to or loss of such load or any part thereof. (1937, c. 407, s. 60; 1943, c. 726; 1949, c. 583, s. 8; 1949, c. 1207, s. 4½; 1949, c. 1253; 1951, c. 1013, ss. 1-3; 1953, c. 694, ss. 2, 3; 1955, c. 554, s. 9; 1957, c. 65, s. 11; 1959, c. 1264, s. 5.)

**Editor's Note.**—

The 1953 amendment deleted the former first sentence of the first paragraph, and substituted in the present first sentence the words "the empty weight and maximum load" for the words "any overload." Section 5 of the amendatory act made it effective July 1, 1953, and applicable to all licenses for years beginning after December 31, 1953.

The 1955 amendment, effective July 1,

1955, inserted at the end of the first sentence of the second paragraph the words "and the overloading penalty provided in this section and § 20-118 has been paid."

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission" in the first paragraph.

The 1959 amendment, effective Oct. 1, 1959, rewrote the first and last sentences of the second paragraph.

**§ 20-97. Taxes compensatory; no additional tax.**

**Historical Background for Subsections (a) and (b).** — See *Victory Cab Co v. Charlotte*, 234 N. C. 572, 68 S. E. (2d) 433 (1951).

**May Not Impose Additional License Tax on Vehicles for Hire.**—

An examination of the legislative history of this section shows a fixed and unvarying legislative policy to curb the powers of municipalities in taxing motor vehicles of all kinds, including taxicabs. *Victory Cab Co. v. Charlotte*, 234 N. C. 572, 68 S. E. (2d) 433 (1951).

In view of the limitations imposed by

subsections (a) and (b) of this section fees collected by a city in excess of \$16.00 for each cab may not be justified as items of revenue. *Victory Cab Co. v. Charlotte*, 234 N. C. 572, 68 S. E. (2d) 433 (1951). See note under subsection 36a of § 160-200

**Taxes Finance Construction and Maintenance of Highways.**—The construction and maintenance of this State's highways is financed, in part, by taxes based on the use of the highways by motor vehicles. *Pilot Freight Carriers, Inc. v. Scheidt*, 263 N.C. 737, 140 S.E.2d 383 (1965).

**§ 20-99. Remedies for the collection of taxes.**

5 The provisions, procedures, and remedies provided in this section shall be applicable to the collection of penalties imposed under the provisions of § 20-96, § 20-118, or any other provisions of this chapter imposing a tax or penalty for operation of a vehicle in excess of the weight limits provided in this chapter and the Commissioner is authorized to collect such taxes or penalties by the use of the procedure established in paragraphs 1, 2, 3 and 4 of this section. (1937, c. 407 s. 63; 1945, c. 576, s. 4; 1951, c. 819, s. 1; 1955, c. 554, s. 10.)

**Editor's Note.**—

The 1955 amendment, effective July 1, 1955, added subsection 5. As subsections 1

through 4 were not affected by the amendment they are not set out.

## Part 8. Anti-Theft and Enforcement Provisions.

§ 20-102.1. **False report of theft or conversion a misdemeanor.**— A person who knowingly makes to a peace officer or to the Department a false report of the theft or conversion of a motor vehicle shall be guilty of a misdemeanor, punishable within discretion of the court. (1963, c. 1083.)

§ 20-105. **Unlawful taking of a vehicle.** — Any person who drives or otherwise takes and carries away a vehicle, not his own, without the consent of the owner thereof, and with intent to temporarily deprive said owner of his possession of such vehicle, without intent to steal the same, is guilty of a misdemeanor. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same or a different person. Any person who assists in, or is a party or accessory to or an accomplice in any such unauthorized taking or driving, is guilty of a misdemeanor. A violation of this section shall be punishable by fine, or by imprisonment not exceeding two years, or both, in the discretion of the court. (1937, c. 407, s. 69; 1943, c. 543; 1965, c. 193.)

**Editor's Note.**—

The 1965 amendment added the last sentence.

**An indictment, etc.**—

While the State's evidence was sufficient to support a conviction for violation of this section, (1) defendant was not charged with such violation, and (2) a de-

fendant may not be convicted under this section upon trial on a bill of indictment for larceny. *State v. McCrary*, 263 N.C. 490, 139 S.E.2d 739 (1965).

**Applied in** *U Drive It Auto Co. v. Atlantic Fire Ins. Co.*, 239 N. C. 416, 80 S. E. (2d) 35 (1954).

§ 20-106.1. **Fraud in connection with rental of motor vehicles.** — Any person with the intent to defraud the owner of any motor vehicle or a person in lawful possession thereof, who obtains possession of said vehicle by agreeing in writing to pay a rental for the use of said vehicle, and further agreeing in writing that the said vehicle shall be returned to a certain place, or at a certain time, and who wilfully fails and refuses to return the same to the place and at the time specified, or who secretes, converts, sells or attempts to sell the same or any part thereof shall be guilty of a felony. (1961, c. 1067.)

§ 20-107. **Injuring or tampering with vehicle.**—(a) Any person who either individually or in association with one or more other persons wilfully injures or tampers with any vehicles or breaks or removes any part or parts of or from a vehicle without the consent of the owner is guilty of a misdemeanor, and upon conviction shall be punished by a fine or imprisonment, or both, in the discretion of the court.

(b) Any person who with intent to steal, commit any malicious mischief, injury or other crime, climbs into or upon a vehicle, whether it is in motion or at rest, or with like intent attempts to manipulate any of the levers, starting mechanism, brakes, or other mechanism or device of a vehicle while the same is at rest and unattended or with like intent sets in motion any vehicle while the same is at rest and unattended, is guilty of a misdemeanor, and upon conviction shall be punished by a fine or imprisonment, or both, in the discretion of the court. (1937, c. 407, s. 71; 1965, c. 621, s. 1.)

**Editor's Note.**—The 1965 amendment language beginning with the words "and added at the end of each subsection the upon conviction."

§ 20-108. **Vehicles without manufacturer's numbers.**—Any person who knowingly buys, receives, disposes of, sells, offers for sale, conceals, or has in his possession any motor vehicle, or engine removed from a motor vehicle, from which the manufacturer's serial or engine number or other distinguishing number or identification mark or number placed thereon under assignment from

the Department has been removed, defaced, covered, altered, or destroyed for the purpose of concealing or misrepresenting the identity of said motor vehicle or engine is guilty of a misdemeanor, and upon conviction shall be punished by a fine or imprisonment, or both, in the discretion of the court. (1937, c. 407, s. 72; 1965, c. 621, s. 2.)

**Editor's Note.**—The 1965 amendment added the provisions relating to the owner permitting certain prohibited acts. It also deleted the former provision making any violation of the section a misdemeanor.

**§ 20-109. Altering or changing engine or other numbers.**—No person shall wilfully deface, destroy, or alter the manufacturer's serial or engine number or other distinguishing number or identification mark of a motor vehicle and neither shall any owner permit the defacing, destroying or alteration of such numbers or marks. No person shall place or stamp any serial, engine or other number or marking upon a vehicle, except one assigned thereto by the Department, and neither shall any owner permit the placing or stamping of any number or mark upon a motor vehicle except one assigned thereto by the Department. It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this section, and upon conviction said person shall be punished by a fine or imprisonment, or both, in the discretion of the court. (1937, c. 407, s. 73; 1943, c. 726; 1953, c. 216; 1965, c. 621, s. 3.)

**Editor's Note.** — The 1965 amendment added the last sentence in the section.

**§ 20-110. When registration shall be rescinded.**

(g) The Department shall rescind and cancel the registration plates issued to a common carrier of passengers or property which has been secured by such common carrier as provided under § 20-50 when the license is being used on a vehicle other than the one for which it was issued or which is being used by the lessor-owner after the lease with such lessee has been terminated.

(h) The Department may rescind and cancel the registration or certificate of title on any vehicle on the grounds that the application therefor contains any false or fraudulent statement or that the holder of the certificate was not entitled to the issuance of a certificate of title or registration.

(i) The Department may rescind and cancel the registration or certificate of title of any vehicle when the Department has reasonable grounds to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of certificate of title constituted a fraud against the rightful owner or person having a valid lien upon such vehicle.

(j) The Department may rescind and cancel the registration or certificate of title of any vehicle on the grounds that the registration of the vehicle stands suspended or revoked under the Motor Vehicle Laws of this State.

(k) The Department shall rescind and cancel a certificate of title when the Department finds that such certificate has been used in connection with the registration or sale of a vehicle other than the vehicle for which the certificate was issued. (1937, c. 407, s. 74; 1945, c. 576, s. 5; 1947, c. 220, s. 4; 1951, c. 985, s. 1; 1953, c. 831, s. 4; 1955, c. 294, s. 1; c. 554, s. 11.)

**Editor's Note.**— July 1, 1955, added subsections (h), (i) and (j). As the rest of the section was not affected by the amendments, it is not set out.

**§ 20-111. Violation of registration provisions.**

(a) To operate or for the owner thereof knowingly to permit the operation upon a highway of any vehicle, trailer, or semi-trailer required to be registered

and which is not registered or for which a certificate of title has not been issued, or which does not have attached thereto and displayed thereon the registration number plate or plates assigned thereto by the Department for the current registration year, subject to the provisions of G. S. 20-64 and 20-72 (a) and the exemptions mentioned in G. S. 20-65 and 20-79.

(f) To give, lend, sell or obtain a certificate of title for the purpose of such certificate being used for any purpose other than the registration, sale, or other use in connection with the vehicle for which the certificate was issued. Any person violating the provisions of this subsection shall be guilty of a misdemeanor. (1937, c. 407, s. 75; 1943, c. 592, s. 2; 1945, c. 576, s. 6; 1945, c. 635; 1949, c. 360; 1955, c. 294, s. 2; 1961, c. 360, s. 20.)

**Editor's Note.—**

The 1955 amendment, effective July 1, 1955 added subsection (f).

The 1961 amendment, effective Jan. 1,

1962, rewrote subsection (a). As the rest of the section was not affected by the amendments it is not set out.

**§ 20-114. Duty of officer; manner of enforcement.**

**Cross Reference.**—As to uniformed firemen enforcing motor vehicle laws and ordinances at fires, see § 20-114.1.

**§ 20-114.1. Uniformed firemen may direct traffic and enforce motor vehicle laws and ordinances at fires.**—In addition to other law enforcement officers, uniformed regular and volunteer firemen may direct traffic and enforce traffic laws and ordinances at the scene of fires in connection with their duties as firemen. Except as herein provided firemen shall not be considered law enforcement officers. (1961, c. 879.)

Part 9. The Size, Weight, Construction and Equipment of Vehicles.

**§ 20 116. Size of vehicles and loads.**—(a) The total outside width of any vehicle or the load thereon shall not exceed ninety-six inches, except as otherwise provided in this section: Provided that when hogheads of tobacco are being transported, a tolerance of five inches shall be allowed.

(c) No vehicle, unladen or with load, shall exceed a height of thirteen feet, six inches. Provided, however, that neither the State of North Carolina nor any agency or subdivision thereof, nor any person, firm or corporation, shall be required to raise, alter, construct or reconstruct any underpass, wire, pole, trestle, or other structure to permit the passage of any vehicle having a height, unladen or with load, in excess of twelve feet, six inches. Provided further, that the operator or owner of any vehicle having an overall height, whether unladen or with load, in excess of twelve feet, six inches, shall be liable for damage to any structure caused by such vehicle having a height in excess of twelve feet, six inches. The term "automobile transport" as used in this subsection shall mean only vehicles engaged exclusively in transporting automobiles, trucks and other commercial vehicles.

(d) No vehicle, except where used in combination with another vehicle, shall exceed a length of thirty-five feet extreme over-all dimension, inclusive of front and rear bumpers: Provided, that a passenger bus having three (3) axles shall not exceed forty (40) feet in length. A truck-tractor and semi-trailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes.

(e) No combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of fifty-five feet inclusive of front and rear bumpers, subject to the following exceptions: Said length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects

operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided, that wreckers in an emergency may tow a combination tractor and trailer to the nearest feasible point for repair and/or storage: Provided, that the State Highway Commission shall have authority to designate any highways upon the State system as light-traffic roads when, in the opinion of the Commission, such roads are inadequate to carry and will be injuriously affected by the maximum load, size, and/or width of trucks or buses using such roads as herein provided for, and all such roads so designated shall be conspicuously posted as light-traffic roads and the maximum load, size and/or width authorized shall be displayed on proper signs erected thereon. Provided, however, that a combination of a house trailer used as a mobile home, together with its towing vehicle, shall not exceed a total length of fifty-five (55) feet exclusive of front and rear bumpers. The operation of any vehicle whose gross load, size and/or width exceed the maximum shown on such signs over the roads thus posted shall constitute a misdemeanor: Provided further, that no standard concrete highway, or other highway built of material of equivalent durability, and not less than eighteen feet in width, shall be designated as a light-traffic road: Provided further, that the limitations placed on any road shall not be less than eighty per cent (80%) of the standard weight, unless there shall be available an alternate improved route of not more than twenty per cent (20%) increase in the distance: provided, however, that such restriction of limitations shall not apply to any county road, farm-to-market road, or any other road of the secondary system: Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three (3) in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of fifty (50) feet inclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a drive-away service when no more than two saddle mounts are used and provided further that equipment used in said combination is approved by the safety regulations of the Interstate Commerce Commission and the safety regulations of the North Carolina Department of Motor Vehicles and the North Carolina State Highway Commission.

(h) Wherever there exist two highways of the primary State Highway System of approximately the same distance between two or more points, the State Highway Commission shall have authority, when in the opinion of the Commission, based upon engineering and traffic investigation, safety will be promoted or the public interest will be served thereby, to designate one of said highways the "truck route" between said points, and to prohibit the use of the other highway by heavy trucks or other vehicles of a gross vehicle weight or axle load limit in excess of a designated maximum. In such instances the highways so selected for heavy vehicle traffic shall be so designated as "truck routes" by signs conspicuously posted thereon, and the highways upon which heavy vehicle traffic is prohibited shall likewise be so designated by signs conspicuously posted thereon showing the maximum gross vehicle weight or axle load limits authorized for said highways. The operation of any vehicle whose gross vehicle weight or axle load exceeds the maximum limits shown on such signs over the highway thus posted shall constitute a misdemeanor: Provided, that nothing herein shall prohibit a truck or other motor vehicle whose gross vehicle weight or axle load exceeds that prescribed for such highways from using such highway when the

destination of such vehicle is located solely upon said highway, road or street: Provided, further, that nothing herein shall prohibit passenger vehicles or other light vehicles from using any highways so designated for heavy truck traffic.

(j) Self-propelled grain combines or other farm equipment self-propelled or otherwise, not exceeding fifteen and one-half feet in width may be operated on any highway, except a highway or section of highway that is a part of the National System of Interstate and Defense Highways; and provided, that such combines or equipment may be operated on numbered federal or State highways exclusive of the Interstate System, only by special permit as provided in G.S. 20-119; permits issued in compliance with G.S. 20-119 for equipment covered under this section may be on a seasonal basis: Provided, further, that all such combines or equipment which exceed ten feet in width may be so operated only under the following conditions:

- (1) Said equipment may only be so operated during daylight hours; and
- (2) Said equipment must display a red flag on front and rear, said flags shall not be smaller than three feet wide and four feet long and be attached to a stick, pole, staff, etc., not less than four feet long and shall be so attached to said equipment as to be visible for not less than 300 feet; and said equipment shall travel only on routes designated by the special permit required under this section and for distances not to exceed four miles; and
- (3) Equipment covered by this section requiring special permit to be operated on permissible or designated highways, which by necessity must travel more than four miles, must be proceeded [preceded] at a distance of 300 feet and followed at a distance of 300 feet by a flagman either on foot or in a vehicle. Each flagman must carry and display, by hand or mounted on his vehicle, a red flag, not smaller than three feet wide and four feet long. Said flag shall be attached to a stick, pole, staff, etc., not less than three feet long and every such piece of equipment so operated shall carry and display at least one red flag not less than three feet wide and four feet long. Equipment to be operated for a distance in excess of four miles may not be so operated on Saturdays, Sundays, or holidays; and
- (4) Every such piece of equipment so operated shall operate to the right of the center line when possible and practical. (1937, c. 246; c. 407, s. 80; 1943, c. 213, s. 1; 1945, c. 242, s. 1; 1947, c. 844; 1951, c. 495, s. 1; c. 733; 1953, cc. 682, 1107; 1955, c. 296, s. 2; c. 729; 1957, c. 65, s. 11; cc. 493, 1183, 1190; 1959, c. 559; 1963, c. 356, s. 1; c. 610, ss. 1, 2; c. 702, s. 4; c. 1027, s. 1; 1965, c. 471.)

**Local Modification.** — City of Charlotte: 1955, c. 317.

**Editor's Note.**—

The first 1953 amendment rewrote subsection (c), and the second 1953 amendment added the proviso to subsection (a).

The first 1955 amendment substituted "exclusive" for "inclusive" in line three of subsection (e), and the second 1955 amendment inserted the third proviso in subsection (e).

The first 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission" in subsections (e) and (h). The second 1957 amendment substituted, near the beginning of subsection (e), the words "fifty feet inclusive" for the words "forty-eight

feet exclusive." The third 1957 amendment added subsection (j). The fourth 1957 amendment changed, in the third proviso of subsection (e), "fifty (50) feet" to "fifty-five (55) feet."

The 1959 amendment inserted "except where used in combination with another vehicle" in the first line of subsection (d).

The first 1963 amendment added the next-to-last proviso of subsection (e). The second 1963 amendment substituted "thirteen" for "twelve" near the beginning of subsection (c) and deleted at the end of the first sentence of subsection (c) an exception clause relating to certain automobile transports. It also substituted "fifty-five" for "fifty" near the beginning of subsection (e). The third 1963 amendment,



effective July 1, 1963, inserted the first proviso in subsection (e). The fourth 1963 amendment added the last proviso to subsection (e).

The 1965 amendment inserted in the opening paragraph of subsection (j) "permits issued in compliance with G.S. 20-119 for equipment covered under this section may be on a seasonal basis." It also rewrote that portion of subsection (j) following the opening paragraph.

As only subsections (a), (c), (d), (e), (h) and (j) were affected by the amendments the rest of the section is not set out.

**Height of Vehicle.**—See *Dennis v. Albe-marle*, 242 N. C. 263, 87 S. E. (2d) 561 (1955).

**Evidence Insufficient to Sustain Violation of Subsection (j).** — The defendant's contention that the plaintiff violated sub-

section (j) of this section, which constitutes negligence per se, was untenable because there was no evidence in the record that the plaintiff's combine exceeded 10 feet in width so as to bring the case within the purview of subsection (j), where the plaintiff's evidence, taken in the light most favorable to him, showed that the combine was 9 feet 11 inches in width while being moved upon the road and the defendant's evidence tended only to show the width of the combine when in actual operation and not when being moved along the highway. *Furr v. Overcash*, 254 N. C. 611, 119 S. E. (2d) 465 (1961).

Quoted in *Lyday v. Southern Ry. Co.*, 253 N. C. 687, 117 S. E. (2d) 778 (1961).

Cited in *State Highway Comm'n v. Raleigh Farmers Mkt., Inc.*, 263 N.C. 622, 139 S.E.2d 904 (1965).

### § 20-117. Flag or light at end of load.

**Violation of Section Is Negligence.**—The failure of the defendant to display a red light at the end of the lumber, which extended more than four feet beyond the rear of the bed or body of the truck, plainly visible under normal atmospheric conditions at least 200 feet from the rear of the truck, between one-half hour after sunset and one-half hour before sunrise,

as required by this section, was negligence. *Weavil v. Myers*, 243 N. C. 386, 90 S. E. (2d) 733 (1956).

Applied in *Bumgardner v. Allison*, 238 N. C. 621, 78 S. E. (2d) 752 (1953)

Cited in *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

**§ 20-117.1. Equipment required on all semi-trailers operated by contract carriers or common carriers of property.** — (a) **Rear-Vision Mirror.**—Every tractor shall be equipped with at least one rear-vision mirror, firmly attached to the motor vehicle and so located as to reflect to the driver a view of the highway to the rear.

(b) **Fuel Container Not to Project.**—No part of any fuel tank or container or intake pipe shall project beyond the sides of the motor vehicle. (1949, c. 1207, s. 1; 1951, c. 819, s. 1; 1955, c. 1157, ss. 1, 4.)

#### Editor's Note.—

The 1955 amendment, effective July 1, 1955, deleted former subsections (a), (b), (c), (d) and (e), relating to required lights and reflectors, and relettered for-

mer subsections (f) and (g) as (a) and (b). The amendment also repealed former subsection (h), requiring a flag or light at the end of a load.

**§ 20-118. Weight of vehicles and load.**—No vehicle or combination of vehicles shall be moved or operated on any highway or bridge when the gross weight thereof exceeds the limit specified below :

- (1) When the wheel is equipped with high-pressure pneumatic, solid rubber or cushion tire, eight thousand pounds.
- (2) When the wheel is equipped with low-pressure pneumatic tire, nine thousand pounds.
- (3) The gross weight on any one axle of the vehicle when the wheels attached to said axle are equipped with high-pressure solid rubber or cushion tires, sixteen thousand pounds.
- (4) When the wheels attached to said axle are equipped with low-pressure pneumatic tires, eighteen thousand pounds.
- (5) For each violation of subdivisions (3) or (4), or for each violation of

the maximum axle weight limits established by the State Highway Commission in connection with light-traffic roads, the owner of the vehicle shall pay to the Department a penalty for each pound of weight of [on] such axle in excess of the said maximum weight in accordance with the following schedule: For the first one thousand (1,000) pounds or any part thereof, two cents (2¢) per pound; for the next one thousand (1,000) pounds or any part thereof, three cents (3¢) per pound; and for each additional pound, five cents (5¢) per pound. Provided, however, the penalty shall not apply if the excess weight on any one axle does not exceed one thousand (1,000) pounds. Said one thousand (1,000) pounds shall constitute a tolerance and no additional tolerance on axle weight shall be granted administratively or otherwise. In all cases of violation of the axle weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted in subdivisions (3) and (4) including the one thousand (1,000) pound tolerance. The penalties herein provided shall constitute sole punishment for violation of this subdivision and violators thereof shall not be subject to criminal action. Provided, that when it is discovered that a vehicle is in violation of subdivisions (3) or (4), or is in violation of the maximum axle weight limits established by the State Highway Commission in connection with light-traffic roads, the owner of the vehicle shall be permitted to shift without penalty the weight from one axle to another to comply with the axle limits set forth in this section in the following instances, provided, that the gross weight of the vehicle is within the legal limit:

- a. In cases where the single axle load exceeds the statutory limits, but does not exceed 21,000 pounds.
  - b. In cases where the vehicle has tandem axles and the weight exceeds the statutory limits, but does not exceed 40,000 pounds, provided, that for the purpose of this section tandem axles shall be defined as any two axles more than 48 inches apart but less than 96 inches apart.
  - c. In cases where the axle weight does not exceed 15,500 pounds and the limit placed on the road or highway by the State Highway Commission is 13,000 pounds per axle.
- (6) For the purposes of this section an axle load shall be defined as the total load on all wheels whose centers are included within two parallel transverse vertical planes not more than forty-eight inches apart.
  - (7) For the purposes of this section every pneumatic tire designed for use and used when inflated with air to less than one hundred pounds pressure shall be deemed a low-pressure pneumatic tire, and every pneumatic tire inflated to one hundred pounds pressure or more shall be deemed a high-pressure pneumatic tire.
  - (8) The gross weight of any vehicle having two axles shall not exceed thirty thousand pounds, unless used in connection with a combination consisting of four axles or more. For the purpose of determining the maximum weight to be allowed for passenger buses to be operated upon the highways of this State, the Commissioner of Motor Vehicles shall require, prior to the issuance of license, a certificate showing the weight of such bus when fully equipped for the road. No license shall be issued to any passenger bus with two (2) axles having a weight, when fully equipped for operation on the highways, of more than twenty-two thousand, five hundred (22,500) lbs., and no license shall be issued for any passenger bus with three (3) axles having a weight, when fully equipped for operation on the highways, of more than thirty thousand (30,000) lbs., unless the bus for which application for license is

made shall have been licensed in the State of North Carolina prior to the 1st day of February, 1949. No special permits shall be issued for any passenger buses exceeding the foregoing specified weights for each group.

- (9) The gross weight of any vehicle or combination of vehicles having three axles shall not exceed forty-seven thousand five hundred pounds. For the purpose of determining gross weight, no axle shall be considered unless the wheels thereof are equipped with adequate brakes. For the purposes of this subdivision, brakes shall not be required on the front wheels; provided, however, such vehicle must be capable of complying with the performance requirements of G.S. 20-124 (e).
- (10) The gross weight of any vehicle or combination of vehicles having four or more axles shall not exceed sixty-four thousand pounds. For the purpose of determining gross weight, no axle shall be considered unless the wheels thereof are equipped with adequate brakes; provided, the gross weight of any vehicle or combination of vehicles having five or more axles shall not exceed seventy thousand pounds. For the purpose of determining gross weight, no axle shall be considered unless the wheels thereof are equipped with adequate brakes: Provided a wrecker towing a disabled vehicle or vehicles of an emergency nature, only the weight of the vehicle or combination of vehicles being towed shall be considered. For the purposes of this subdivision, brakes shall not be required on the front wheels; provided, however, such vehicle must be capable of complying with the performance requirements of G.S. 20-124 (e).
- (11) The gross weight with normal load of passengers of any vehicle propelled by electric power obtained from trolley wires, but not operated upon rails, commonly known as an electric trackless trolley coach, which is operated as a part of the general trackless trolley system of passenger transportation of the city of Greensboro and vicinity, shall not exceed thirty thousand pounds.
- (12) No vehicle shall be operated on any highway the weight of which, resting on the surface of such highway, exceeds six hundred pounds upon any inch of tire roller or other support.

Any vehicle or combination of vehicle and load may exceed the gross weight limitations for the vehicle or vehicle and load hereinbefore set out in this section by not more than five per centum (5%), except that under no circumstances shall the total weight, including tolerance, exceed seventy-three thousand, two hundred eighty pounds.

For each violation of the gross weight limitation for the vehicle or vehicle and load the owner of the vehicle shall pay to the Department a penalty for each pound of weight of such vehicle or vehicle and load in excess of the weight limitations, including the 5%, hereinbefore set out in this section for each vehicle or vehicle and load in accordance with the following schedule: For the first 2,000 pounds or any part thereof, one cent (1¢) per pound; for the next 3,000 pounds or any part thereof, two cents (2¢) per pound; for each pound in excess of 5,000 pounds, five cents (5¢) per pound. (1937, c. 407, s. 82; 1943, c. 213, s. 2; 1943, cc. 726, 784; 1945, c. 242, s. 2; 1945, c. 569, s. 2; 1945, c. 576, s. 7; 1947, c. 1079; 1949, c. 1207, s. 2; 1951, c. 495, s. 2; 1951, c. 942, s. 1; 1951, c. 1013, ss. 5, 6, 8; 1953, cc. 214, 1092; 1959, c. 872; c. 1264, s. 6; 1963, c. 159; c. 610, ss. 3-5; c. 702, s. 5; 1965, cc. 483, 1044.)

#### Editor's Note.—

The first 1953 amendment struck out the last sentence in the next to last paragraph relating to the piston displacement

requirement for certain motor vehicles. The second 1953 amendment inserted present subdivision (5), repealed a former subdivision prohibiting certain vehicles

from operating on any but heavy duty highways and rewrote the last two paragraphs of the section.

The first 1959 amendment substituted "sixty-two thousand" for "fifty-six thousand" near the beginning of subdivision (10). The second 1959 amendment, effective Oct. 1, 1959, inserted near the beginning of subdivision (5) the words "or for each violation of the maximum axle weight limits established by the State Highway Commission in connection with light-traffic roads."

The first 1963 amendment substituted "forty-seven thousand five hundred" for "forty-four thousand" in subdivision (9).

The second 1963 amendment substituted

"sixty-four thousand" for "sixty-two thousand" near the beginning of subdivision (10) and added the first proviso and the third sentence in subdivision (10). It also added the exception clause at the end of the next-to-last paragraph.

The third 1963 amendment, effective July 1, 1963, added the second proviso to subdivision (10).

The first 1965 amendment added, at the end of subdivision (5), the provisions permitting the owner of the vehicle to shift without penalty the weight from one axle to another to comply with the axle limits.

The second 1965 amendment added the last sentence in subdivisions (9) and (10).

### § 20-119. Special permits for vehicles of excessive size or weight.

—The State Highway and Public Works Commission may, in their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle of a size or weight exceeding a maximum specified in this article upon any highway under the jurisdiction and for the maintenance of which the body granting the permit is responsible. Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer; and it shall be a misdemeanor for any person to violate any of the terms or conditions of such special permit: Provided, the authorities in any incorporated city or town may grant permits in writing and for good cause shown, authorizing the applicant to move a vehicle over the streets of such city or town, the size or width exceeding the maximum expressed in this article. (1937, c. 407, s. 83; 1959, c. 1129.)

**Editor's Note.** — The 1959 amendment deleted, following the word "applicant" in line three, the words "for seasonal operations."

This section was enacted for the protection of the traveling public. *Lyday v. Southern Ry. Co.*, 253 N. C. 687, 117 S. E. (2d) 778 (1961).

### Violation as Contributory Negligence.—

Whether violation of this section by the plaintiff constitutes contributory negligence depends on whether or not such violation is a proximate cause, or one of the proximate causes, of the damages suffered by the plaintiff. *Lyday v. Southern Ry. Co.*, 253 N. C. 687, 117 S. E. (2d) 778 (1961).

§ 20-120. Operation of flat trucks on State highways regulated; trucks hauling leaf tobacco in barrels or hogsheads — It shall be unlawful for any person, firm or corporation to operate, or have operated on any public highway in the State any open, flat truck loaded with logs, cotton bales, boxes or other load piled on said truck, without having the said load securely fastened on said truck.

It shall be unlawful for any firm, person or corporation to operate or permit to be operated on any highway of this State a truck or trucks on which leaf tobacco in barrels or hogsheads is carried unless each section or tier of such barrels or hogsheads are reasonably securely fastened to such truck or trucks by metal chains or wire cables, or manila or hemp ropes of not less than five-eighths inch in diameter to hold said barrels or hogsheads in place under any ordinary traffic or road condition: Provided that the provisions of this paragraph shall not apply to any truck or trucks on which the hogsheads or barrels of tobacco are arranged in a single layer, tier, or plane, it being the intent of this paragraph to require the use of metal chains or wire cables only when barrels or hogsheads of tobacco are stacked or piled one upon the other on a truck or trucks. Nothing in this paragraph shall apply to trucks engaged in transporting hogsheads or barrels of tobacco between factories and storage houses

of the same company unless such hogsheads or barrels are placed upon the truck in tiers. In the event the hogsheads or barrels of tobacco are placed upon the truck in tiers same shall be securely fastened to the said truck as hereinbefore provided in this paragraph.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1939, c. 114; 1947, c. 1094; 1953, c. 240.)

**Editor's Note.—**

The 1953 amendment deleted the former provisions in the first two paragraphs relating to punishment for violation and added the third paragraph in lieu thereof. It changed the diameter of the ropes mentioned in the first sentence of the second

paragraph from "one-half inch" to "five-eighths inch." It also inserted in said sentence the words "each section or tier of" and deleted the words "or tarpaulin" formerly appearing after the word "cables" therein.

**§ 20-122. Restrictions as to tire equipment.**

(b) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway and except, also, that it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice or other conditions tending to cause a vehicle to slide or skid. It shall be permissible to use upon any vehicle for increased safety, regular and snow tires with studs which project beyond the tread of the traction surface of the tire not more than 1/16th of an inch when compressed.

(1965, c. 435.)

**Editor's Note.—**

The 1965 amendment added the second sentence of subsection (b).

As the rest of the section was not changed by the amendment, only subsection (b) is set out.

Cited in *State Highway Comm'n v. Raleigh Farmers Mkt., Inc.*, 263 N.C. 622, 139 S.E.2d 904 (1965).

**§ 20-123. Trailers and towed vehicles.**—(a) No motor vehicle shall be driven upon any highway drawing or having attached thereto more than one trailer or semi-trailer: Provided that this provision shall not apply to trailers not exceeding three (3) in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of fifty (50) feet inclusive of front and rear bumpers: Provided that this provision shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a drive-away service when no more than two saddle mounts are used and provided further that equipment used in said combination is approved by the safety regulations of the Interstate Commerce Commission and the safety regulations of the North Carolina Department of Motor Vehicles and the North Carolina State Highway Commission. Nothing herein shall prohibit the towing of farm trailers and equipment in single tandem during the period from one half hour before sunrise and one half hour after sunset, but such combination of vehicles shall not exceed a total length of 40 feet and provided there is displayed on the rear of the last vehicle being towed, in such position as to be clearly visible at all times, a red flag not less than 12 inches both in length and width. The towing of farm trailers and equipment as herein permitted shall not be applicable to interstate or federal numbered highways.

(b) No trailer or semi-trailer shall be operated over the highways of the State unless such trailer or semi-trailer be firmly attached to the rear of the motor vehicle drawing same, and unless so equipped that it will not snake, but will travel in the path of the wheels of the vehicle drawing such trailer or semi-trailer, which

equipment shall at all times be kept in good condition. (1937, c. 407, s. 86; 1955, c. 296, s. 3; 1963, c. 356, s. 2; c. 1027, s. 2; 1965, c. 966.)

**Editor's Note.**—The 1955 amendment substituted "snake" for "shake" near the middle of subsection (b). The 1963 amendment added the first proviso to subsection (a). The second 1963 amendment added the second proviso to subsection (a). The 1965 amendment added the last two sentences in subsection (a).

The first 1963 amendment added the first proviso to subsection (a). The second 1963 amendment added the second proviso to subsection (a). The 1965 amendment added the last two sentences in subsection (a).

§ 20-123.1. **Steering mechanism.**—The steering mechanism of every self-propelled motor vehicle operated on the highway shall be maintained in good working order, sufficient to enable the operator to control the vehicle's movements and to maneuver it safely. (1957, c. 1038, s. 3.)

§ 20-124. **Brakes.**—(a) Every motor vehicle when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop such vehicle or vehicles, and such brakes shall be maintained in good working order and shall conform to regulations provided in this section.

(b) No person having control or charge of a motor vehicle shall allow such vehicle to stand on any highway unattended without first effectively setting the parking brake thereon, stopping the motor and turning the front wheels into the curb or side of the highway.

(c) Every motor vehicle other than a motorcycle or motor-driven cycle when operated on a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

(d) Every motorcycle and every motor-driven cycle when operated upon a highway shall be equipped with at least one brake which may be operated by hand or foot.

(e) Motor trucks and tractor-trucks with semi-trailers attached shall be capable of stopping on a dry, hard, approximately level highway free from loose material at a speed of twenty miles per hour within the following distances: Thirty feet with both hand and service brake applied simultaneously and fifty feet when either is applied separately, except that vehicles maintained and operated permanently for the transportation of property and which were registered in this or any other state or district prior to August, nineteen hundred and twenty-nine, shall be capable of stopping on a dry, hard, approximately level highway free from loose material at a speed of twenty miles per hour within a distance of fifty feet with both hand and service brake applied simultaneously, and within a distance of seventy-five feet when either applied separately.

(e) Every motor truck and tractor-truck with semitrailer attached, shall be equipped with brakes acting on all wheels, except trucks and truck-tractors having three or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. However, such trucks and truck-tractors must be capable of complying with the performance requirements of G.S. 20-124 (e).

(f) Every semi-trailer, or trailer, or separate vehicle, attached by a drawbar or coupling to a towing vehicle, and having a gross weight of two tons, and all house trailers of one thousand pounds gross weight or more, shall be equipped with brakes controlled or operated by the driver of the towing vehicle, which shall conform to the specifications set forth in subsection (d) of this section and shall be of a type approved by the Commissioner.

(g) The provisions of this section shall not apply to any trailer or semi-trailer when used by a farmer, his tenant, agent or employee under such circumstances

that such trailer or semi-trailer is exempt from registration by the provisions of § 20-51.

(h) From and after July 1, 1955, no person shall sell or offer for sale for use in motor vehicle brake systems in this State any hydraulic brake fluid of a type and brand other than those approved by the Commissioner of Motor Vehicles. Violation of the provisions of this subsection shall constitute a misdemeanor. (1937, c. 407, s. 87; 1953, c. 1316, s. 2; 1955, c. 1275; 1959, c. 990; 1965, c. 1031.)

**Editor's Note.**—The 1953 amendment added paragraph (g), and the 1955 amendment, effective July 1, 1955, added paragraph (h).

The 1959 amendment substituted "parking" for "hand" in line three of subsection (b). It also rewrote subsection (c), inserted present subsection (d) and re-designated former subsections (d) to (g) as present subsections (e) to (h).

The 1965 amendment added subsection (ee).

**Legislative Purpose.**—This section was enacted to promote safe operation of motor vehicles on the highways. *Stephens v. Southern Oil Co., Inc.*, 259 N. C. 456, 131 S. E. (2d) 39 (1963).

**Section Is Mandatory.**—The language of this section is mandatory. *Stephens v. Southern Oil Co., Inc.*, 259 N. C. 456, 131 S. E. (2d) 39 (1963).

**But Section Must Be Given Reasonable Interpretation.**—Although the language of this section is mandatory, the statute must be given a reasonable interpretation to promote its intended purpose. *Stephens v. Southern Oil Co., Inc.*, 259 N. C. 456, 131 S. E. (2d) 39 (1963).

**The legislature did not intend to make operators of motor vehicles insurers of the adequacy of their brakes.** The operator must act with care and diligence to see that his brakes meet the standard prescribed by this section; but if because of some latent defect, unknown to the operator and not reasonably discoverable upon proper inspection, he is not able to control the movement of his car, he is not negligent, and for that reason not liable for injuries directly resulting from such loss of control; such injuries result from an unavoidable accident. *Stephens v. Southern Oil Co., Inc.*, 259 N. C. 456, 131 S. E. (2d) 39 (1963).

**Violation Negligence Per Se.**—

In accord with original. See *Arnett v. Yeago*, 247 N. C. 356, 100 S. E. (2d) 855 (1957); *Watts v. Watts*, 252 N. C. 352, 113 S. E. (2d) 720 (1960); *Bundy v. Belue*, 253 N. C. 31, 116 S. E. (2d) 200 (1960).

One who fails to comply with the provisions of this section is negligent. *Stephens v. Southern Oil Co., Inc.*, 259 N. C. 456, 131 S. E. (2d) 39 (1963).

If the negligence resulting from failure

to comply with the provisions of this section proximately causes injury, liability results. *Stephens v. Southern Oil Co., Inc.*, 259 N. C. 456, 131 S. E. (2d) 39 (1963).

**Runaway Automobile—Inference.**—The fact that an automobile ran down the street for a considerable distance immediately after it was parked, permits the inference that plaintiff's intestate did not turn its front wheels to the curb of the street, as required by this section and § 20-163. *Watts v. Watts*, 252 N. C. 352, 113 S. E. (2d) 720 (1960).

**Delivery of Automobile with Defective Brakes.**—Whether defendant breached his duty to the intestates of plaintiff by delivering to them an automobile when he knew, or by the exercise of ordinary care should have known, the brakes were defective and operation was dangerous held a question for the jury. *Austin v. Austin*, 252 N. C. 283, 113 S. E. (2d) 553 (1960).

**Question of Proximate Cause Is for Jury.**—Whether a violation of the provisions of this section is one proximate cause of an injury is for the jury to determine. *Stephens v. Southern Oil Co., Inc.*, 259 N. C. 456, 131 S. E. (2d) 39 (1963).

**Evidence Sufficient to Negative Prima Facie Case of Negligence.**—Defendants' evidence to the effect that brakes on the corporate defendant's vehicle had been overhauled and relined and had worked perfectly until some two days thereafter when the brakes suddenly failed, causing the accident in suit, and that after the collision it was ascertained that the flange on one of the wheels was broken, permitting the brake fluid to escape, was held to require the court to instruct the jury that if they accepted defendants' evidence it was sufficient to negative the prima facie case of negligence made out by plaintiff's evidence of the failure of the brakes on defendant's vehicle. *Stephens v. Southern Oil Co., Inc.*, 259 N. C. 456, 131 S. E. (2d) 39 (1963).

Applied in *Burlington Indus., Inc. v. State Highway Comm'n*, 262 N. C. 620, 138 S. E. 2d 281 (1964).

Cited in *Crotts v. Overnite Transportation Co.*, 246 N. C. 420, 98 S. E. (2d) 502 (1957); *Jones v. C. B. Atkins Co.*, 259 N. C. 655, 131 S. E. (2d) 371 (1963); *Warren*

v. Jeffries, 263 N.C. 531, 139 S.E.2d 718 Farmers Mkt., Inc., 263 N.C. 622, 139 (1965); State Highway Comm'n v. Raleigh S.E.2d 904 (1965).

### § 20-125. Horns and warning devices.

(b) Every vehicle owned and operated by a police department or by the State Highway Patrol or by the Wildlife Resources Commission and used exclusively for law enforcement purposes, or by a fire department, either municipal or rural, or by a fire patrol, whether such fire department or patrol be a paid organization or a voluntary association, and every ambulance used for answering emergency calls, shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

The operators of all such vehicles so equipped are hereby authorized to use such equipment at all times while engaged in the performance of their duties and services, both within their respective corporate limits and beyond.

In addition to the use of special equipment authorized and required by this subsection, the chief and one assistant chief of any police department or of any fire department, whether the same be municipal or rural, paid or voluntary, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in the performance of their official or semi-official duties or services either within or beyond their respective corporate limits.

And vehicles driven by inspectors in the employ of the North Carolina Utilities Commission shall be equipped with a bell, siren, or exhaust whistle of a type approved by the Commissioner, and all vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties may be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

Every vehicle used or operated for law enforcement purposes by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, whether owned by the county or not, may be, but is not required to be, equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Such special equipment shall not be operated or activated by any person except by a law enforcement officer while actively engaged in performing law enforcement duties.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of each emergency rescue squad which is recognized or sponsored by any municipality or civil defense agency, are hereby authorized to use such special equipment on privately-owned vehicles operated by them while actually engaged in their official or semiofficial duties or services either within or beyond the corporate limits of the municipality which recognizes or sponsors such organization.

(c) Notwithstanding any other provisions of law, the following vehicles may be equipped with a special blue warning light of a type approved by the Commissioner of Motor Vehicles:

- (1) All publicly owned vehicles used primarily for law enforcement purposes;
- (2) All other vehicles used primarily by law enforcement officers in the performance of their official duties.

It shall be unlawful for such blue lights to be installed on a vehicle other than those enumerated in (c) above, or for such blue lights to be activated or operated by any person except a law enforcement officer who is actively engaged in performing lawful duties. (1937, c. 407, s. 88; 1951, cc. 392, 1161; 1955, c. 1224; 1959, c. 166, s. 1; c. 494; c. 1170, s. 1; c. 1209; 1965, c. 257.)

**Local Modification.**—Brunswick: 1959, c. 211; Edgecombe: 1955, c. 1024.

**Editor's Note.**—

The 1955 amendment inserted the words

“or by the State Highway Patrol” near the beginning of the first paragraph of subsection (b).

The first 1959 amendment inserted, be-



ginning in the second line of subsection (b), the words "or by the Wildlife Resources Commission and used exclusively for law enforcement purposes." The second 1959 amendment added to the fourth paragraph of subsection (b) the provision permitting the State Bureau of Investigation to equip its vehicles with sirens and other special equipment. The third 1959 amendment added the fifth paragraph to subsection (b). The fourth 1959 amendment added the last paragraph to subsection (b).

The 1965 amendment, effective July 1, 1965, added subsection (c).

As subsection (a) was not affected by the amendments, it is not set out.

#### Distinction between Vehicles Making

§ 20-125.1. Directional signals.—(a) It shall be unlawful for the owner of any motor vehicle of a changed model or series designation indicating that it was manufactured or assembled after July 1, 1953, to register such vehicle or cause it to be registered in this State, or to obtain, or cause to be obtained in this State registration plates therefor, unless such vehicle is equipped with a mechanical or electrical signal device by which the operator of the vehicle may indicate to the operator of another vehicle, approaching from either the front or rear and within a distance of 200 feet, his intention to turn from a direct line. Such signal device must be of a type approved by the Commissioner of Motor Vehicles.

(b) It shall be unlawful for any dealer to sell or deliver in this State any motor vehicle of a changed model or series designation indicating that it was manufactured or assembled after July 1, 1953, if he knows or has reasonable cause to believe that the purchaser of such vehicle intends to register it or cause it to be registered in this State or to resell it to any other person for registration in and use upon the highways of this State, unless such motor vehicle is equipped with a mechanical or electrical signal device by which the operator of the vehicle may indicate to the operator of another vehicle, approaching from either of the front or rear or within a distance of 200 feet, his intention to turn from a direct line. Such signal device must be of a type approved by the Commissioner of Motor Vehicles: Provided that in the case of any motor vehicle manufactured or assembled after July 1, 1953 the signal device with which such motor vehicle is equipped shall be presumed prima facie to have been approved by the Commissioner of Motor Vehicles. Irrespective of the date of manufacture of any motor vehicle a certificate from the Commissioner of Motor Vehicles to the effect that a particular type of signal device has been approved by his Department shall be admissible in evidence in all the courts of this State.

(c) Trailers satisfying the following conditions are not required to be equipped with a directional signal device:

- (1) The trailer and load does not obscure the directional signals of the towing vehicle from the view of a driver approaching from the rear and within a distance of two hundred (200) feet;
- (2) The gross weight of the trailer and load does not exceed three thousand (3,000) pounds.

Nothing in this section shall apply to motorcycles. (1953, c. 481; 1957, c. 488, s. 1; 1963, c. 524.)

**Editor's Note.**—The 1957 amendment added the proviso and the last sentence to subsection (b).

**Normal Use of Highway and Those Engaged in Emergency Uses.**—The legislature, in prescribing practical warning devices for use on motor vehicles, drew a distinction between vehicles making normal use of the highway and those engaged in emergency uses. For normal use, a horn audible for 200 feet under normal conditions was deemed adequate, under subsection (a) of this section; but something different and manifestly with a more authoritative voice and greater volume was expected of vehicles on emergency errands under subsection (b). *McEwen Funeral Service, Inc. v. Charlotte City Coach Lines, Inc.*, 248 N. C. 146, 102 S. E. (2d) 816 (1958).

The 1963 amendment inserted subsection (c) before the last paragraph of the section.

§ 20-126. **Mirrors.**—(a) No person shall drive a motor vehicle on a highway which motor vehicle is so constructed or loaded as to prevent the driver from obtaining a view of the highway to the rear by looking backward from the driver's position, unless such vehicle is equipped with a mirror of a type to be approved by the Commissioner so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle.

(b) It shall be unlawful for any person to operate upon the highways of this State any vehicle manufactured, assembled or first sold on or after January 1, 1966 and registered in this State unless such vehicle is equipped with at least one outside mirror mounted on the driver's side of the vehicle. Mirrors herein required shall be of a type approved by the Commissioner. (1937, c. 407, s. 89; 1965, c. 368.)

**Editor's Note.** — The 1965 amendment, effective Jan. 1, 1966, designated the former provisions of the section as subsection (a) and added subsection (b).

§ 20-127. **Windshields must be unobstructed.**—(a) It shall be unlawful for any person to drive any vehicle upon a highway with any sign, poster or other nontransparent material upon the front windshield, side wings, side or rear window of such motor vehicle other than a certificate or other paper required to be so displayed by law, or approved by the Commissioner of Motor Vehicles.

(b) No motor vehicle which is equipped with a permanent windshield shall be operated upon the highways unless said windshield is equipped with a device for cleaning snow, rain, moisture, or other matters from the windshield directly in front of the operator, which device shall be in good working order and so constructed as to be controlled or operated by the operator of the vehicle. The device required by this subsection shall be of a type approved by the Commissioner.

(c) The windshield, rear and side glasses of a motor vehicle must be free from discoloration which impair the driver's vision or create a hazard. (1937, c. 407, s. 90; 1953, c. 1254; 1955, c. 1157, s. 2; 1959, c. 1264, s. 7.)

**Editor's Note.** — The 1953 amendment added at the end of subsection (a) the words "or approved by the Commissioner of Motor Vehicles." The 1955 amendment, effective July 1, 1955, added subsection (c). The 1959 amendment, effective Oct. 1, 1959, rewrote subsection (b).

§ 20-128. **Prevention of noise, smoke, etc.; muffler cut-outs regulated.**

**Warrant held sufficient to charge violation of this section.** *State v. Daughtry*, 236 N. C. 316, 72 S. E. (2d) 658 (1952). **Cited in** *State v. Woolard*, 260 N.C. 133, 132 S.E.2d 364 (1963).

§ 20-129. **Required lighting equipment of vehicles.**—(a) **Vehicles Must Be Equipped.**—Every vehicle upon a highway within this State during the period from a half hour after sunset to a half hour before sunrise and at any other time when there is not sufficient light to render clearly discernible any person on the highway at a distance of two hundred feet ahead, shall be equipped with lighted front and rear lamps as in this section respectively required for different classes of vehicles, and subject to exemption with reference to lights on parked vehicles as declared in § 20-134.

(b) **Head Lamps on Motor Vehicles.**—Every self-propelled motor vehicle other than motorcycles, road machinery, and farm tractors shall be equipped with at least two head lamps, all in good operating condition with at least one on each side of the front of the motor vehicle. Head lamps shall comply with the requirements and limitations set forth in G. S. 20-131 or G. S. 20-132.

(c) **Head Lamps on Motorcycles.**—Every motorcycle shall be equipped with at least one and not more than two head lamps which shall comply with the requirements and limitations set forth in §§ 20-131 or 20-132.

(d) Rear lamps.—Every motor vehicle and every trailer or semi-trailer which is being drawn at the end of a train of vehicles shall carry at the rear a lamp of a type which has been approved by the Commissioner and which exhibits a red light plainly visible under normal atmospheric conditions from a distance of five hundred feet to the rear of such vehicle, and so constructed and placed that the number plate carried on the rear of such vehicle shall under like conditions be so illuminated by a white light as to be read from a distance of fifty feet to the rear of such vehicle, and every trailer or semi-trailer shall carry at the rear, in addition to a rear lamp as above specified, a red reflector of a type which has been approved by the Commissioner and which is so designed, located as to a height and maintained as to be visible for at least five hundred feet when opposed by a motor vehicle displaying lawful undimmed headlights at night on an unlighted highway. Such reflector shall be placed at the extreme end of the load.

Notwithstanding the provision of the first paragraph of this subsection, it shall not be necessary for a trailer, licensed for not more than 2500 pounds, to carry or be equipped with a rear lamp, provided such vehicle is equipped with and carries at the rear two red reflectors, each not less than four inches in diameter, and to be of a type approved by the Commissioner, and which are so designed, located as to height and maintained as for each reflector to be visible for at least five hundred feet when approached by a motor vehicle displaying lawful undimmed headlights at night on an unlighted highway, such reflectors to be placed at the extreme end of the load.

(e) Lamps on Bicycles.—Every bicycle shall be equipped with a lighted lamp on the front thereof, visible under normal atmospheric conditions from a distance of at least three hundred feet in front of such bicycle, and shall also be equipped with a reflex mirror or lamp on the rear, exhibiting a red light visible under like conditions from a distance of at least two hundred feet to the rear of such bicycle, when used at night.

(f) Lights on Other Vehicles.—All vehicles not heretofore in this section required to be equipped with specified lighted lamps shall carry on the left side one or more lighted lamps or lanterns projecting a white light, visible under normal atmospheric conditions from a distance of not less than five hundred feet to the front of such vehicle and visible under like conditions from a distance of not less than five hundred feet to the rear of such vehicle, or in lieu of said lights shall be equipped with reflectors of a type which is approved by the Commissioner. Farm tractors operated on a highway at night must be equipped with at least one white lamp visible at a distance of five hundred feet from the front of the tractor and with at least one red lamp visible at a distance of five hundred feet to the rear of the tractor. Two red reflectors each having a diameter of at least four inches may be used on the rear of the tractor in lieu of the red lamp.

(g) No person shall sell or operate on the highways of the State any motor vehicle, motorcycle or motor-driven cycle manufactured after December 31, 1955, unless it shall be equipped with a stop lamp on the rear of the vehicle. The stop lamp shall display a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, and shall be actuated upon application of the service (foot) brake. The stop lamp may be incorporated into a unit with one or more other rear lamps. (1937, c. 407, s. 92; 1939, c. 275; 1947, c. 526; 1955, c. 1157, ss. 3-5, 8; 1957, c. 1038, s. 1.)

Cross Reference.—See note to § 20-131.

Editor's Note.—

The 1955 amendment, effective July 1, 1955, inserted the words "of approximately

the same candle power" near the middle of subsection (b), deleted former subsection (e), relating to clearance lamps and relettered former subsections (f) and (g) as

(e) and (f). The amendment also added the last two sentences of present subsection (f) and all of present subsection (g).

The 1957 amendment rewrote subsection (b).

**Purpose of Section.—**

This section was enacted for the protection of persons and property and in the interest of public safety, and the preservation of human life. *State v. Norris*, 242 N. C. 47, 86 S. E. (2d) 916 (1955).

This section was enacted in the interest of public safety. *Scarborough v. Ingram*, 256 N. C. 87, 22 S. E. (2d) 798 (1961); *Oxendine v. Lowry*, 260 N. C. 709, 133 S. E. 2d 687 (1963).

**Section 20-161 does not conflict with nor reduce the obligation imposed on the operator of a motor vehicle stopped or parked on the highway at night to light his vehicle as required by this section and § 20-134.** *Melton v. Crofts*, 257 N. C. 121, 125 S. E. (2d) 396 (1962).

**What Constitutes Violation.—**Driving a motor vehicle without lights during the period from a half hour after sunset to a half hour before sunrise violates this section and is punishable as prescribed by § 20-176 (b). *State v. Eason*, 242 N. C. 59, 86 S. E. (2d) 774 (1955).

Operating a motor vehicle on a public highway at night without lights is a violation of this section. *Williamson v. Varner*, 252 N. C. 446, 114 S. E. (2d) 92 (1960).

**Violation as Negligence Per Se.—**

The violation of this section is negligence per se. *Williamson v. Varner*, 252 N. C. 446, 114 S. E. 2d 92 (1960); *Correll v. Gaskins*, 263 N. C. 212, 139 S. E. 2d 202 (1964).

The violation of this section constitutes negligence as a matter of law. *Scarborough v. Ingram*, 256 N. C. 87, 22 S. E. 2d 798 (1961); *Oxendine v. Lowry*, 260 N. C. 709, 133 S. E. 2d 687 (1963).

One who operates a vehicle at night without lights, or with improper lights, is negligent. *Reeves v. Campbell*, 264 N. C. 224, 141 S. E. 2d 296 (1965).

Riding a bicycle on the highway at night without a lamp of any kind on the front thereof, is a violation of this section and is negligence per se. *Oxendine v. Lowry*, 260 N. C. 709, 133 S. E. 2d 687 (1963).

**And as Misdemeanor under § 20-176.—**The violation of this section is a misdemeanor under § 20-176. *Williamson v. Varner*, 252 N. C. 446, 114 S. E. 2d 92 (1960).

**Lights on Motor Vehicles Serve Two Purposes.—**The lights required by this section serve two purposes: (1) To enable the operator of the automobile to see what is

ahead of him; (2) to inform others of the approach of the automobile. *Reeves v. Campbell*, 264 N. C. 224, 141 S. E. 2d 296 (1965).

**Purpose of Front Lamp on Bicycle.—**Subsection (e) of this section, respecting a front lamp on a bicycle, is designed for the benefit of those approaching a bicycle from the front and for the protection of the bicyclist from such. *Oxendine v. Lowry*, 260 N. C. 709, 133 S. E. 2d 687 (1963).

**And of Red Reflector.—**The red reflector required under subsection (e) is designed to protect the bicyclist from vehicles approaching from the rear and to give notice to such vehicles of the presence of the bicycle ahead. *Oxendine v. Lowry*, 260 N. C. 709, 133 S. E. 2d 687 (1963).

**Intensity of Light.—**Subsection (e) in no way requires a light of such intensity as to render objects visible along the highway in front of the bicycle. *Oxendine v. Lowry*, 260 N. C. 709, 133 S. E. 2d 687 (1963).

**Parking on highway without lights 40 minutes before sunrise is unlawful.** *Smith v. Nunn*, 257 N. C. 108, 125 S. E. 2d 351 (1962).

**Disabled Vehicle.—**

It is negligence to permit a disabled bus to stand on a highway at night without lights, blocking a lane of traffic, without giving warning to approaching vehicles. *Dezern v. Asheboro City Bd. of Educ.*, 260 N. C. 535, 133 S. E. 2d 204 (1963).

**Right of Motorist to Assume That Other Vehicle Will Display Lights.—**A motorist has the right to act upon the assumption, until he has notice to the contrary, that no other motorist will permit a motor vehicle either to move or to stand on the highway without displaying thereon the lights required by this section and § 20-134. *Chaffin v. Brame*, 233 N. C. 377, 64 S. E. (2d) 276 (1951). See *Towe v. Stokes*, 117 F. Supp. 880 (1954); *United States v. First Citizens Bank & Trust Co.*, 208 F. (2d) 280 (1953), affirming *Rosenblatt v. United States*, 112 F. Supp. 114 (1953).

A plaintiff until he saw, or by the exercise of due care should have seen, the approach of defendant's car, was entitled to assume and to act upon the assumption that no motorist would be traveling without lights in violation of this section. *White v. Lacey*, 245 N. C. 364, 96 S. E. (2d) 1 (1957).

**Instructions.—**The court correctly instructed the jury in specific detail that the defendant would be chargeable with negligence if he drove a school bus having a width in excess of eighty inches on the

highway during the nighttime without displaying burning clearance lights thereon as required by this section. This instruction was correct, even though the duty to keep the lighting system on the vehicle in good working order may have rested on the defendant's employer and not on the defendant. The latter was not empowered to set a positive statute at naught merely because his employer may have furnished him a vehicle with a defective lighting system. *Hansley v. Tilton*, 234 N. C. 3, 65 S. E. (2d) 300 (1951).

Defendant was held entitled to an instruction, even in the absence of request therefor, in substance, as follows: If the jury find by the greater weight of the evidence that plaintiff stopped his car and permitted it to stand, without lights, on the paved portion of the road in defendant's right lane of travel, such conduct on the part of the plaintiff would constitute negligence as a matter of law; and if the jury find by the greater weight of the evidence that such negligence was a proximate cause of the collision and plaintiff's injuries, the jury is instructed to answer the contributory negligence issue, "Yes." *Correll v. Gaskins*, 263 N.C. 212, 139 S.E.2d 202 (1964).

Where plaintiff's evidence fails to show that his bicycle was equipped with a lighted lamp on the front thereof, but does show that he had a reflecting mirror on its rear, and that plaintiff's bicycle was

hit from the rear by a car operated by defendant, and there is no evidence in the record that if the bicycle had been equipped with a front lamp, the lamp would have been visible to a person approaching in an automobile from the rear of the bicycle, the Supreme Court held the only legitimate inference is that the absence of a lighted lamp on the front of the bicycle was not a proximate cause or a contributing proximate cause of the collision, and the court may properly charge the jury to this effect. *Oxendine v. Lowry*, 260 N.C. 709, 133 S.E.2d 687 (1963).

#### Evidence Showing Violation of Section.

—See *Powell v. Lloyd*, 234 N. C. 481, 67 S. E. (2d) 664 (1951).

Applied in *Gantt v. Hobson*, 240 N. C. 426, 82 S. E. (2d) 384 (1954) (as to subsection (d)); *Punch v. Landis*, 258 N. C. 114, 128 S. E. (2d) 224 (1962).

Quoted in part in *Morris v. Jenrette Transport Co.*, 235 N. C. 568, 70 S. E. (2d) 845 (1952).

Cited in *Morgan v. Cook*, 236 N. C. 477, 73 S. E. (2d) 296 (1952); *Hollifield v. Everhart*, 237 N. C. 313, 74 S. E. (2d) 706 (1953); *Smith v. Kinston*, 249 N. C. 160, 105 S. E. (2d) 648 (1959); *Meece v. Dickson*, 252 N. C. 300, 113 S. E. (2d) 578 (1960); *Smith v. Goldsboro Iron & Metal Co.*, 257 N. C. 143, 125 S. E. (2d) 377 (1962); *State Highway Comm'n v. Raleigh Farmers Mkt., Inc.*, 263 N.C. 622, 139 S.E.2d 904 (1965).

§ 20-129.1. **Additional lighting equipment required on certain vehicles.**—In addition to other equipment required in this chapter, the following vehicles shall be equipped as follows:

(a) On every bus or truck, whatever its size, there shall be the following:  
On the rear, two reflectors, one at each side, and one stop light.

(b) On every bus or truck 80 inches or more in over-all width, in addition to the requirements in paragraph (a):

On the front, two clearance lamps, one at each side.

On the rear, two clearance lamps, one at each side.

On each side, two side marker lamps, one at or near the front and one at or near the rear.

On each side, two reflectors, one at or near the front and one at or near the rear.

(c) On every truck tractor:

On the front, two clearance lamps, one at each side.

On the rear, one stop light.

(d) On every trailer or semi-trailer having a gross weight in excess of 3,000 pounds:

On the front, two clearance lamps, one at each side.

On each side, two side marker lamps, one at or near the front and one at or near the rear.

On each side, two reflectors, one at or near the front and one at or near the rear.

On the rear, two clearance lamps, one at each side, also two reflectors, one at each side, and one stop light.

(e) On every pole trailer in excess of 3,000 pounds gross weight:

On each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side and rear.

On the rear of the pole trailer or load two reflectors, one at each side.

(f) On every trailer, semi-trailer or pole trailer weighing 3,000 pounds gross or less:

On the rear, two reflectors, one on each side. If any trailer or semi-trailer is so loaded or is of such dimensions as to obscure the stop light on the towing vehicle, then such vehicle shall also be equipped with one stop light.

(g) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(h) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(i) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red, amber or yellow, and except that the light illuminating the license plate shall be white and the light emitted by a backup lamp shall be white or amber. (1955, c. 1157, s. 4.)

This section was enacted in the interest of public safety. Scarborough v. Ingram, 256 N. C. 87, 122 S. E. (2d) 798 (1961); Oxendine v. Lowry, 260 N.C. 709, 133 S.E.2d 687 (1963).

Its violation constitutes negligence as a matter of law. Scarborough v. Ingram,

256 N. C. 87, 122 S. E. (2d) 798 (1961); Oxendine v. Lowry, 260 N.C. 709, 133 S.E.2d 687 (1963).

Applied in Smith v. Goldsboro Iron & Metal Co., 257 N. C. 143, 125 S. E. (2d) 377 (1962).

**§ 20-130.1. Use of red lights on front of vehicles prohibited; exceptions.**—It shall be unlawful for any person to drive upon the highways of this State any vehicle displaying red lights visible from the front of said vehicle. The provisions of this section shall not apply to police cars, highway patrol cars, vehicles owned by the Wildlife Resources Commission and operated exclusively for law enforcement purposes, ambulances, wreckers, fire fighting vehicles, school buses, a vehicle operated in the performance of his duties or services by any member of a municipal or rural fire department, paid or voluntary, or vehicles of a voluntary life-saving organization that have been officially approved by the local police authorities and manned or operated by members of such organization while on official call or to such lights as may be prescribed by the Interstate Commerce Commission, or to maintenance or construction vehicles or equipment of the State Highway Commission engaged in performing maintenance or construction work on the roads. The provisions of this section shall not apply to motor vehicles used in law enforcement by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, regardless of whether or not the vehicle is owned by the county. (1943, c. 726; 1947, c. 1032; 1953 c. 354; 1955, c. 528; 1957, c. 65, s. 11; 1959, c. 166, s. 2; c. 1170, s. 2.)

**Editor's Note.—**

The 1953 amendment authorized the use of red lights on the front of school buses and vehicles operated in the performance of duty by members of municipal or rural fire departments.

The 1955 amendment added at the end of the next to last sentence the provision formerly relating to the State Highway and Public Works Commission.

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

The first 1959 amendment inserted after the word "cars" in line four the words "vehicles owned by the Wildlife Resources Commission and operated exclusively for law enforcement purposes." The second 1959 amendment added the last sentence.

**Section Applies to Vehicles Operated at Time Lights Are Required.**—While it is true that this section declares that it shall be unlawful to display red lights visible in front of a vehicle, it may be fairly assumed

that the General Assembly intended the section to apply to vehicles operated at the time when lights are required, as provided in § 20-129. *Hollifield v. Everhart*, 237 N. C. 313, 74 S. E. (2d) 706 (1953).

**§ 20-131. Requirements as to head lamps and auxiliary driving lamps.**—(a) The head lamps of motor vehicles shall be so constructed, arranged, and adjusted that, except as provided in subsection (c) of this section, they will at all times mentioned in § 20-129, and under normal atmospheric conditions and on a level road, produce a driving light sufficient to render clearly discernible a person two hundred feet ahead, but any person operating a motor vehicle upon the highways, when meeting another vehicle, shall so control the lights of the vehicle operated by him by shifting, depressing, deflecting, tilting, or dimming the headlight beams in such manner as shall not project a glaring or dazzling light to persons within a distance of 500 feet in front of such head lamp. Every new motor vehicle, other than a motorcycle or motor-driven cycle, registered in this State after January 1, 1956, which has multiple-beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped. (1955, c. 1157, ss. 6, 7.)

**Cross References.**—

As to failure or inability of operator to stop vehicle within radius of lights, see § 20-141 (e).

**Editor's Note.**—

The 1955 amendment, effective July 1, 1955, inserted the words "within a distance of 500 feet" near the end of the first sentence of subsection (a) and added the second and third sentences of subsection (a). As the rest of the section was not changed, only subsection (a) is set out.

**Lights May Be Dimmed for Better Visibility.**—The duty of a motorist to dim or deflect his headlights is not restricted by this section solely to instances in which he is meeting oncoming traffic, since this section refers to "normal atmospheric conditions"; therefore, it may be permissible for a motorist to deflect his headlights when

driving in fog or other atmospheric conditions in which deflected headlights afford better visibility. *Short v. Chapman*, 261 N.C. 674, 136 S.E.2d 40 (1964).

**Requirements Differ from § 20-129 (e).**—The requirement of subsection (e) of § 20-129 is entirely different from the requirement for motor vehicles, when used at night, as set forth in subsection (a) of this section. *Oxendine v. Lowry*, 260 N.C. 709, 133 S.E.2d 687 (1963).

**Applied in** *Cronenberg v. United States*, 123 F. Supp. 693 (1954).

**Quoted**, as to subsections (a) and (d), in *Keener v. Beal*, 246 N. C. 247, 98 S. E. (2d) 19 (1957).

**Cited in** *Singletary v. Nixon*, 239 N. C. 634, 80 S. E. (2d) 676 (1954); *Smith v. Kingston*, 249 N. C. 160, 105 S. E. (2d) 648 (1958).

**§ 20-134. Lights on parked vehicles.**—Whenever a vehicle is parked or stopped upon a highway, whether attended or unattended during the times mentioned in § 20-129, there shall be displayed upon such vehicle one or more lamps projecting a white or amber light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle, and projecting a red light visible under like conditions from a distance of five hundred feet to the rear, except that local authorities may provide by ordinance that no lights need be displayed upon any such vehicle when parked in accordance with local ordinances upon a highway where there is sufficient light to reveal any person within a distance of two hundred feet upon such highway. (1937, c. 407, s. 97; 1959, c. 1264, s. 9.)

**Cross Reference.**—As to right of motorist to assume that others will comply with this section, see note to § 20-129.

**Editor's Note.**—The 1959 amendment,

effective Oct. 1, 1959, inserted the words "or amber" in line four of this section.

**Design of Section.**—This section is designed to promote safe use of the public

highways. *Beasley v. Williams*, 260 N.C. 561, 133 S.E.2d 227 (1963).

This section is inapplicable unless there be a parking in violation of § 20-161. *Meece v. Dickson*, 252 N. C. 300, 113 S. E. (2d) 578 (1960).

Section 20-161 does not conflict with nor reduce the obligation imposed on the operator of a motor vehicle stopped or parked on the highway at night to light his vehicle as required by this section and § 20-129. *Melton v. Crotts*, 257 N. C. 121, 125 S. E. (2d) 396 (1962).

This section is inapplicable to a motor vehicle parked in a residential district in a city or town on a street which constitutes no part of the highway system. *Smith v. Goldsboro Iron & Metal Co.*, 257 N. C. 143, 125 S. E. (2d) 377 (1962).

#### Violation Is Negligence Per Se.—

Leaving a disabled marine corps wrecker standing on the highway in the nighttime without the lights and warning signals required by this section and § 20-161 constituted negligence. *United States v. First-Citizens Bank & Trust Co.*, 208 F. (2d) 280 (1953), affirming *Rosenblatt v. United States*, 112 F. Supp. 114 (1953).

A violation of this section is negligence per se. *Correll v. Gaskins*, 263 N.C. 212, 139 S.E.2d 202 (1964).

**Disabled Bus.**—It is negligence to permit a disabled bus to stand on a highway at night without lights, blocking a lane of traffic, without giving warning to approaching vehicles. *Dezern v. Asheboro City Bd. of Educ.*, 260 N.C. 535, 133 S.E.2d 204 (1963).

§ 20-135.1. **Safety belts.**—(a) The Commissioner shall establish specifications or requirements for approved type safety belts and safety harness and attachments.

(b) No person shall sell, offer or keep for sale any safety belt, safety harness, or attachment thereto as referred to in subsection (a) for use in a vehicle, unless of a type and brand which has been approved by the Commissioner. (1957, c. 1038, s. 2.)

§ 20-135.2. **Safety belts and anchorages.**—(a) Every new motor vehicle registered in this State and manufactured, assembled, or sold after January 1, 1964, shall, at the time of registration, be equipped with at least two sets of seat safety belts for the front seat of the motor vehicle. Such seat safety belts shall be of such construction, design, and strength to support a loop load strength of not less than five thousand (5,000) pounds for each belt, and must be of a type approved by the commissioner.

This subsection shall not apply to passenger motor vehicles having a seating capacity in the front seat of less than two passengers.

(b) After July 1, 1962, no seat safety belt shall be sold for use in connection with the operation of a motor vehicle on any highway of this State unless it shall be constructed and installed as to have a loop strength through the complete attachment of not less than five thousand (5,000) pounds and the buckle or clos-

**Instruction.**—Defendant was entitled to an instruction, even in the absence of request therefor, in substance, as follows: If the jury find by the greater weight of the evidence that plaintiff stopped his car and permitted it to stand, without lights, on the paved portion of the road in defendant's right lane of travel, such conduct on the part of the plaintiff would constitute negligence as a matter of law; and if the jury find by the greater weight of the evidence that such negligence was a proximate cause of the collision and plaintiff's injuries, the jury is instructed to answer the contributory negligence issue, "Yes." *Correll v. Gaskins*, 263 N.C. 212, 139 S.E.2d 202 (1964).

**Jury Question.** — Evidence that the driver of a car left the vehicle standing unattended without lights at nighttime, partially on the hard surface, and that plaintiff was unable to stop before striking the rear of the vehicle when he first saw it upon resuming his bright lights after dimming his lights in response to oncoming traffic, was sufficient to be submitted to the jury on the issue of negligence. *Beasley v. Williams*, 260 N.C. 561, 133 S.E.2d 227 (1963).

**Applied in** *Bumgardner v. Allison*, 238 N. C. 621, 78 S. E. (2d) 752 (1953); *Kinsey v. Town of Kenly*, 263 N.C. 376, 139 S.E.2d 686 (1965).

**Cited in** *Harris Express, Inc. v. Jones*, 236 N. C. 542, 73 S. E. (2d) 301 (1952) (dis. op.); *Keener v. Beal*, 246 N. C. 247, 98 S. E. (2d) 19 (1957).



ing device shall be of such construction and design that after it has received the aforesaid loop belt load it can be released with one hand with a pull of less than forty-five (45) pounds.

(c) The provisions of this section shall apply only to passenger vehicles of nine (9) passenger capacity or less, except motorcycles. (1961, c. 1076; 1963, c. 288.)

**Editor's Note.**—The 1963 amendment, effective Jan. 1, 1964, rewrote subsection (a).

**§ 20-135.3. Seat belt anchorages for rear seats of motor vehicles.**—Every new motor vehicle registered in this State and manufactured, assembled or sold after July 1, 1966, shall be equipped with sufficient anchorage units at the attachment points for attaching at least two sets of seat safety belts for the rear seat of the motor vehicle. Such anchorage units at the attachment points shall be of such construction, design and strength to support a loop load strength of not less than five thousand (5,000) pounds for each belt.

The provisions of this section shall apply to passenger vehicles of nine-passenger capacity or less, except motorcycles. (1965, c. 372.)

#### Part 10. Operation of Vehicles and Rules of the Road.

### § 20-138. Persons under the influence of intoxicating liquor or narcotic drugs.

#### Cross Reference.—

See notes to §§ 20-138, 20-179.

#### Editor's Note.—

For note on offense of driving under the influence of intoxicating liquor when vehicle is motionless, see 36 N. C. Law Rev. 322.

This section creates and defines three separate criminal offenses. Under its provisions, it is unlawful and punishable as provided in § 20-179 for any person, whether licensed or not, (1) who is a habitual user of narcotic drugs, or (2) who is under the influence of intoxicating liquor, or (3) who is under the influence of narcotic drugs, to drive any vehicle upon the highways within this State. *State v. Thompson*, 257 N. C. 452, 126 S. E. (2d) 58 (1962).

**Elements of Offense.**—This section defines three distinct elements of the offense: (1) Driving a vehicle; (2) upon a highway within the State; (3) while under the influence of intoxicating liquor or narcotic drugs. *State v. Haddock*, 254 N. C. 162, 118 S. E. (2d) 411 (1961).

**Aiders and Abettors Guilty as Principals.**—The unlawful operation of a vehicle upon a highway within this State while under the influence of intoxicating liquor within the meaning of this section is a misdemeanor and all who participate therein as aiders and abettors or otherwise, are guilty as principals. *State v. Nall*, 239 N. C. 60, 79 S. E. (2d) 354 (1953).

#### "Under the Influence" Defined.—

In accord with 1st paragraph in original. See *State v. Lee*, 237 N. C. 263, 74 S. E. (2d) 654 (1953); *State v. Turberville*, 239 N. C. 25, 79 S. E. (2d) 359 (1953); *State v. Nall*, 239 N. C. 60, 79 S. E. (2d) 354 (1953); *State v. Hairr*, 244 N. C. 506, 94 S. E. (2d) 472 (1956); *State v. Green*, 251 N. C. 141, 110 S. E. (2d) 805 (1959).

A person drunk by the use of intoxicating liquor is necessarily under the influence of intoxicating liquor within the intent and meaning of this section. *Southern Nat'l Bank v. Lindsey*, 264 N.C. 585, 142 S.E.2d 357 (1965); *State v. Stephens*, 262 N.C. 45, 136 S.E.2d 209 (1964).

The correct test is not whether the party had drunk or consumed a spoonful or a quart of intoxicating beverage, but whether a person is under the influence of an intoxicating liquor or narcotic drug by reason of his having drunk a sufficient quantity of an intoxicating beverage or taken a sufficient amount of narcotic drugs, to cause him to lose normal control of his bodily or mental faculties, or both, to such an extent that there is an appreciable impairment of either or both of these faculties. *State v. Ellis*, 261 N.C. 606, 135 S.E.2d 584 (1964).

**"Under the Influence" and "Drunk" Not Synonymous.**—"Under the influence of an intoxicant" and "drunk" are not necessarily synonymous. *Davis v. Rigsby*, 261 N.C. 684, 136 S.E.2d 33 (1964).

"Drunk" within the meaning of § 14-335 is not synonymous with "under the influence of intoxicating liquor" within the intent of this section and § 20-139. *State v. Painter*, 261 N.C. 332, 134 S.E.2d 638 (1964).

Hence, in a prosecution for public drunkenness under § 14-335 an instruction applying the definition of "under the influence of intoxicating liquor" must be held for prejudicial error. *State v. Painter*, 261 N.C. 332, 134 S.E.2d 638 (1964).

**Being Drunk Distinguished from Being under the Influence of Intoxicating Beverages.**—See *State v. Painter*, 261 N.C. 332, 134 S.E.2d 638 (1964).

**Instruction on Intoxication Held Proper.**—

In an instruction stating the degree of impairment of the faculties necessary to render one "under the influence" of intoxicating liquor within the meaning of this section, the use of the word "perceptibly" instead of the word "appreciably" without explanation of what it means, is not error. While the language of the rule in *State v. Carroll*, 226 N. C. 237, 37 S. E. (2d) 688 (1946), is preferred, there is not in the word "perceptible" sufficient difference in meaning and common understanding for the rule to have been misunderstood by the jury. *State v. Lee*, 237 N. C. 263, 74 S. E. (2d) 654 (1953).

Evidence tending to show that defendant was seen driving his truck some 30 minutes before a highway patrolman reached the scene of the accident, that defendant had then been arrested and was in the custody of a deputy sheriff, that defendant was in a highly intoxicated condition, and that no intoxicating liquor was found in or about the vehicle, was held sufficient to support an instruction in regard to the law if defendant at the time of the accident was driving while under the influence of intoxicating liquor. *State v. Lindsey*, 264 N.C. 588, 142 S.E.2d 355 (1965).

**Instructions Held Prejudicial Wherein Defendant Stated to Be Driver.**—See *State v. Swaringen*, 249 N. C. 38, 105 S. E. (2d) 99 (1958).

The use of the term "any beverage containing alcohol," rather than the intoxicating beverage," in the court's charge defining the expression "under the influence of intoxicating liquor" in a prosecution for drunken driving, was not prejudicial. *State v. Nall*, 239 N. C. 60, 79 S. E. (2d) 354 (1953).

**Violation Must Be Shown, etc.**—

In accord with original. See *State v. Lee*, 237 N. C. 263, 74 S. E. (2d) 654

(1953); *State v. Nall*, 239 N. C. 60, 79 S. E. (2d) 354 (1953); *State v. Hairr*, 244 N. C. 506, 94 S. E. (2d) 472 (1956).

**Policeman May Arrest without Warrant.**—

The rule that when a misdemeanor or other criminal offense is committed in the presence of an officer, he may forthwith arrest the offender without a warrant, applies when the offense committed is the violation of this section. *State v. Pillow*, 234 N. C. 146, 66 S. E. (2d) 657 (1951)

**Testimony as to Results of Blood Test Admissible.**—In a prosecution for drunken driving it is competent for an expert witness to testify as to the results of a test of the defendant's blood, based on a sample taken less than an hour after the alleged offense with defendant's consent, as to the alcoholic content of the blood. *State v. Willard*, 241 N. C. 259, 84 S. E. (2d) 899 (1954); *State v. Moore*, 245 N. C. 158, 95 S. E. (2d) 548 (1956).

Assuming the blood specimen is obtained at or near the pertinent time and identified and traced until chemical analysis thereof is made, in a prosecution under this section testimony of a qualified expert (1) as to the making and results of a chemical analysis of such blood specimen to determine the alcoholic content thereof, and (2) as to the effects of certain percentages of alcohol in the blood stream, is competent. *State v. Paschal*, 253 N. C. 795, 117 S. E. (2d) 749 (1961).

**Significance of Answering, "No," When Asked If Blood Test Wanted.**—Where defendant did not refuse to submit to a blood test, but simply answered, "No," when asked by a police officer if he wanted one, and presumably such blood test, if requested by defendant, would have been made at his expense the only significance of his statement was that he did not choose to go to the expense of having such blood test made and his unwillingness to incur this expense was without probative significance in relation to his guilt or innocence. The testimony as to the officer's inquiry and defendant's response was susceptible of use and probably was used to the defendant's prejudice and the admission of the challenged testimony was prejudicial error. *State v. Paschal*, 253 N. C. 795, 117 S. E. (2d) 749 (1961).

**In a prosecution for drunken driving, the arresting officer may be asked his opinion as to whether at the time the arrest was made the defendant was under the influence of liquor.** *State v. Warren*, 236 N. C. 358, 72 S. E. (2d) 763 (1952)

**Effect of Family Connection between**

**Accused and Arresting Officer.** — Where defendant introduces evidence of ill will between himself and his brother-in-law (the deputy sheriff who arrested him for drunken driving), it is error for the court to charge that the jurors should disabuse their minds of any family connection. *State v. Kirk*, 260 N.C. 447, 133 S.E.2d 65 (1963).

**Admissibility of Opinion of Lay Witness.** — A lay witness is competent to testify whether or not in his opinion a person was under the influence of an intoxicant on a given occasion on which he observed him. *State v. Willard*, 241 N. C. 259, 84 S. E. (2d) 899 (1954).

**Sufficiency of Evidence of Intoxication.** —

It is not sufficient for a conviction under this section for the State to show that defendant drove an automobile upon a highway within the State when he had drunk a sufficient quantity of intoxicating liquor to affect however slightly his mental and physical faculties. The State must show that he has drunk a sufficient quantity of intoxicating liquor to cause him to lose the normal control of his bodily or mental faculties, or both, to such an extent that there is an appreciable impairment of either or both of these faculties. *State v. Hairr*, 244 N. C. 506, 94 S. E. (2d) 472 (1956).

The fact that a motorist has been drinking, when considered in connection with faulty driving such as following an irregular course on the highway or other conduct indicating an impairment of physical or mental faculties, is sufficient, prima facie, to show a violation of this section. *State v. Hewitt*, 263 N.C. 759, 140 S.E.2d 241 (1965).

**Evidence Sufficient to Show Violation of Section.** — See *State v. Pillow*, 234 N. C. 146, 66 S. E. (2d) 657 (1951).

**Evidence Sufficient for Jury.** — See *State v. Simpson*, 233 N. C. 438, 64 S. E. (2d) 568 (1951); *State v. Cole*, 241 N. C. 576, 86 S. E. (2d) 203 (1955); *State v. St. Clair*, 246 N. C. 183, 97 S. E. (2d) 840 (1957); *State v. Green*, 251 N. C. 40, 110 S. E. (2d) 609 (1959).

Evidence that defendant was highly intoxicated when sheriff caught up with him after a chase was sufficient to take charge of driving under the influence of intoxicants to the jury. *State v. Garner*, 244 N. C. 79, 92 S. E. (2d) 445 (1956)

Evidence that defendant was intoxicated within the purview of this section held amply sufficient to be submitted to the jury even in the absence of expert testi-

mony as to the alcoholic content of defendant's blood. *State v. Willard*, 241 N. C. 259, 84 S. E. (2d) 899 (1954).

**Section Applicable to Farm Tractors.** — The General Assembly intended that while farm tractors are motor implements of husbandry as set forth in § 20-38 they are vehicles within the meaning of this section, when operated upon a highway by one under the influence of intoxicating liquor or narcotic drugs. *State v. Green*, 251 N. C. 141, 110 S. E. (2d) 805 (1959).

**Violation of Section Is Negligence Per Se.** — Defendant is guilty of negligence per se in operating his pickup truck while under the influence of intoxicating liquor in violation of this section. *Watters v. Parrish*, 252 N. C. 787, 115 S. E. (2d) 1 (1960).

It is negligence per se for one to operate an automobile while under the influence of an intoxicant within the meaning of this section. *Davis v. Rigsby*, 261 N.C. 684, 136 S.E.2d 33 (1964); *Southern Nat'l Bank v. Lindsey*, 264 N.C. 585, 142 S.E.2d 357 (1965).

**Punishment for Violation.** — This section does not provide that the court as a part of the punishment can revoke an operator's license to operate a motor vehicle. *Harrell v. Schardt*, 243 N. C. 735, 92 S. E. (2d) 182 (1956). As to revocation of license by Department of Motor Vehicles, see §§ 20-17, 20-19.

**Warrant Should Contain Separate Count as to Each Offense Charged.** — With reference to the drafting of criminal warrants based on violations of this section, it is appropriate to emphasize: If it be intended to charge only one of the criminal offenses created and defined by this section, e.g., the operation of a motor vehicle upon the public highway within this State while under the influence of intoxicating liquor, the warrant should charge this criminal offense and no other. If it be intended to charge two or more of the criminal offenses created and defined in the section, the warrant should contain a separate count, complete within itself, as to each criminal offense. *State v. Thompson*, 257 N. C. 452, 126 S. E. (2d) 58 (1962).

**Warrant Held Sufficient.** — A warrant charging that the defendant "did unlawfully and willfully operate a motor vehicle on the public roads while under the influence of intoxicating liquors, opiates or narcotic drugs." was held a sufficient charge of a violation of this section. *State v. Smith*, 240 N. C. 99, 81 S. E. (2d) 263 (1954)

A warrant, containing no reference to any specific statute or ordinance, disclosing

on its face that it was drafted in the language of former § 14-387, was sufficient to charge the defendant with operating a motor vehicle upon the public streets of a town while "under the influence of intoxicating liquor or narcotic drugs," the language of this section, and by going to trial without making a motion to quash, defendant waived the right to attack the warrant on the ground of duplicity. *State v. Thompson*, 257 N. C. 452, 126 S. E. (2d) 58 (1962).

**Defendant's motion for judgment of nonsuit held properly denied** under authority of *State v. Carroll*, 226 N. C. 237, 37 S. E. (2d) 688 (1946). *State v. Warren*, 236 N. C. 358, 72 S. E. (2d) 763 (1952).

**Applied in** *State v. Davis*, 238 N. C. 252, 77 S. E. (2d) 630 (1953); *State v. Baker*, 240 N. C. 140, 81 S. E. (2d) 199 (1954); *State v. Bolling*, 240 N. C. 141, 81 S. E. (2d) 266 (1954); *Fox v. Scheidt*, 241 N. C. 31, 84 S. E. (2d) 259 (1954); *State v. White*, 246 N. C. 537, 99 S. E. (2d) 772 (1957); *State v. Collins*, 247 N. C. 244, 100 S. E. (2d) 489 (1957); *State v. Collins*, 247 N. C. 248, 100 S. E. (2d) 492 (1957); *Parks v. Washington*, 255 N. C. 478, 122 S. E. (2d) 70 (1961); *State v. Stroud*, 256 N. C. 453, 124 S. E. (2d) 136 (1962); *State v. Broadway*, 256 N. C. 608, 124 S. E. (2d) 568 (1962); *State v. Medlin*, 257 N. C. 773, 127 S. E. (2d) 552 (1962);

*Porter v. Pitt*, 261 N.C. 482, 135 S.E.2d 42 (1964); *State v. Smith*, 261 N.C. 613, 135 S.E.2d 571 (1964); *Rice v. Rigsby*, 261 N.C. 687, 136 S.E.2d 35 (1964); *State v. Brown*, 262 N.C. 495, 137 S.E.2d 825 (1964); *State v. Forrest*, 262 N.C. 625, 138 S.E.2d 284 (1964); *State v. Virgil*, 263 N.C. 73, 138 S.E.2d 777 (1964); *State v. Anderson*, 263 N.C. 124, 139 S.E.2d 6 (1964); *State v. Farrington*, 263 N.C. 128, 139 S.E.2d 3 (1964); *State v. Hollingsworth*, 263 N.C. 158, 139 S.E.2d 235 (1964); *State v. Morgan*, 263 N.C. 400, 139 S.E.2d 708 (1965); *Brewer v. Garner*, 264 N.C. 384, 141 S.E.2d 806 (1965).

**Quoted in** *State v. Robbins*, 243 N. C. 161, 90 S. E. (2d) 322 (1955); *State v. Stone*, 245 N. C. 42, 95 S. E. (2d) 77 (1956).

**Stated in** *Morrisey v. Crabtree*, 143 F. Supp. 105 (1956).

**Cited in** *State v. Carter*, 233 N. C. 581, 65 S. E. (2d) 9 (1951); *State v. Baucom*, 244 N. C. 61, 92 S. E. (2d) 426 (1956); *State v. St. Clair*, 248 N. C. 333, 103 S. E. (2d) 408 (1958); *State v. Medlin*, 250 N. C. 601, 108 S. E. (2d) 855 (1959); *Rick v. Murphy*, 251 N. C. 162, 110 S. E. (2d) 815 (1959); *State v. Ball*, 255 N. C. 351, 121 S. E. (2d) 604 (1961); *State v. Gurley*, 257 N. C. 270, 125 S. E. (2d) 445 (1962); *In re Donnelly*, 260 N.C. 375, 132 S.E.2d 904 (1963).

**§ 20-139. Operation upon driveways of public or private institutions while under the influence of intoxicating liquors, etc.**—It shall be unlawful for any person, whether licensed or not, who is a habitual user of narcotic drugs or who is under the influence of intoxicating liquor or narcotic drugs, to operate a motor vehicle over any drive, driveway, road, roadway, street, or alley upon the grounds and premises of any public or private hospital, college, university, school, orphanage, church, or any of the institutions maintained and supported by the State of North Carolina, or any of its subdivisions, or upon the grounds and premises of any service station, drive-in theater, supermarket, store, restaurant or office building, or any other business or municipal establishment providing parking space for customers, patrons, or the public. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided in § 20-179. (1939, c. 292; 1951, c. 1042, s. 1; 1959, c. 1264, s. 1.)

**Editor's Note.**—

The 1959 amendment, effective Oct. 1, 1959, rewrote this section.

This section and § 20-138 each creates and defines a separate criminal offense. *State v. Davis*, 261 N.C. 655, 135 S.E.2d 663 (1964).

**"Under the Influence" and "Drunk" Not Synonymous.**—See same catchline in note to § 20-138.

**Being Drunk Distinguished from Being under the Influence of Intoxicating Beverages.**—See *State v. Painter*, 261 N.C. 332, 134 S.E.2d 638 (1964).

**§ 20-139.1. Results of chemical analysis admissible in evidence; presumptions.**—(a) In any criminal action arising out of acts alleged to have been committed by any person while driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the person's blood at the time al-

leged as shown by chemical analysis of the person's breath shall be admissible in evidence and shall give rise to the following presumptions:

If there was at that time 0.10 per cent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor.

Per cent by weight of alcohol in the blood shall be based upon milligrams of alcohol per one hundred cubic centimeters of blood.

The foregoing provisions of subsection (a) of this section shall not be construed as limiting the introduction of any other competent evidence, including other types of chemical analyses, bearing upon the question whether the person was under the influence of intoxicating liquors.

(b) Chemical analyses of the person's breath, to be considered valid under the provisions of this section, shall have been performed according to methods approved by the State Board of Health and by an individual possessing a valid permit issued by the State Board of Health for this purpose. The State Board of Health is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the State Board of Health; provided that in no case shall the arresting officer or officers administer said test.

(c) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any test administered at the direction of a law enforcement officer. The person whose breath is being analyzed shall be furnished the results of such analysis at the time of taking the test. The failure or inability of the person tested to obtain an additional test shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer. Any law enforcement officer having in his charge any person who has submitted to the chemical test under the provisions of G. S. 20-16.2 shall assist such person in contacting a qualified person as set forth above for the purpose of administering such additional test.

(d) The individual making such chemical analysis of a person's breath shall record in writing the time of arrest, the time and results of such analysis, a copy of which record shall be furnished to the person submitting to said test or to his attorney prior to any trial or proceeding where the results of the test may be used. (1963, c. 966, s. 2.)

**Editor's Note.**—The act inserting this section is effective as of Jan. 1, 1964. **Applied in** *State v. Powell*, 264 N.C. 73, 140 S.E.2d 705 (1965).

**§ 20-140. Reckless driving.** — (a) Any person who drives any vehicle upon a highway carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others shall be guilty of reckless driving.

(b) Any person who drives any vehicle upon a highway without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property shall be guilty of reckless driving.

(c) Any person convicted of reckless driving shall be punished by imprisonment not to exceed six months or by a fine, not to exceed five hundred dollars (\$500.00) or by both such imprisonment and fine, in the discretion of the court. (1937, c. 407, s. 102; 1957, c. 1368, s. 1; 1959, c. 1264, s. 8.)

**Editor's Note.**—

The 1959 amendment, effective Oct. 1, 1959, rewrote this section as changed by the 1957 amendment.

This section is a safety statute. *State v. Colson*, 262 N.C. 506, 138 S.E.2d 121 (1964).

**Legislative Purpose.**— This section was enacted for the protection of persons and property and in the interest of public safety, and the preservation of human life. *State v. Norris*, 242 N. C. 47, 86 S. E. (2d) 916 (1955).

The reckless driving and speed statutes

are designed for the protection of life, limb and property. *State v. Ward*, 258 N. C. 330, 128 S. E. (2d) 673 (1962).

This section is designed to prevent injury to persons or property and prohibiting the careless and reckless driving of automobiles on the public highways. *State v. Colson*, 262 N.C. 506, 138 S.E.2d 121 (1964).

Every operator of a motor vehicle is required to exercise reasonable care to avoid injury to persons or property of another, and a failure to so operate proximately resulting in injury to another gives rise to a cause of action. *Scarlette v. Grindstaff*, 258 N. C. 159, 128 S. E. (2d) 221 (1962).

This section prescribes a standard of care, "and the standard fixed by the legislature is absolute." *Kellogg v. Thomas*, 244 N. C. 722, 94 S. E. (2d) 903 (1956); *Aldridge v. Hasty*, 240 N. C. 353 82 S. E. (2d) 331 (1954); *Lamm v. Gardner* 250 N. C. 540, 108 S. E. (2d) 847 (1959); *Bondurant v. Mastin* 252 N. C. 190 113 S. E. (2d) 292 (1960); *Stockwell v. Brown* 254 N. C. 662, 119 S. E. (2d) 795 (1961); *Boykin v. Bissette*, 260 N.C. 295, 132 S.E.2d 616 (1963).

Fundamental to the right to operate any motor vehicle is the rule of the prudent man declared in this section, that he shall operate with due care and circumspection so as not to endanger others by his reckless driving. *McEwen Funeral Service, Inc. v. Charlotte City Coach Lines, Inc.*, 248 N. C. 146, 102 S. E. (2d) 816 (1958).

Person may violate section by either one of the two courses of conduct defined in subsections (a) and (b), or in both respects. *State v. Dupree*, 264 N.C. 463, 142 S.E.2d 5 (1965).

A violation of this section may subject the offender to both civil and criminal liability. There may be a violation of this section as a result of which the offender is subjected, in addition to civil liability, only to the penalty prescribed by statute, but when the negligent acts are reckless to the point of culpability and are sufficient to evince a complete and thoughtless disregard for the rights and safety of other persons using the highways, it then becomes criminal negligence and the driver of a motor vehicle so offending may be called upon to answer for manslaughter. *State v. McLean*, 234 N. C. 283, 67 S. E. (2d) 75 (1951)

**Alleging Violation of This Section Rather Than § 20-140.1.** — Where a complaint alleged reckless driving on a university campus as a violation of this section, the fact

that the complaint alleged a violation of this section instead of a violation of § 20-140.1 was not fatal in the light of § 1-151, providing that pleadings shall be liberally construed, and in light of the theory of the trial court that campus roads were highways within the purview of this section. *Rhyné v. Bailey*, 254 N. C. 467, 119 S. E. (2d) 385 (1961).

The language of this section constitutes culpable negligence. *State v. Roberson*, 240 N.C. 745, 83 S.E.2d 798 (1954); *State v. Dupree*, 264 N.C. 463, 142 S.E.2d 5 (1965); *Southern Nat'l Bank v. Lindsey*, 264 N.C. 585, 142 S.E.2d 357 (1965).

**Culpable Negligence and Actionable Negligence Distinguished.**—Culpable negligence in the law of crimes is something more than actionable negligence in the law of torts. *State v. Roberson*, 240 N. C. 745, 83 S. E. (2d) 798 (1954).

Where there is an unintentional or inadvertent violation of this section such violation, standing alone, does not constitute culpable negligence in the law of crimes as distinguished from actionable negligence in the law of torts. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature when tested by the rule of reasonable prevision, amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others. *State v. Sealy*, 253 N. C. 802, 117 S. E. (2d) 793 (1961).

**A motorist is under duty, etc.—**

In accord with original. See *Goodson v. Williams*, 237 N. C. 291, 74 S. E. (2d) 762 (1953).

**Surrounding Circumstances, etc.—**

The principle that the mere fact of a collision with a vehicle ahead furnishes some evidence that the following motorist was negligent as to speed, was following too closely, or failed to keep a proper lookout is not absolute; the negligence, if any, depends upon the circumstances. *Powell v. Cross*, 263 N.C. 764, 140 S.E.2d 393 (1965).

**Care Required in Emergency.—**

If the peril suddenly confronting the defendant was due to excessive speed or to his failure to maintain a proper lookout, the fact that care was exercised after the discovery of the peril would not excuse the negligent conduct which was the proximate cause of the injury and damage. *The court should have so instructed the jury. Brunson v. Gainey*, 245 N. C. 152, 95 S. E. (2d) 514 (1956).

### When Person Guilty of Reckless Driving.—

It is unlawful to drive a motor vehicle upon a public highway carelessly and heedlessly, in willful or wanton disregard of the rights or safety of others, or without due circumspection and at a speed or in any manner so as to endanger or be likely to endanger any person or property. *State v. Norris*, 242 N. C. 47, 86 S. E. (2d) 916 (1955).

#### Duty to Keep Car, etc.—

In accord with original. See *Beasley v. Williams*, 260 N.C. 561, 133 S.E.2d 227 (1963).

#### Effect of Using Prudence, etc.—

The fact that defendant at length made an effort to avoid the accident does not avail him when it appears that his recklessness was responsible for his inability to control the vehicle. *State v. Ward*, 258 N. C. 330, 128 S. E. (2d) 673 (1962).

**Speed of 55 Miles an Hour.**—In light of the provisions of this section and § 20-141 it is clear that whether or not a speed of 55 miles an hour is lawful depends upon the circumstances at the time. These sections provide that a motorist must at all times drive with due caution and circumspection and at a speed and in a manner so as not to endanger or be likely to endanger any person or property. At no time may a motorist lawfully drive at a speed greater than is reasonable and prudent under the conditions then existing. *Primm v. King*, 249 N. C. 228, 106 S. E. (2d) 223 (1958).

**Mere failure to keep a reasonable lookout** does not constitute reckless driving. To this must be added dangerous speed or perilous operation. *Dunlap v. Lee*, 257 N. C. 447, 126 S. E. (2d) 62 (1962); *State v. Dupree*, 264 N.C. 463, 142 S.E.2d 5 (1965).

**Violations Committed in One Continuous Operation of Vehicle Constitute One Offense.**—If a defendant is guilty of the acts condemned either under subsection (a) or (b), or both, in one continuous operation of his vehicle, he is guilty of one offense of reckless driving and not guilty of two separate offenses. *State v. Lewis*, 256 N. C. 430, 124 S. E. (2d) 115 (1962).

**Violation of Section as Negligence.**—A motorist is required to act as a reasonably prudent man and to drive with due caution and circumspection and at a speed or in a manner so as not to endanger or be likely to endanger any person or property, and his failure to do so is negligence. *Crotts v. Overnite Transportation Co.*, 246 N. C. 420, 98 S. E. (2d) 502 (1957).

A violation of this section is negligence

per se. *Stegall v. Sledge*, 247 N. C. 718, 102 S. E. (2d) 115 (1958); *Carswell v. Lackey*, 253 N. C. 387, 117 S. E. (2d) 51 (1960); *Robbins v. Harrington*, 255 N. C. 416, 121 S. E. (2d) 584 (1961); *Dunlap v. Lee*, 257 N. C. 447, 126 S. E. (2d) 62 (1962); *Boykin v. Bisette*, 260 N.C. 295, 132 S.E.2d 616 (1963); *Southern Nat'l Bank v. Lindsey*, 264 N.C. 585, 142 S.E.2d 357 (1965).

Evidence of greatly excessive speed in violation of the speed restrictions of § 20-141, and of reckless driving in violation of this section, were sufficient to make out a case of actionable negligence. *Bell v. Maxwell*, 246 N. C. 257, 98 S. E. (2d) 33 (1957).

All the evidence tended to show that plaintiff's decedent was killed by the actionable negligence of the driver of the automobile in which he was a passenger in driving it at an excessive speed in violation of § 20-141, subsec. (b) (4), and in a reckless manner in violation of this section. *Bridges v. Graham*, 246 N. C. 371, 98 S. E. (2d) 492 (1957).

**Driving on Wrong Side of Road.**—The mere fact that defendant's automobile was on the left of the center line in the direction it was traveling when the collision occurred, without any evidence that it was being operated at a dangerous speed or in a perilous manner, except being on the wrong side of the road some 40 feet before the collision, does not show on defendant's part an intentional or wilful violation of subsection (b) of this section; nor does it show an unintentional violation of subsection (a) unaccompanied by such recklessness or carelessness of probable consequences of a dangerous nature, when tested by the rule of reasonable prevision, amounting to a thoughtless disregard of consequences, or a heedless indifference, to the safety of others as imports criminal responsibility; and, hence, does not make out a case of reckless driving sufficient to carry the case to the jury. *State v. Dupree*, 264 N.C. 463, 142 S.E.2d 5 (1965).

**Skidding.**—The mere skidding of a motor vehicle is not evidence of, and does not imply, negligence. *Webb v. Clark*, 264 N.C. 474, 141 S.E.2d 880 (1965).

But skidding may form the basis of a recovery where it and the resulting damage is caused from some fault of the operator amounting to negligence on his part. *Webb v. Clark*, 264 N.C. 474, 141 S.E.2d 880 (1965).

When the condition of a road is such that skidding may be reasonably anticipated, the driver of a vehicle must exercise

care commensurate with the danger to keep the vehicle under control so as to avoid injury to occupants of the vehicle and others on or off the highway. *Webb v. Clark*, 264 N.C. 474, 141 S.E.2d 880 (1965).

**Operation of Vehicle in Drunken Condition.** — Defendant's perilous operation of his truck in a drunken condition constituted a driving of it upon the public highway without due caution and circumspection and in a manner so as to endanger persons or property, and was reckless driving within the intent and meaning of this section. *Southern Nat'l Bank v. Lindsey*, 264 N.C. 585, 142 S.E.2d 357 (1965).

**Instruction on Reckless Driving, etc.**—

In a manslaughter case based on reckless driving of defendant, an instruction on reckless driving which did not charge the jury to find that such reckless driving was the proximate cause of the wreck and resultant death of the deceased was erroneous. *State v. Mundy*, 243 N. C. 149, 90 S. E. (2d) 312 (1955).

**Sufficiency of Warrant.**—

Warrants under this section which charge the offense almost literally in the words of the statute are sufficient. *State v. Wallace*, 251 N. C. 378, 111 S. E. (2d) 714 (1959).

**Sufficiency of Evidence for Jury.**—

In accord with 3rd paragraph in original. See *State v. Call*, 236 N.C. 333, 72 S.E.2d 752 (1952).

Evidence held insufficient to take the case to the jury on the charge of reckless driving. *State v. Roberson*, 240 N. C. 745, 83 S. E. (2d) 798 (1954).

When evidence tended to show that an ambulance on emergency duty, with its siren sounding at "peak" was traveling north along a four-lane street, and entered an intersection with another, more heavily traveled, four-lane street, against the red light, that a car traveling east and a cab traveling west along the intersecting street stopped, but that defendant's bus, traveling west in the northern lane of the intersecting street with its view obstructed by the stationary cab, etc., proceeded into the intersection with the green light and struck the right side of the ambulance in the north-eastern part of the intersection, failed to show negligence on the part of the operator of the bus under this section or § 20-156. *McEwen Funeral Service, Inc. v. Charlotte City Coach Lines, Inc.*, 248 N. C. 146, 102 S. E. (2d) 816 (1958).

From the evidence it was inferable that the defendant in rounding a curve failed to exercise due care to maintain a proper lookout and to keep his car under control.

and that he was driving recklessly in violation of this section. The evidence was sufficient to carry the case to the jury on the issue of actionable negligence. *Tatem v. Tatem*, 245 N. C. 587, 96 S. E. (2d) 725 (1957).

Evidence tending to show that defendant driver saw approaching a truck with a red flashing light on its front and a fogging machine in the truck emitting chemical fog, which completely obscured the entire highway, that defendant driver slowed his vehicle but drove into the fog at a pretty good rate of speed and so continued on his right side of the highway until he was hit head-on by a truck traveling in the opposite direction, was sufficient to require the submission to the jury of the question whether defendant was operating his vehicle in violation of this section. *Moore v. Plymouth*, 249 N. C. 423, 106 S. E. (2d) 695 (1959).

The evidence tended to show that defendant was negligent in the operation of his automobile in driving it upon the highway without due caution and circumspection, and at a speed or in a manner so as to endanger or be likely to endanger any person or property in violation of this section. *Stockwell v. Brown*, 254 N. C. 662, 119 S. E. (2d) 795 (1961).

**Conviction Does Not Authorize Suspension of License.**—The offense of reckless driving in violation of this section is not an offense for which the Department of Motor Vehicles is authorized by § 20-16 to suspend an operator's license. In re *Bratton*, 263 N.C. 70, 138 S.E.2d 809 (1964).

**Nor Mandatory Revocation Thereof.**—The offense of reckless driving in violation of this section is not an offense for which, upon conviction, the revocation of an operator's license is mandatory under § 20-17. In re *Bratton*, 263 N.C. 70, 138 S.E.2d 809 (1964).

Applied in *State v. Williams*, 237 N. C. 435, 75 S. E. (2d) 301 (1953); *State v. McIntyre*, 238 N. C. 305, 77 S. E. (2d) 698 (1953); *State v. Turberville*, 239 N. C. 25, 79 S. E. (2d) 359 (1953); *State v. McRae*, 240 N. C. 334, 82 S. E. (2d) 67 (1954); *Redden v. Bynum*, 256 N. C. 351, 123 S. E. (2d) 734 (1962); *State v. Stroud*, 256 N. C. 458, 124 S. E. (2d) 136 (1962); *Benson v. Sawyer*, 257 N. C. 765, 127 S. E. (2d) 549 (1962); *Parker v. Bruce*, 258 N. C. 341, 128 S. E. (2d) 561 (1962); *Queen v. Jarrett*, 258 N. C. 405, 128 S. E. (2d) 894 (1963); *Scott v. Darden*, 259 N. C. 167, 130 S. E. (2d) 42 (1963); *State v. Wells*, 259 N. C. 173, 130 S. E. (2d) 299 (1963); *Williams v. Tucker*, 259 N. C. 214,



130 S. E. (2d) 306 (1963); Russell v. Hamlett, 259 N. C. 273, 130 S. E. (2d) 395 (1963); Faulk v. Althouse Chemical Co., 259 N. C. 395, 130 S. E. (2d) 684 (1963); Jones v. C. B. Atkins Co., 259 N. C. 655, 131 S. E. (2d) 371 (1963); Rundle v. Grubb Motor Lines, Inc., 300 F. (2d) 333 (1962); State v. Woolard, 260 N. C. 133, 132 S.E.2d 364 (1963); Scott v. Clark, 261 N.C. 102, 134 S.E.2d 181 (1964); Britt v. Mangum, 261 N.C. 250, 134 S.E.2d 235 (1964); Porter v. Pitt, 261 N.C. 482, 135 S.E.2d 42 (1964); Randall v. Rogers, 262 N.C. 544, 138 S.E.2d 248 (1964); Hall v. Little, 262 N.C. 618, 138 S.E.2d 282 (1964); Knight v. Seymour, 263 N.C. 790, 140 S.E.2d 410 (1965); Farmers Oil Co. v. Miller, 264 N.C. 101, 141 S.E.2d 41 (1965); Bongardt v. Frink, 265 N.C. 130, 143 S.E.2d 286 (1965).

Cited in Singletary v. Nixon, 239 N. C. 634, 80 S. E. (2d) 676 (1954); State v.

Bournais, 240 N. C. 311, 82 S. E. (2d) 115 (1954); Aldridge v. Hasty, 240 N. C. 353, 82 S. E. (2d) 331 (1954); Troxler v. Central Motor Lines, Inc., 240 N. C. 420, 82 S. E. (2d) 342 (1954); Hennis Freight Lines, Inc. v. Burlington Mills Corp., 246 N. C. 143, 97 S. E. (2d) 850 (1957); Rick v. Murphy, 251 N. C. 162, 110 S. E. (2d) 815 (1959); Hunt v. Crawford 253 N. C. 381, 117 S. E. (2d) 18 (1960); Fleming v. Drye, 253 N. C. 545, 117 S. E. (2d) 416 (1960); Pridgen v. Uzzell, 254 N. C. 292, 118 S. E. (2d) 755 (1961); Gathings v. Sehorn, 255 N. C. 503, 121 S. E. (2d) 873 (1961); Pittman v. Swanson, 255 N. C. 681, 122 S. E. (2d) 814 (1961); Powell v. Clark, 255 N. C. 707, 122 S. E. (2d) 706 (1961); Mason v. Gillikin, 256 N. C. 527, 124 S. E. (2d) 537 (1962); Hall v. Poteat, 257 N. C. 458, 125 S. E. (2d) 924 (1962); Greene v. Meredith, 264 N.C. 178, 141 S.E.2d 287 (1965).

§ 20-140.1. **Reckless driving upon driveways of public or private institutions, establishments providing parking space, etc.**—Any person who shall operate a motor vehicle over any drive, driveway, road, roadway, street or alley upon the grounds and premises of any public or private hospital, college, university, school, orphanage, church, or any of the institutions maintained and supported by the State of North Carolina or any of its subdivisions, or upon the grounds and premises of any service station, drive-in theater, supermarket, store, restaurant or office building, or any other business or municipal establishment, providing parking space for customers, patrons or the public, carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving and upon conviction shall be punished by imprisonment not to exceed six months or by a fine not to exceed five hundred dollars (\$500.00) or by both such imprisonment and fine, in the discretion of the court. (1951, c. 182, s. 1; 1955, c. 917; 1957, c. 1368, s. 2.)

**Cross Reference.**—As to the provisions of this chapter being applicable to the streets, etc., on the campus of Appalachian State Teachers College, see § 116-46.1.

**Editor's Note.**—The 1955 amendment inserted the words "or upon the grounds and premises of any service station, drive-in theater, supermarket, store, restaurant or office building, or any other business or municipal establishment, providing parking space for customers, patrons or the public."

The 1957 amendment deleted "as provided in § 20-180" from the end of the section and added in lieu thereof the present provision as to punishment.

§ 20-140.2. **Overloaded or overcrowded vehicle.** — (a) No person shall operate upon a highway a motor vehicle which is so loaded or crowded with passengers or property, or both, as to obstruct the operator's view of the highway, including intersections, or so as to impair or restrict otherwise the proper operation of the vehicle.

**Alleging Violation of § 20-140 Rather Than This Section.**—Where a complaint alleged reckless driving on a university campus as a violation of § 20-140, the fact that the complaint alleged a violation of § 20-140 instead of a violation of this section was not fatal in the light of § 1-151 providing that pleadings shall be liberally construed, and in light of the theory of the trial court that campus roads were highways within the purview of § 20-140. Rhyne v. Bailey, 254 N. C. 467, 119 S. E. (2d) 385 (1961).

Applied in State v. McIntyre, 238 N. C. 305, 77 S. E. (2d) 698 (1953).

(b) No person shall operate any motorcycle or motor scooter upon a highway when the number of persons upon such motorcycle or motor scooter, including the driver, shall be in excess of the number which it was designed by the manufacturer to carry.

(c) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided in § 20-176. (1953, c. 1233.)

#### § 20-141. Speed restrictions.

(b) Except as otherwise provided in this chapter, it shall be unlawful to operate a vehicle in excess of the following speeds:

- (1) Twenty miles per hour in any business district;
- (2) Thirty-five miles per hour in any residential district;
- (3) Forty-five miles per hour in places other than those named in subdivisions (1) and (2) of this subsection for:
  - a. All vehicles other than passenger cars, regular passenger vehicles, pick-up trucks of less than one-ton capacity, and school busses loaded with children; and
  - b. All vehicles, of whatever kind, which are engaged in towing, drawing, or pushing another vehicle: Provided, this subdivision shall not apply to vehicles engaged in towing, drawing, or pushing trailers with a gross weight of not more than three thousand (3000) pounds;
- (4) Fifty-five miles per hour in places other than those named in subdivisions (1) and (2) of this subsection for passenger cars, regular passenger carrying vehicles, and pick-up trucks of less than one ton capacity.
- (5) Whenever the State Highway Commission shall determine upon the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subdivisions (1), (2), (3) and (4) of this subsection is reasonable and safe under the conditions found to exist upon any part of a highway outside the corporate limits of a municipality, or upon any part of a highway designated as a part of the interstate highway system or other controlled-access-facility highway either inside or outside the corporate limits of a municipality, with respect to the vehicles described in said subdivisions (3) and (4), said Commission shall determine and declare a reasonable and safe speed limit, not to exceed a maximum of 65 miles per hour, with respect to said part of any such highway, which maximum speed limit with respect to subdivisions (1), (2), (3) and (4) of this subsection shall be effective when appropriate signs giving notice thereof are erected upon the parts of the highway affected.

(b1) Except as otherwise provided in this chapter, and except while towing another vehicle, and except when an advisory safe speed sign indicates a slower speed, it shall be unlawful to operate a passenger vehicle or pick-up truck, rated for a capacity of not more than three-fourths ( $\frac{3}{4}$ ) ton, upon the interstate and primary highway system at less than the following speeds:

- (1) Forty (40) miles per hour in a fifty-five (55) mile-per-hour zone;
- (2) Forty-five (45) miles per hour in a sixty (60) mile-per-hour zone; and
- (3) Forty-five (45) miles per hour in a sixty-five mile-per-hour zone.

It shall be a specific duty of the State Highway Patrol and such Patrol is hereby directed to enforce the minimum speeds established hereby, when appropriate signs are posted indicating the minimum speed, provided that this mandate shall not be construed to divest other local, authorized law enforcement officers of authority to enforce the minimum speeds established hereby.

In all civil actions, violations of this subsection relating to minimum speeds shall not constitute negligence per se.

(c) The fact that the speed of a vehicle is lower than the foregoing limits shall not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, or when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions, and speed shall be decreased as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway, and to avoid causing injury to any person or property either on or off the highway, in compliance with legal requirements and the duty of all persons to use due care.

(d) Whenever the State Highway Commission shall determine upon the basis of an engineering and traffic investigation that any speed hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist upon any part of a highway outside the corporate limits of a municipality or upon any part of a highway designated as a part of the interstate highway system or other controlled-access-facility highway either inside or outside the corporate limits of a municipality, said Commission shall determine and declare a reasonable and safe speed limit thereat, which shall be effective when appropriate signs giving notice thereof are erected at such place or part of the highway.

(e) The foregoing provisions of this section shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence upon the part of the defendant as the proximate cause of an accident: Provided, that the failure or inability of a motor vehicle operator who is operating such vehicle within the maximum speed limits prescribed by G. S. 20-141(b) to stop such vehicle within the radius of the lights thereof or within the range of his vision shall not be considered negligence per se or contributory negligence per se in any civil action, but the facts relating thereto may be considered with other facts in such action in determining the negligence or contributory negligence of such operator.

(f) Repealed by Session Laws 1963, c. 949.

(f1) Local authorities in their respective jurisdictions may in their discretion fix by ordinance such speed limits as they may deem safe and proper on those streets which are not a part of the State highway system and which are not maintained by the State Highway Commission, but no speed limit so fixed for such streets shall be less than twenty-five miles per hour, and no such ordinance shall become or remain effective unless signs have been conspicuously placed giving notice of the speed limit for such streets. A violation of any ordinance adopted pursuant to the provisions of this subsection shall constitute a misdemeanor punishable by a fine not to exceed fifty dollars (\$50.00) or a prison sentence of not more than thirty days.

(g) Local authorities in their respective jurisdictions may, in their discretion, authorize by ordinance higher speeds than those stated in subsection (b) hereof upon streets which are not a part of the State highway system and which are not maintained by the State Highway Commission or portions thereof where there are no intersections or between widely spaced intersections: Provided, that signs are erected giving notice of the authorized speed.

Local authorities shall not have authority to modify or alter the basic rules set forth in subsection (a) herein, nor in any event to authorize by ordinance a speed in excess of fifty miles per hour.

(g1) Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subdivisions (1), (2), and (3) of subsection (b) hereof is reasonable and safe under the conditions found to exist upon any part of a street or highway within the corporate limits of a municipality and

which street or highway is a part of the State highway system, except those highways designated as a part of the interstate highway system or other controlled-access-facility highways, said local authorities shall determine and declare a safe and reasonable speed limit, not to exceed a maximum of fifty (50) miles per hour; provided, that the same shall not become effective until the State Highway Commission has passed a concurring ordinance adopting the speed limit so fixed by the local ordinance and, signs are erected giving notice of the authorized speed limit.

(g2) Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that any speed hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist upon any part of a street or highway within the corporate limits of a municipality and which street or highway is a part of the State highway system, except those highways designated as a part of the interstate highway system or other controlled-access-facility highways, said local authority shall determine and declare a safe and reasonable speed limit; provided, that the same shall not become effective until the State Highway Commission has passed a concurring ordinance adopting the speed limit so fixed by the local ordinance and, signs are erected giving notice of the authorized speed limits; provided, further, however, that nothing in this subsection shall prohibit local authorities from setting lower speed limits in school zones under the authority of subsection (g3) hereof.

(g3) Whenever a municipal governing body determines upon the basis of an engineering and traffic investigation that any speed hereinbefore set forth is greater than reasonable or safe under the conditions found to exist upon any street or highway within its corporate limits which is a part of a State highway system, except those highways designated as a part of the interstate highway system or other controlled-access-facility highways, and is located in the vicinity of any public or private elementary or secondary school, it shall have authority to reduce by ordinance the speed limit upon such streets and highways abutting school property and for a distance not to exceed five hundred (500) feet on either side of such school property lines to a maximum speed of not less than twenty-five (25) miles per hour, such speed limit to be effective only for thirty minutes prior to and thirty minutes following the times when such school begins and ends its daily schedule; provided, that in the event of a school having different beginning and ending schedules for different groups of pupils, such speed limit may be effective for thirty minutes prior to and thirty minutes following the time of each beginning schedule and each ending schedule; and provided, further, that no speed limit fixed under authority of this subsection shall be effective unless appropriate signs are erected giving notice of the authorized speed limit.

(h) No person shall operate a motor vehicle on the highway at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation because of mechanical failure or in compliance with law; provided, this provision shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

(h1) Whenever the State Highway Commission or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway considerably impede the normal and reasonable movement of traffic, the Commission or such local authority may determine and declare a minimum speed below which no person shall operate a motor vehicle except when necessary for safe operation because of mechanical failure or in compliance with law. Such minimum speed limit shall be effective when appropriate signs giving notice thereof are erected on said part of the highway. Provided, such minimum speed limit shall be effective as to those highways and streets within the corporate limits of a municipality which are on the State highway system only when ordinances adopting the minimum speed lim-

it are passed and concurred in by both the State Highway Commission and the local authorities. The provisions of this subsection shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

(h2): Struck out by 1961 Session Laws, c. 1147.

(i) The State Highway Commission shall have authority to designate and appropriately mark certain highways of the State as truck routes.

(1953, c. 1145; 1955, c. 398; c. 555, ss. 1, 2; c. 1042; 1957, c. 65, s. 11; c. 214; 1959, c. 640; c. 1264, s. 10; 1961, cc. 99, 1147; 1963, cc. 134, 456, 949.)

**Cross References.**—Delete reference to § 20-216 in Recompiled Volume.

As to what is a "business district" within the meaning of subsection (b) of this section, see note to § 20-38.

**Editor's Note.**—

The 1953 amendment, which added the proviso to subsection (e), provides that it shall not apply to any action arising out of a collision occurring prior to April 29, 1953.

The first 1955 amendment made subsection (f) applicable to a street or highway in the vicinity of a public, private, or parochial school or recreational area. The second 1955 amendment, effective July 1, 1955, rewrote subsection (h) and inserted subsection (h1). And the third 1955 amendment inserted the words "and to avoid causing injury to any person or property either on or off the highway" near the end of subsection (c).

The first 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission" in subsections (d), (f1), (h1) and (i). And the second 1957 amendment added subdivision (5) to subsection (b).

The first 1959 amendment inserted former subsection (h2). The second 1959 amendment, effective Oct. 1, 1959, rewrote subdivision (3) of subsection (b).

The first 1961 amendment added the proviso to subsection (b) (3) b. The second 1961 amendment inserted subsection (b1) and struck out former subsection (h2) providing maximum and minimum limits for highways in the National System of Interstate and Defense Highways.

The first 1963 amendment, effective July 1, 1963, changed subdivision (5) of subsection (b) by substituting "65" for "60." It also inserted subdivision (3) in subsection (b1). The second 1963 amendment substituted at the end of paragraph (3) b of subsection (b) the words "with a gross weight of not more than three thousand (3000) pounds" for the words "licensed for not more than twenty-five hundred (2500) pounds gross weight." The third 1963 amendment made further changes in

subdivision (5) of subsection (b). It also rewrote subsection (d), repealed subsection (f), rewrote the portion of the first paragraph of subsection (g) preceding the proviso, added subsections (g1), (g2) and (g3), and inserted the proviso in subsection (h1).

As the rest of the section was not changed, only the subsections mentioned above are set out.

For comment on the 1953 amendment, see 31 N. C. Law Rev. 415.

**Section Prescribes Lawful Speeds.**—This section prescribes speeds at which motor vehicles may be lawfully operated on the highways of the State. *Short v. Chapman*, 261 N.C. 674, 136 S.E.2d 40 (1964).

**Scope of Protection.**—This section does not limit its protection to motorists who are within the law; it enjoins all motorists "to avoid causing injury to any person or property either on or off the highway, in compliance with legal requirements and the duty of all persons to use due care. *McNair v. Goodwin*, 264 N. C. 146, 141 S.E.2d 22 (1965).

This section applies to criminal actions only, etc.—

*Piner v. Richter*, 202 N. C. 573, 163 S. E. 561 (1932), treated under this catchline in the Recompiled Volume, held that a statutory provision requiring the defendant's speed to be alleged in the complaint did not apply to the complaint in a civil action for negligence. Such a provision is no longer contained in this section.

The citation, "*Jones v. Charlotte*, 183 N. C. 630, 112 S. E. 423 (1922)," appearing under this catchline in the Recompiled Volume should read, "*James v. Charlotte*, 183 N. C. 630, 112 S. E. 423 (1922)."—*Ed. Note.*

**Violation as Constituting Negligence.**—If defendant approached the intersection at a speed in excess of 60 miles per hour, he violated this section and was thus guilty of negligence per se. *Jones v. Horton*, 264 N.C. 549, 142 S.E.2d 351 (1965).

If the automobile was driven at a speed greater than 55 miles per hour, or faster than was reasonable and prudent under existing conditions, the operator was negli-

gent. *Rector v. Roberts*, 264 N.C. 324, 141 S.E.2d 482 (1965).

A motorist is required to act as a reasonably prudent man and to drive with due caution and circumspection and at a speed or in a manner so as not to endanger or be likely to endanger any person or property, and his failure to do so is negligence. *Crotts v. Overnite Transportation Co.*, 246 N. C. 420, 98 S. E. (2d) 502 (1957).

One who fails to comply with the provisions of this section is negligent. *Stephens v. Southern Oil Co., Inc.*, 259 N. C. 456, 131 S. E. (2d) 39 (1963).

Evidence of greatly excessive speed in violation of the speed restrictions of this section, and of reckless driving in violation of § 20-140, were sufficient to make out a case of actionable negligence. *Bell v. Maxwell*, 246 N. C. 257, 98 S. E. (2d) 33 (1957); *Hutchens v. Southard*, 254 N. C. 428, 119 S. E. (2d) 205 (1961).

A violation of subsection (a) of this section, which is a safety statute, is negligence per se. *Black v. Gurley Milling Co., Inc.*, 257 N. C. 730, 127 S. E. (2d) 515 (1962).

All the evidence tended to show that plaintiff's decedent was killed by the actionable negligence of the driver of the automobile in which he was a passenger in driving it at an excessive speed in violation of subsec. (b) (4) of this section, and in a reckless manner in violation of § 20-140. *Bridges v. Graham*, 246 N. C. 371, 98 S. E. (2d) 492 (1957).

A violation of subsection (b) (4) of this section is negligence per se. *Stegall v. Sledge*, 247 N. C. 718, 102 S. E. (2d) 115 (1958); *Rudd v. Stewart*, 255 N. C. 90, 120 S. E. (2d) 601 (1961).

Under subsections (a) and (c) of this section, it is unlawful for a person to operate a vehicle upon a public highway at a speed that is greater than is reasonable and prudent under existing circumstances. One who violates this statute is guilty of negligence. *Rouse v. Jones*, 254 N. C. 575, 119 S. E. (2d) 628 (1961).

Violation of subsections (a) and (b) of this section constitutes negligence, because according to the uniform decisions of the Supreme Court, the violation of a statute imposing a rule of conduct in the operation of a motor vehicle and enacted in the interest of safety has been held to constitute negligence per se, unless otherwise provided in the statute. *Bridges v. Jackson*, 255 N. C. 333, 121 S. E. (2d) 542 (1961).

Operation at a speed in excess of that lawfully prescribed is a negligent act. *Krider v. Martello*, 252 N. C. 474, 113 S. E. (2d) 924 (1960).

Proof of the breach of subsection (c) of

this section is negligence. In essence, that is the meaning of "per se." *Hutchens v. Southard*, 254 N. C. 428, 119 S. E. (2d) 205 (1961).

Under subsections (a) and (c), if a person drives a vehicle on a highway at a speed greater than is reasonable and prudent under conditions then existing, such person is guilty of negligence per se, that is, as a matter of law, notwithstanding the speed does not exceed the applicable maximum limits set forth in subsection (b). *Cassetta v. Compton*, 256 N. C. 71, 123 S. E. (2d) 222 (1961).

Violation of subsections (a) and (c) of this section constituted negligence per se. *Rundle v. Grubb Motor Lines, Inc.*, 300 F. (2d) 333 (1962).

A violation of subsection (c) is negligence per se. *Pittman v. Swanson*, 255 N. C. 681, 122 S. E. (2d) 814 (1961).

Failure to observe the statutory duty imposed by subsection (c) renders a motorist negligent, and such negligence may consist of traveling at excessive speed, failure to keep a proper lookout, or failure to maintain reasonable control of vehicle. *Redden v. Bynum*, 256 N. C. 351, 123 S. E. (2d) 734 (1962).

**Violation Must Proximately Cause Injury.**—As provided by subsection (e), a violation of subsections (a) and (c) has legal significance in a civil action only if it proximately causes injury. *Cassetta v. Compton*, 256 N. C. 71, 123 S. E. (2d) 222 (1961).

If the negligence resulting from failure to comply with the provisions of this section proximately causes injury, liability results. *Stephens v. Southern Oil Co., Inc.*, 259 N. C. 456, 131 S. E. (2d) 39 (1963).

**Legislative Purpose.**—This section was enacted for the protection of persons and property and in the interest of public safety, and the preservation of human life. *State v. Norris*, 242 N. C. 47, 86 S. E. (2d) 916 (1955).

The statutory regulation of speed at intersections has for its purpose the protection of those who are in entering, or about to enter, the intersecting highway. *Hutchens v. Southard*, 254 N. C. 428, 119 S. E. (2d) 205 (1961).

The reckless driving and speed statutes are designed for the protection of life, limb and property. *State v. Ward*, 258 N. C. 330, 128 S. E. (2d) 673 (1962).

This section was enacted to promote safe operation of motor vehicles on the highways. *Stephens v. Southern Oil Co., Inc.*, 259 N. C. 456, 131 S. E. (2d) 39 (1963).

This section prescribes a standard of

care, "and the standard fixed by the legislature is absolute." *Kellogg v. Thomas*, 244 N. C. 722, 94 S. E. (2d) 903 (1956); *Aldridge v. Hasty*, 240 N. C. 353, 82 S. E. (2d) 331 (1954); *Lamm v. Gardner*, 250 N. C. 540, 108 S. E. (2d) 847 (1959); *Bondurant v. Mastin*, 252 N. C. 190, 113 S. E. (2d) 292 (1960); *Hutchens v. Southard* 254 N. C. 428, 119 S. E. (2d) 205 (1961); *Pittman v. Swanson*, 255 N. C. 681, 122 S. E. (2d) 314 (1961).

#### Regulation of Speed at Night.—

While a motorist is under no duty to anticipate negligence on the part of others traveling the highway, it is his duty to anticipate the presence of others and hazards of the road, such as disabled vehicles, and, in the exercise of due care, to keep his automobile under such control as to be able to stop within the range of his lights. *Morris v. Jenrette Transport Co.*, 235 N. C. 568, 70 S. E. (2d) 845 (1952).

Under the 1953 amendment, the failure of a motorist to stop his vehicle within the radius of its lights or the range of his vision may not be held negligence per se or contributory negligence per se, provided the motor vehicle is not being operated in excess of the maximum speed limit under the existing circumstances as prescribed by subsection (b). *Burchette v. Davis Distributing Co.*, 243 N. C. 120, 90 S. E. (2d) 232 (1955); *Brooks v. Honeycutt*, 250 N. C. 179, 108 S. E. (2d) 457 (1959).

If a motorist is traveling within the legal speed limit, his inability to stop within the range of his headlights is not negligence per se but is only evidence of negligence to be considered with the other evidence in the case. *May v. Southern Ry. Co.*, 259 N. C. 43, 129 S. E. (2d) 624 (1963).

The court committed prejudicial error in instructing the jury to the effect that a failure or inability of the defendant, who was driving the automobile within the maximum speed limit on the highway, to stop the automobile within the radius of his lights, would constitute a breach of legal duty and would be negligence per se. *Salter v. Lovick*, 257 N. C. 619, 127 S. E. (2d) 273 (1962).

#### Same—Purpose of Regulation.—

In accord with original. See *Hutchens v. Southard*, 254 N. C. 428, 119 S. E. (2d) 205 (1961).

Section 20-145 exempts a police officer from observing the speed limit set out in this section when such officer is operating an automobile in the chase or apprehension of a violator of the law or persons charged or suspected of such violation as long as the officer drives with due regard to the

safety of others. *Goddard v. Williams*, 251 N. C. 128, 110 S. E. (2d) 820 (1959).

#### Colliding with Vehicle Parked on Highway at Night Without Signals.—

Allegations held not to show contributory negligence as a matter of law in colliding with truck stopped on highway after dark, without rear lights. *Weavil v. Myers*, 243 N. C. 386, 90 S. E. (2d) 733 (1956)

Plaintiff will not be held contributorily negligent as a matter of law in striking the rear of a vehicle left unattended on a highway at nighttime without lights, when plaintiff at the time is traveling within the statutory maximum speed limit. *Beasley v. Williams*, 260 N.C. 561, 133 S.E.2d 227 (1963).

Motorist who is driving his automobile within the maximum speed limit cannot be held contributorily negligent as a matter of law in outrunning his headlights and striking the rear end of a pickup truck stopped on the highway without lights. *Rouse v. Peterson*, 261 N.C. 600, 135 S.E.2d 549 (1964).

Where a motorist is traveling within the maximum legal speed, he will not be held contributorily negligent as a matter of law in colliding with the rear of a vehicle left in his lane of traffic at nighttime without lights. *Dezern v. Asheboro City Bd. of Educ.*, 260 N.C. 535, 133 S.E.2d 204 (1963).

**Right to Assume That Other Driver Will Observe Law.—**The operator of an automobile traveling upon an intersecting highway traversing a designated main traveled or through highway, is under no duty to anticipate that the operator of an automobile, upon such designated highway, approaching the intersection of the two highways, will fail to observe the speed regulations and the rules of the road. *Hawes v. Atlantic Refining Co.*, 236 N. C. 643, 74 S. E. (2d) 17 (1953).

Under this section 55 miles per hour is the general maximum speed limit in the State, and the provisions of subdivision (5) of subsection (b) are in the nature of an exception, and a defendant must bring himself within the provisions of the exception in order to receive the benefits of the exception. *State v. Brown*, 250 N. C. 209, 108 S. E. (2d) 233 (1959); *Shue v. Scheidt*, 252 N. C. 561, 114 S. E. (2d) 237 (1960).

#### Care as to Children.—

Evidence that a child less than five years old was on the hard surface of a highway, unattended, and clearly visible to defendant while he traveled a distance of one-half mile, that the child ran across the

highway toward her companion, another small child, when defendant was only some 40 feet away, and that defendant could not then avoid striking the child, notwithstanding he had reduced his speed from some 45 miles per hour to 25 miles per hour, was sufficient to be submitted to the jury. *Henderson v. Locklear*, 260 N.C. 582, 133 S.E.2d 164 (1963).

**Limitation upon Privilege of Driving at Maximum Rate.—**

The speed of a motor vehicle may be unlawful under the circumstances of a particular case, even though such speed is less than the definite statutory limit prescribed for the vehicle in the place where it is being driven. *Sowers v. Marley*, 235 N. C. 607, 70 S. E. (2d) 670 (1952); *Wise v. Lodge*, 247 N. C. 250, 100 S. E. (2d) 677 (1957); *Lamm v. Gardner*, 250 N. C. 540, 108 S. E. (2d) 847 (1959).

Any speed may be unlawful and excessive if the operator of a motor vehicle knows or by the exercise of due care should reasonably anticipate that a person or vehicle is standing in his line of travel. *Murray v. Wyatt*, 245 N. C. 123, 95 S. E. (2d) 541 (1956).

It is unlawful to drive at any time on a State highway at a speed greater than is reasonable and prudent under the conditions then existing or in any event at a higher rate of speed of than 55 miles per hour. *State v. Norris*, 242 N. C. 47, 86 S. E. (2d) 916 (1955).

In light of the provisions of § 20-140 and this section it is clear that whether or not a speed of 55 miles an hour is lawful depends upon the circumstances at the time. These sections provide that a motorist must at all times drive with due caution and circumspection and at a speed and in a manner so as not to endanger or be likely to endanger any person or property. At no time may a motorist lawfully drive at a speed greater than is reasonable and prudent under the conditions then existing. *Primm v. King*, 249 N. C. 228, 106 S. E. (2d) 223 (1958).

The fact that the speed of defendant's automobile was 50 miles an hour did not relieve her from the duty to decrease speed when approaching and crossing an intersection as required by subsection (c) of this section. *Hutchens v. Southard*, 254 N. C. 428, 119 S. E. (2d) 205 (1961).

**Speed Less than 20 Miles Per Hour May Be Unlawful.—**Speed less than 20 miles per hour, either in a business district, residential district or elsewhere, if greater than is reasonable and prudent under the conditions then existing is un-

lawful and negligence per se. *Hinson v. Dawson*, 241 N. C. 714, 86 S. E. (2d) 585 (1955).

**Speed of 40 miles per hour on a highway on which snow is beginning to stick** may be excessive. *Fox v. Hollar*, 257 N. C. 65, 125 S. E. (2d) 334 (1962).

**Speed of 35 to 40 miles per hour on a highway covered with ice and snow** may be excessive; the driver of the vehicle under such conditions must exercise care commensurate with the danger, so as to keep his vehicle under control. *Redden v. Bynum*, 256 N. C. 351, 123 S. E. (2d) 734 (1962).

**Motorist Must Decrease Speed, etc.—**

In accord with 2nd paragraph in original. See *Singletary v. Nixon*, 239 N. C. 634, 80 S. E. (2d) 676 (1954); *Lamm v. Gardner*, 250 N. C. 540, 108 S. E. (2d) 847 (1959).

A motorist is under statutory duty to decrease speed when special hazard exists by reason of weather and highway conditions, to the end that others using the highway may not be injured. *Williams v. Tucker*, 259 N. C. 214, 130 S. E. (2d) 306 (1963).

The fact that the speed of a vehicle is lower than that fixed by statute does not relieve the driver from the duty to decrease speed when approaching and crossing an intersection, or when a hazard exists with respect to weather or highway conditions, and speed shall be reduced as may be necessary to avoid colliding with any vehicle on the highway. *Keller v. Security Mills of Greensboro, Inc.*, 260 N.C. 571, 133 S.E.2d 222 (1963).

When the condition of a road is such that skidding may be reasonably anticipated, the driver of a vehicle must exercise care commensurate with the danger to keep the vehicle under control so as to avoid injury to occupants of the vehicle and others on or off the highway. *Webb v. Clark*, 264 N.C. 474, 141 S.E.2d 880 (1965).

**And in Extreme Cases Must Stop.—**It has been held in extreme cases that where by reason of fog or other conditions visibility is practically nonexistent, motorists are under duty to refrain from entering the highway or to stop if already on the highway. *Williams v. Tucker*, 259 N. C. 214, 130 S. E. (2d) 306 (1963).

A motorist should exercise reasonable care in keeping a lookout commensurate with the increased danger occasioned by conditions obscuring his view. *Williams v. Tucker*, 259 N. C. 214, 130 S. E. (2d) 306 (1963).

**Speed When Driver Sees Person or Vehicle in His Line of Travel.—**Any speed



may be unlawful if the driver of a motor vehicle sees, or in the exercise of due care could and should have seen, a person or vehicle in his line of travel. *Cassetta v. Compton*, 256 N. C. 71, 123 S. E. (2d) 222 (1961).

**Inability to Stop within Radius of Lights.** — When a motorist is traveling within the maximum speed limit, his inability to stop his vehicle within the radius of his headlights will not be held negligence or contributory negligence per se. *Short v. Chapman*, 261 N.C. 674, 136 S.E.2d 40 (1964).

If the driver of a motor vehicle who is operating it within the maximum speed limits prescribed by subsection (b) of this section fails to stop such vehicle within the radius of the lights of the vehicle or within the range of his vision, the courts may no longer hold such failure to be negligence per se, or contributory negligence per se, as the case may be, that is, negligence or contributory negligence, in and of itself; but the facts relating thereto may be considered by the jury, with other facts in such action, in determining whether the operator be guilty of negligence, or contributory negligence, as the case may be. *Beasley v. Williams*, 260 N.C. 561, 133 S.E.2d 227 (1963).

**Or within Range of Vision.**—Plaintiff's inability to stop within the range of his vision was held not to be contributory negligence per se, but the facts relating thereto were held for consideration by the jury in determining the issue of contributory negligence. *Brown v. Hale*, 263 N.C. 176, 139 S.E.2d 210 (1964).

**Sudden Emergency.**—The duty of the nocturnal motorist to exercise ordinary care for his own safety does not extend so far as to require that he must be able to bring his automobile to an immediate stop on the sudden arising of a dangerous situation which he could not reasonably have anticipated. *Rouse v. Peterson*, 261 N.C. 600, 135 S.E.2d 549 (1964).

**Proximate Cause Is for Jury.**—

Whether a violation of the provisions of this section is the proximate cause of an injury is for the jury to determine. *Stephens v. Southern Oil Co., Inc.*, 259 N. C. 456, 131 S. E. (2d) 39 (1963).

**Necessity of Referring to Subsection (c).**—

Where the trial court instructed the jury that the evidence was insufficient to show that the area where the collision occurred was a residential district and therefore the maximum allowable speed was 55 miles per hour, it was held on appeal that de-

fendant was entitled to have the jury instructed as to provisions of subsection (c) of this section. *Medlin v. Spurrier & Co.*, 239 N. C. 48, 79 S. E. (2d) 209 (1953).

Where the court in its charge quoted almost verbatim the provisions of subsection (a), but neither charged nor explained in form or substance, nor made any reference to, the provisions of subsection (c) in any part of the charge, this affected a substantive right of plaintiff, and was prejudicial error, even in the absence of a special request for instructions. *Pittman v. Swanson*, 255 N. C. 681, 122 S. E. (2d) 814 (1961).

**What is the speed limit is a mixed question of fact and law**, except where the State Highway Commission or local authorities, pursuant to the statute, have determined a reasonable and safe speed for a particular area and have declared it by erecting appropriate signs. *Hensley v. Wallen*, 257 N. C. 675, 127 S. E. (2d) 277 (1962).

**Maximum Legal Speed Determined by Nature of Area.**—What is the maximum speed permitted by law for a given area depends upon whether that area is a business or residential district as defined by § 20-38 (a) and (w) 1, or "places other than those," as mentioned in § 20-141 (b) 4. *Hensley v. Wallen*, 257 N. C. 675, 127 S. E. (2d) 277 (1962).

**Which Must Be Proved before Speed Limit Can Be Determined.** — In the absence of a stipulation, it is necessary to prove the character of the district before the maximum speed permitted by law can be determined. *Hensley v. Wallen*, 257 N. C. 675, 127 S. E. (2d) 277 (1962).

**Failure to Allege Character of District Where Accident Occurred.**—Where plaintiff alleged that defendant was operating his automobile at a speed which was excessive under the existing conditions in violation of subsection (a), and made no other allegation with reference to defendant's speed, and did not allege that the approach to the scene of the collision was either a business or a residential district or that the proper authorities had posted any signs giving notice of any determined speed limit for the area, subsections (a) and (b) 4 were pertinent in judging the conduct of the defendant. *Hensley v. Wallen*, 257 N. C. 675, 127 S. E. (2d) 277 (1962).

A "business district" is determinable with reference to the status of the frontage on the street or highway on which the motorist is traveling. Conditions along intersecting streets or highways are excluded from consideration. *Black v. Pen-*

land, 255 N. C. 691, 122 S. E. (2d) 504 (1961).

**Judging Speed by Movement of Lights.**

—At night, a witness may judge the speed of an automobile by the movement of its lights, if his observation is for such a distance as to enable him to form an intelligent opinion. *Jones v. Horton*, 264 N.C. 549, 142 S.E.2d 351 (1965).

**The physical facts at the scene of an accident** may disclose that the operator of the vehicle was traveling at excessive speed. *Keller v. Security Mills of Greensboro, Inc.*, 260 N.C. 571, 133 S.E.2d 222 (1963).

**Competency of Witnesses.** — It is the rule in this State that any person of ordinary intelligence who has had a reasonable opportunity to observe is competent to testify as to the rate of speed of an automobile. *Jones v. Horton*, 264 N.C. 549, 142 S.E.2d 351 (1965).

**Opinion Testimony.**—Plaintiff's opinion testimony that the defendant's vehicle was traveling "in excess of 60 miles per hour, between 75-80 miles per hour" was competent. Its weight and credibility were for the jury. *Jones v. Horton*, 264 N.C. 549, 142 S.E.2d 351 (1965).

**Testimony of Witness as to Speed Limit in Particular Area Violates Opinion Rule.**—To permit a witness to say what a speed limit was for a particular area at a given time is to allow him to give his inferences from facts which he has observed. Such testimony violates the opinion rule and invades the province of the jury. *Hensley v. Wallen*, 257 N. C. 675, 127 S. E. (2d) 277 (1962).

**But Witness May Testify as to Presence of Highway Sign.**—If a highway sign declaring the speed limit to be a given speed has been posted, it would be competent for a witness to say so, describe the sign, and testify as to its location. *Hensley v. Wallen*, 257 N. C. 675, 127 S. E. (2d) 277 (1962).

**And Inference Is That Highway Sign Was Erected by Proper Authorities.** — When a sign is present, nothing else appearing, there is a logical inference that it was erected by the proper authorities pursuant to this section. *Hensley v. Wallen*, 257 N. C. 675, 127 S. E. (2d) 277 (1962).

**The authority of the State Highway Commission under subsection (d) of this section** does not stop at city limits but extends to all State highways maintained by it, regardless of whether such highways are within the corporate limits of a city or town. *Davis v. Jessup*, 257 N. C. 215, 125 S. E. (2d) 440 (1962).

**Warrant held sufficient to charge viola-**

tion of this section by speeding 80 miles per hour. *State v. Daughtry*, 236 N. C. 316, 72 S. E. (2d) 658 (1952).

**Evidence Sufficient to Show Violation of Paragraph (a).**—See *Register v. Gibbs*, 233 N. C. 456, 64 S. E. (2d) 280 (1951).

**Evidence of Excessive Speed Is Not, etc.**—

The mere fact that it can be reasonably inferred from the evidence that an automobile was traveling at a very rapid speed when it wrecked is not sufficient to permit a jury to find that such speed caused its wreck, and that its driver was guilty of actionable negligence. *Crisp v. Medlin*, 264 N.C. 314, 141 S.E.2d 609 (1965).

**Evidence Showing Excessive Speed.**—See *State v. Goins*, 233 N. C. 460, 64 S. E. (2d) 289 (1951).

The principle that the mere fact of a collision with a vehicle ahead furnishes some evidence that the following motorist was negligent as to speed, was following too closely, or failed to keep a proper lookout is not absolute; the negligence, if any, depends upon the circumstances. *Powell v. Cross*, 263 N.C. 764, 140 S.E.2d 393 (1965).

Driver held driving at a speed greater than was reasonable and prudent under the conditions existing. *Cronenberg v. United States*, 123 F. Supp. 693 (1954).

Mute evidence of extensive damage to front end of defendant's car, of blood spots on car and of car coming to rest 365 feet from where other blood spots began, tends to show that defendant had not slackened his speed of 75 to 80 miles per hour up to the moment of striking deceased, that he was violating this section. *State v. Phelps*, 242 N. C. 540, 89 S. E. (2d) 132 (1955).

**Evidence held sufficient to be submitted to the jury on the question of the negligence of a driver in traveling at excessive speed and in failing to maintain a proper lookout and in failing to keep his car under proper control.** *Blalock v. Hart*, 239 N. C. 475, 80 S. E. (2d) 373 (1954).

Evidence that defendant failed to yield the right of way to the plaintiff who was on the right, and that defendant was driving at 50 miles per hour through the intersection, raised the issue of defendant's negligence, and the motion for nonsuit at the close of all the evidence was properly denied. *Price v. Gray*, 246 N. C. 162, 97 S. E. (2d) 884 (1957).

The evidence tended to show that defendant was guilty of negligence in not decreasing speed when approaching and entering an intersection at a speed of 60 to 70 miles an hour in violation of subsection (c) of

this section. *Stockwell v. Brown*, 254 N. C. 662, 119 S. E. (2d) 795 (1961).

**Evidence held insufficient to be submitted to jury** on question of maximum speed limit for business district where it did not bring locale of collision within statutory definition of such district. *Tillman v. Bellamy*, 242 N. C. 201, 87 S. E. (2d) 253 (1955).

Applied in *Bumgardner v. Allison*, 238 N. C. 621, 78 S. E. (2d) 752 (1953); *McClamrock v. White Packing Co.*, 238 N. C. 648, 78 S. E. (2d) 749 (1953) (as to subsection (e)); *Gantt v. Hobson*, 240 N. C. 426, 82 S. E. (2d) 384 (1954) (as to subsection (h)); *Combs v. United States*, 122 F. Supp. 280 (1954) (as to subsection (a)); *Wilson v. Webster*, 247 N. C. 393, 100 S. E. (2d) 829 (1957); *Bass v. Lee*, 255 N. C. 73, 120 S. E. (2d) 570 (1961); *Powell v. Clark*, 255 N. C. 707, 122 S. E. (2d) 706 (1961); *Scarborough v. Ingram*, 256 N. C. 87, 122 S. E. (2d) 798 (1961); *Bulluck v. Long*, 256 N. C. 577, 124 S. E. (2d) 716 (1962); *Phillips v. Alston*, 257 N. C. 255, 125 S. E. (2d) 580 (1962); *Benson v. Sawyer*, 257 N. C. 765, 127 S. E. (2d) 549 (1962); *Parker v. Bruce*, 258 N. C. 341, 128 S. E. (2d) 561 (1962); *Queen v. Jarrett*, 258 N. C. 405, 128 S. E. (2d) 894 (1963); *State v. Wells*, 259 N. C. 173, 130 S. E. (2d) 299 (1963); *Scott v. Clark*, 261 N.C. 102, 134 S.E.2d 181 (1964); *Taney v. Brown*, 262 N.C. 438, 137 S.E.2d 827 (1964); *Hall v. Little*, 262 N.C. 618, 138 S.E.2d 282 (1964); *Knight v. Seymour*, 263 N.C. 790, 140 S.E.2d 410 (1965); *Reeves v. Campbell*, 264 N.C. 224, 141 S.E.2d 296 (1965).

Quoted in part in *Butler v. Allen*, 233 N. C. 484, 64 S. E. (2d) 561 (1951); *Adcox v. Austin*, 235 N. C. 591, 70 S. E. (2d) 837 (1952); as to subsection (e), in *Keener v. Beal*, 246 N. C. 247, 98 S. E. (2d) 19 (1957); as to subsection (c), in *Clifton v. Turner*, 257 N. C. 92, 125 S. E. (2d) 339 (1962).

Stated in *Freshman v. Stallings*, 128 F. Supp. 179 (1955); *Parlier v. Barnes*, 260 N.C. 341, 132 S.E.2d 684 (1963).

Cited in *Matheny v. Central Motor Lines*, 233 N. C. 673, 65 S. E. (2d) 361 (1951); *Hansley v. Tilton*, 234 N. C. 3, 65 S. E. (2d) 300 (1951); *Pemberton v. Lewis*, 235 N. C. 188, 69 S. E. (2d) 512 (1952); *Childress v. Johnson Motor Lines*, 235 N. C. 522, 70 S. E. (2d) 558 (1952); *Jernigan v. Jernigan*, 236 N. C. 430, 72 S. E. (2d) 912 (1952); *Powell v. Daniel*, 236 N. C. 489, 73 S. E. (2d) 143 (1952); *Hawes v. Atlantic Refining Co.*, 236 N. C. 643, 74 S. E. (2d) 17 (1953); *Aldridge v. Hasty*, 240 N. C. 353, 82 S. E. (2d) 331 (1954); *Lowe v. Department of Motor Vehicles*, 244 N. C. 353, 93 S. E. (2d) 448 (1956); *Weaver v. C. W. Myers Trading Post, Inc.*, 245 N. C. 106, 95 S. E. (2d) 533 (1956); *Hennis Freight Lines, Inc. v. Burlington Mills Corp.*, 246 N. C. 143, 97 S. E. (2d) 850 (1957); *Lookabill v. Regan*, 247 N. C. 199, 100 S. E. (2d) 521 (1957); *Durham v. McLean Trucking Co.*, 247 N. C. 204, 100 S. E. (2d) 348 (1957); *Hollowell v. Archbell*, 250 N. C. 716, 110 S. E. (2d) 262 (1959); *Beaver v. Scheidt*, 251 N. C. 671, 111 S. E. (2d) 881 (1960); *Kennedy v. James*, 252 N. C. 434, 113 S. E. (2d) 889 (1960); *Pridgen v. Uzzell*, 254 N. C. 292, 118 S. E. (2d) 755 (1961); *Peeden v. Tait*, 254 N. C. 489, 119 S. E. (2d) 450 (1961); *Brewer v. Powers Trucking Co.*, 256 N. C. 175, 123 S. E. (2d) 608 (1962); *Gilliam v. Propst Constr. Co.*, 256 N. C. 197, 123 S. E. (2d) 504 (1962); *Dunlap v. Lee*, 257 N. C. 447, 126 S. E. (2d) 62 (1962); *Jewell Ridge Coal Corp. v. Charlotte*, 204 F. Supp. 256 (1962); *Upchurch v. Hudson Funeral Home, Inc.*, 263 N. C. 560, 140 S.E.2d 17 (1965); *State Highway Comm'n v. Raleigh Farmers Mkt., Inc.*, 263 N.C. 622, 139 S.E.2d 904 (1965); *Cogdell v. Taylor*, 264 N.C. 424, 142 S.E.2d 36 (1965).

### § 20-141.1. Restrictions in speed zones near rural public schools.

**Local Modification.**—City of Greensboro 1953, c. 1075

**Restriction Limited to Hours Posted.**—The limitation of speed in the vicinity of a schoolhouse during school hours, effected

by the posting of appropriate signs by the Highway Commission, does not affect the speed restrictions outside the time limited. *Clark v. Rucker*, 251 N. C. 90, 110 S. E. (2d) 605 (1959).

**§ 20-141.2. Prima facie rule of evidence as to operation of motor vehicle altered so as to increase potential speed.**—Proof of the operation upon any street or highway of North Carolina at a speed in excess of the limits provided by law of any motor vehicle when the motor, or any mechanical part or feature, or the design of the motor vehicle has been changed or altered so that there is a variation between such motor vehicle as changed or altered and the motor vehicle as constructed according to specification of the original motor ve-

hicle manufacturer, with the result that the potential speed of such vehicle has been increased beyond that which existed prior to such change or alteration, or the proof of operation upon any street or highway of North Carolina at a speed in excess of the limits provided by law of any motor vehicle assembled from parts of two or more different makes of motor vehicles, whether or not any specially made or specially designed parts or appliances are included in the manufacture and assembly thereof, shall be prima facie evidence that such motor vehicle was operated at such time by the registered owner thereof. (1953, c. 1220.)

**Editor's Note.**—For brief comment on this section, see 31 N. C. Law Rev. 418.

**§ 20-141.3. Unlawful racing on streets and highways.**—(a) It shall be unlawful for any person to operate a motor vehicle on a street or highway wilfully in prearranged speed competition with another motor vehicle. Any person violating the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than five hundred dollars (\$500.00) or imprisonment for not less than sixty (60) days, or both, in the discretion of the court.

(b) It shall be unlawful for any person to operate a motor vehicle on a street or highway wilfully in speed competition with another motor vehicle. Any person wilfully violating the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than fifty dollars (\$50.00), or imprisonment of not more than two years, or by both such fine and imprisonment in the discretion of the court.

(c) It shall be unlawful for any person to authorize or knowingly permit a motor vehicle owned by him or under his control to be operated on a public street, highway, or thoroughfare in prearranged speed competition with another motor vehicle, or to place or receive any bet, wager, or other thing of value from the outcome of any prearranged speed competition on any public street, highway, or thoroughfare. Any person violating the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine or imprisonment, or both, in the discretion of the court.

(d) The Commissioner of Motor Vehicles shall revoke the operator's or chauffeur's license or privilege to drive of every person convicted of violating the provisions of subsection (a) or subsection (c) of this section, said revocation to be for three years; provided any person whose license has been revoked under this section may apply for a new license after eighteen (18) months from revocation. Upon filing of such application the Department may issue a new license upon satisfactory proof that the former licensee has been of good behavior for the past eighteen (18) months and that his conduct and attitude are such as to entitle him to favorable consideration and upon such terms and conditions which the Department may see fit to impose for the balance of the three-year revocation period, which period shall be computed from the date of the original revocation.

(e) The Commissioner may suspend the operator's or chauffeur's license or privilege to drive of every person convicted of violating the provisions of subsection (b) of this section. Such suspension shall be for a period of time within the discretion of the Commissioner, but not to exceed one year.

(f) All suspensions and revocations made pursuant to the provisions of this section shall be in the same form and manner and shall be subject to all procedures as now provided for suspensions and revocations made under the provisions of article 2 of chapter 20 of the General Statutes. Any person whose license or privilege is suspended or revoked under this section must comply with the provisions of article 9A of chapter 20 of the General Statutes relating to filing proof of financial responsibility as a condition to the return or reissuance of his license or privilege after the expiration of the period of revocation or suspension.

(g) When any officer of the law discovers that any person has operated or is

operating a motor vehicle wilfully in prearranged speed competition with another motor vehicle on a street or highway, he shall seize the motor vehicle and deliver the same to the sheriff of the county in which such offense is committed, or the same shall be placed under said sheriff's constructive possession if delivery of actual possession is impractical, and the vehicle shall be held by the sheriff pending the trial of the person or persons arrested for operating such motor vehicle in violation of subsection (a) of this section. The sheriff shall restore the seized motor vehicle to the owner upon execution by the owner of a good and valid bond, with sufficient sureties, in an amount double the value of the property, which bond shall be approved by said sheriff and shall be conditioned on the return of the motor vehicle to the custody of the sheriff on the day of trial of the person or persons accused. Upon the acquittal of the person charged with operating said motor vehicle wilfully in prearranged speed competition with another motor vehicle, the sheriff shall return the motor vehicle to the owner thereof.

Upon conviction of the operator of said motor vehicle of a violation of subsection (a) of this section, the court shall order a sale at public auction of said motor vehicle and the officer making the sale, after deducting the expenses of keeping the motor vehicle, the fee for the seizure, and the costs of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise, at said hearing or in other proceeding brought for said purpose, as being bona fide, and shall pay the balance of the proceeds to the proper officer of the county who receives fines and forfeitures to be used for the school fund of the county. All liens against a motor vehicle sold under the provisions of this section shall be transferred from the motor vehicle to the proceeds of its sale. If, at the time of hearing, or other proceeding in which the matter is considered, the owner of the vehicle can establish to the satisfaction of the court that said motor vehicle was used in prearranged speed competition with another motor vehicle on a street or highway without the knowledge or consent of the owner, and that the owner had no reasonable grounds to believe that the motor vehicle would be used for such purpose, the court shall not order a sale of the vehicle but shall restore it to the owner, and the said owner shall, at his request, be entitled to a trial by jury upon such issues.

If the owner of said motor vehicle cannot be found, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken, or, if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if said owner shall not appear within ten (10) days after the last publication of the advertisement, the property shall be sold, or otherwise disposed of in the manner set forth in this section.

When any vehicle confiscated under the provisions of this section is found to be specially equipped or modified from its original manufactured condition so as to increase its speed, the court shall, prior to sale, order that the special equipment or modification be removed and destroyed and the vehicle restored to its original manufactured condition. However, if the court should find that such equipment and modifications are so extensive that it would be impractical to restore said vehicle to its original manufactured condition, then the court may order that the vehicle be turned over to such governmental agency or public official within the territorial jurisdiction of the court as the court shall see fit, to be used in the performance of official duties only, and not for resale, transfer, or disposition other than as junk: Provided, that nothing herein contained shall affect the rights of lien holders and other claimants to said vehicles as set out in this section. (1955, c. 1156; 1957, c. 1358; 1961, c. 354; 1963, c. 318.)

**Editor's Note.** -- The 1957 amendment rewrote and greatly enlarged this section. The 1961 amendment deleted the words "or imprisonment" in line five of subsection (a) and substituted in lieu thereof the words and figures "of not less than five

hundred dollars (\$500.00) or imprisonment for not less than sixty (60) days." The amendment also substituted "three years" for "one year" in line four of subsection (d).

The 1963 amendment added the proviso and the second sentence of subsection (d).

The violation of subsections (a) and (b) of this section is negligence per se. Those who participate are on a joint venture and are encouraging and inciting each other. The primary negligence involved is the race itself. All who wilfully participate in speed competition between motor vehicles on a public highway are jointly and concurrently negligent and, if damage to one not involved in the race proximately results from it, all participants are liable, regardless of which of the racing cars actually inflicts the injury, and regardless of the fact that the injured person was a passenger in one of the racing vehicles. *Boykin v. Bennett*, 253 N. C. 725, 118 S. E. (2d) 12 (1961).

**All Engaged in Race Are Liable.**—Racing in the public highways is a plain and serious danger to every other person using the way, and a danger it is often impossible to avoid. When persons are making such unlawful use of the highways and another is injured thereby, the former are liable in damages for the injuries sustained by the latter. And where a person is injured by such racing all engaged in the race are liable although only one, or even none, of the vehicles came in contact with the injured person. *Boykin v. Bennett*, 253 N. C. 725, 118 S. E. (2d) 12 (1961).

**Applied in** *State v. Daniel*, 255 N. C. 717, 122 S. E. (2d) 704 (1961); *Mason v. Gillikin*, 256 N. C. 527, 124 S. E. (2d) 537 (1962).

**Cited in** *Orange Speedway, Inc. v. Clayton*, 247 N. C. 528, 101 S. E. (2d) 406 (1958).

**§ 20-143. Vehicles must stop at certain railway grade crossings.**

**Editor's Note.**—

For note on contributory negligence

and obstructions of view at railroad crossings, see 29 N. C. Law Rev. 245.

**§ 20-145. When speed limit not applicable.**

**Editor's Note.**—

For note on municipal liability for accident involving fire truck responding to emergency call for inhalator, see 30 N. C. Law Rev. 89. For note discussing effect of this section on standard of care required of police officers in performance of official duties, see 39 N. C. Law Rev. 460.

**Standard of Care Applicable to Police Officers.**—The fact that a police vehicle is exempt from the operation of traffic regulations, or enjoys certain prior rights over other vehicles, does not permit the operator of such vehicle to drive in reckless disregard of the safety of others; nor does it relieve him from the general duty of exercising due care. *Goddard v. Williams*, 251 N. C. 128 110 S. E. (2d) 820 (1959).

In an action alleging actionable negligence on the part of a police officer the court said: "We do not hold that an officer, when in pursuit of a lawbreaker, is un-

der no obligation to exercise a reasonable degree of care to avoid injury to others who may be on the public roads and streets. What we do hold is that, when so engaged, he is not to be deemed negligent merely because he fails to observe the requirements of the Motor Vehicle Act. His conduct is to be examined and tested by another standard. He is required to observe the care which a reasonably prudent man would exercise in the discharge of official duties of a like nature under like circumstances. We know of no better standard by which to determine a claim of negligence on the part of a police officer than by comparing his conduct to the care which a reasonably prudent man would exercise, in the discharge of official duties of like nature under like circumstances." *Goddard v. Williams*, 251 N. C. 128 110 S. E. (2d) 820 (1959).

**§ 20-146. Drive on right side of roadway; exceptions.**—(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway except as follows:

- (1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
- (2) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right of way to all vehicles traveling in the proper direction upon

the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(3) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(4) Upon a roadway designated and signposted for one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for thru traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn.

(c) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by official traffic control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes or except as permitted under subsection (a) (2) hereof. (1937, c. 407, s. 108; 1965, c. 678, s. 2.)

#### Editor's Note.—

The 1965 amendment, effective July 1, 1965, rewrote this section.

The purpose of this section is the protection of occupants of other vehicles then using the public highway and pedestrians and property thereon. *Powell v. Clark*, 255 N. C. 707, 122 S. E. (2d) 706 (1961).

This section prescribes a standard of care for a motorist, and the standard fixed by the legislature is absolute. *Bondurant v. Mastin*, 252 N. C. 190, 113 S. E. (2d) 292 (1960).

#### Proximate Cause.—

In accord with 1st paragraph in original. See *McCombs v. McLean Trucking Co.*, 252 N. C. 699, 114 S. E. (2d) 683 (1960).

A safety statute, such as this section, is pertinent when, and only when, there is evidence tending to show a violation thereof proximately caused the alleged injuries. *Powell v. Clark*, 255 N. C. 707, 122 S. E. (2d) 706 (1961).

If the negligence resulting from the failure to comply with the provisions of this section proximately causes injury, liability results. *Stephens v. Southern Oil Co., Inc.*, 259 N. C. 456, 131 S. E. (2d) 39 (1963).

Whether a violation of the provisions of this section is the proximate cause of an injury is for the jury to determine. *Stephens v. Southern Oil Co., Inc.*, 259 N. C. 456, 131 S. E. (2d) 39 (1963).

#### Negligence Per Se.—

In accord with 2nd paragraph in original. See *Watters v. Parrish*, 252 N. C. 787, 115 S. E. (2d) 1 (1960).

Violation of this section is negligence per se. *Boyd v. Harper*, 250 N. C. 334, 108 S. E. (2d) 598 (1959).

One who fails to comply with the provisions of this section is negligent. *Ste-*

*phens v. Southern Oil Co., Inc.*, 259 N. C. 456, 131 S. E. (2d) 39 (1963).

**Culpable Negligence.**—The rule in the application of the law with respect to an intentional or unintentional violation of a safety statute such as this section is simply this: The violation of a safety statute which results in injury or death will constitute culpable negligence if the violation is wilful, wanton, or intentional. But, where there is an unintentional or inadvertent violation of the statute, such violation standing alone does not constitute culpable negligence. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature, when tested by the rule of reasonable prevision, amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others. *State v. Hancock*, 248 N. C. 432, 103 S. E. (2d) 491 (1958).

**Both Drivers to Left of Center.**—Where plaintiff passenger was injured in a head-on collision of two automobiles on a dirt road in the dust raised by a third car, testimony of witnesses respectively that at least a part of each driver's vehicle was to the left of his center of the highway takes the issue as to the negligence of each driver to the jury. *Forte v. Goodwin*, 261 N. C. 608, 135 S. E. (2d) 552 (1964).

**Evidence Sufficient to Show Violation of Section.**—

See *State v. Goins*, 233 N. C. 460, 64 S. E. (2d) 289 (1951).

Blood spots held to indicate that when defendant's car struck deceased its left wheels were on or over the center of the highway in violation of this section. *State v. Phelps*, 242 N. C. 540, 89 S. E. (2d) 132 (1955).

**Evidence Insufficient to Show Intentional, Willful or Wanton Violation.**—See *State v. Hancock*, 248 N. C. 432, 103 S. E. (2d) 491 (1958); *State v. Eller*, 256 N. C. 706, 124 S. E. (2d) 806 (1962).

Applied in *Horton v. Peterson*, 238 N. C. 446, 78 S. E. (2d) 181 (1953); *State v. Turberville*, 239 N. C. 25, 79 S. E. (2d) 359 (1953); *Combs v. United States*, 122 F. Supp. 280 (1954); *Hennis Freight Lines, Inc. v. Burlington Mills Corp.*, 246 N. C. 143, 97 S. E. (2d) 850 (1957); *Kirkman v. Baucom*, 246 N. C. 510, 98 S. E. (2d) 922 (1957); *Parker v. Flythe*, 256 N. C. 548, 124 S. E. (2d) 530 (1962); *Hardin v.*

*American Mut. Fire Ins. Co.*, 261 N.C. 67, 134 S.E.2d 142 (1964); *Bass v. Roberson*, 261 N.C. 125, 134 S.E.2d 157 (1964); *Threadgill v. Kendall*, 262 N.C. 751, 138 S.E.2d 625 (1964).

Cited in *White v. Cason*, 251 N. C. 646, 111 S. E. (2d) 887 (1960); *Brewer v. Powers Trucking Co.*, 256 N. C. 175, 123 S. E. (2d) 608 (1962); *Wagner v. Eudy*, 257 N. C. 199, 125 S. E. (2d) 598 (1962); *McPherson v. Haire*, 262 N.C. 71, 136 S.E.2d 224 (1964); *State Highway Comm'n v. Raleigh Farmers Mkt., Inc.*, 263 N.C. 622, 139 S.E.2d 904 (1965).

**§ 20-146.1. Operation of motorcycles.**—It shall be unlawful for persons operating motorcycles upon the public highways of the State of North Carolina to travel thereon more than two abreast.

Any persons operating motorcycles upon the public highways shall operate the same as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

Upon conviction of the above offense, the punishment therefor shall be a fine not to exceed fifty dollars (\$50.00), or imprisonment not to exceed thirty days for each offense. (1965, c. 909.)

**§ 20-147. Keep to the right in crossing intersections or railroads.**

**Violation of Section Is Negligence.**—A motorist is required by statute to remain on the right side of the highway at a crossing or intersection and the violation

of this statute is negligence. *Crotts v. Overnite Transportation Co.*, 246 N. C. 420, 98 S. E. (2d) 502 (1957).

**§ 20-148. Meeting of vehicles.**

This section prescribes a standard of care for a motorist and the standard fixed by the legislature is absolute. *Bondurant v. Mastin*, 252 N. C. 190, 113 S. E. (2d) 292 (1960).

The standard of care fixed for a motorist in this section by the legislature is absolute. *McGinnis v. Robinson*, 258 N. C. 264, 128 S. E. (2d) 608 (1962).

**It is not relevant to a three-lane highway.** *State v. Duncan*, 264 N.C. 123, 141 S.E.2d 23 (1965).

**Violation as Negligence.**—

In accord with 1st paragraph in original. See *Boyd v. Harper*, 250 N. C. 334, 108 S. E. (2d) 598 (1959); *McCombs v. McLean Trucking Co.*, 252 N. C. 699, 114 S. E. (2d) 683 (1960); *Watters v. Parrish*, 252 N. C. 787, 115 S. E. (2d) 1 (1960); *Carswell v. Lackey*, 253 N. C. 387, 117 S. E. (2d) 51 (1960).

In accord with 2nd paragraph in original. See *McGinnis v. Robinson*, 258 N. C. 264, 128 S. E. (2d) 608 (1962).

**Violation as Culpable Negligence.**—The violation of a safety statute which results in injury or death will constitute culpable negligence if the violation is willful, wanton, or intentional. But, where there is an

unintentional or inadvertent violation of the statute, such violation standing alone does not constitute culpable negligence. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature when tested by the rule of reasonable prevision, amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others. *State v. Roop*, 255 N. C. 607, 122 S. E. (2d) 363 (1961).

**Violation Must Be Proximate Cause of Injury.**—A safety statute, such as this section, is pertinent when, and only when, there is evidence tending to show a violation thereof proximately caused the alleged injuries or death. *State v. Duncan*, 264 N.C. 123, 141 S.E.2d 23 (1965).

**Driving on Wrong Side of Road.**—See same catchline in note to § 20-140.

**A motorist, although in his proper lane of traffic, must exercise ordinary care to avoid injuring persons or vehicles in his lane if he discovers their peril or in the exercise of ordinary care could discover it. It is his duty to slow down and have his vehicle under control and to pull over on the shoulder, if by doing so, he can avoid in-**



jury. *Rundle v. Wyrick*, 194 F. Supp. 630 (1961), affirmed in 300 F. (2d) 333 (1962).

**Assumption That Vehicle Will Turn to Right.—**

In accord with 1st paragraph in original. See *Morgan v. Saunders*, 236 N. C. 162, 72 S. E. (2d) 411 (1952).

In accord with 2nd paragraph in original. See *Lamm v. Gardner*, 250 N. C. 540, 108 S. E. (2d) 847 (1959).

The right of a motorist to assume that the driver of a negligently operated automobile will observe the law in time to avoid collision is not absolute, but may be qualified by the particular circumstances at the time, such as the proximity and movement of the other vehicle and the condition and width of the road. *Morgan v. Saunders*, 236 N. C. 162, 72 S. E. (2d) 411 (1952); *Lamm v. Gardner*, 250 N. C. 540, 108 S. E. (2d) 847 (1959).

The driver of an automobile who is himself observing the law as set out in this section in meeting and passing an automobile proceeding in the opposite direction has the right ordinarily to assume that the driver of the approaching automobile will also observe the rule and avoid a collision. *Lucas v. White*, 248 N. C. 38, 102 S. E. (2d) 387 (1958).

The right of a motorist to assume that vehicles approaching from the opposite direction will remain on their right side of the highway is not absolute, and when a motorist approaches a machine emitting a chemical fog obscuring the entire highway, he may not rely on such assumption when a reasonably prudent man might reasonably anticipate that a motorist might be on the highway meeting him and unable to keep safely on his side of the highway on account of the fog. *Moore v. Plymouth*, 249 N. C. 423, 106 S. E. (2d) 695 (1959).

**Proximate Cause Is for Jury.—**

In accord with 1st paragraph in original. See *McCombs v. McLean Trucking Co.*, 252 N. C. 699, 114 S. E. (2d) 683 (1960).

§ 20-149. **Overtaking a vehicle.**—(a) The driver of any such vehicle overtaking another vehicle proceeding in the same direction shall pass at least two feet to the left thereof, and shall not again drive to the right side of the highway until safely clear of such overtaken vehicle. This subsection shall not apply when the overtaking and passing is done pursuant to the provisions of G. S. 20-150.1.

(b) The driver of an overtaking motor vehicle not within a business or residence district, as herein defined, shall give audible warning with his horn or other warning device before passing or attempting to pass a vehicle proceeding in the same direction, but his failure to do so shall not constitute negligence or contributory negligence per se in any civil action; although the same may be considered with the other facts in the case in determining whether the driver

**Evidence Showing Failure to Yield One-Half of Roadway.**—See *State v. Goins*, 233 N. C. 460, 64 S. E. (2d) 289 (1951).

**Charge to Jury.—**

An instruction confusing the provisions of § 20-149, pertaining to the duty of the driver of any vehicle overtaking another vehicle proceeding in the same direction, with the provisions of this section, prescribing the respective duties of drivers of vehicles proceeding in opposite directions when meeting, was prejudicial error. *Lookabill v. Regan*, 245 N. C. 500, 96 S. E. (2d) 421 (1957).

An instruction on the right of a motorist to assume that an approaching vehicle would yield one half the highway in passing was held not objectionable in limiting such right to a motorist himself observing the requirements of the statute, when such instruction, considered in context, was to the effect that a motorist was not entitled to rely on such assumption if such motorist was himself then driving on his left side of the highway and was thereby contributing to the hazard and emergency that existed immediately prior to the collision. *Blackwell v. Lee*, 248 N. C. 354, 103 S. E. (2d) 703 (1958).

**Applied in** *Hennis Freight Lines, Inc. v. Burlington Mills Corp.*, 246 N. C. 143, 97 S. E. (2d) 850 (1957); *Kirkman v. Bacon*, 246 N. C. 510, 98 S. E. (2d) 922 (1957); *Parker v. Flythe*, 256 N. C. 548, 124 S. E. (2d) 530 (1962); *Hardin v. American Mut. Fire Ins. Co.*, 261 N. C. 67, 134 S. E. 2d 142 (1964); *Scott v. Clark*, 261 N. C. 102, 134 S. E. 2d 181 (1964).

**Quoted in** *Beauchamp v. Clark*, 250 N. C. 132, 108 S. E. (2d) 535 (1959); *Eller v. United States*, 155 F. Supp. 273 (1957).

**Cited in** *Hansley v. Tilton*, 234 N. C. 3, 65 S. E. (2d) 300 (1951); *Wagner v. Eudy*, 257 N. C. 199, 125 S. E. (2d) 598 (1962); *Stephens v. Southern Oil Co., Inc.*, 259 N. C. 456, 131 S. E. (2d) 39 (1963); *Smith v. Corsat*, 260 N. C. 92, 131 S. E. (2d) 894 (1963).

of the overtaking vehicle was guilty of negligence or contributory negligence. (1937, c. 407, s. 111; 1955, c. 913, s. 3; 1959, c. 247.)

**Local Modification.**—Durham, Mecklenburg, Vance and Wake, as to subsection (a): 1953, c. 772.

**Editor's Note.**—

The 1955 amendment, effective July 1, 1955, added the second sentence of subsection (a).

The 1959 amendment added the part of subsection (b) appearing after "direction" in line four.

**Purpose of Section.**—

The principal purpose of this section is the protection of the "overtaken vehicle" and its occupants. *McGinnis v. Robinson* 252 N. C. 574, 114 S. E. (2d) 365 (1960).

The object of this section is not only the protection of the overtaken vehicle and its occupants, but also the protection of the passing vehicle and its occupants. *Boykin v. Bisette*, 260 N.C. 295, 132 S.E.2d 616 (1963).

**Section Inapplicable Where Forward Vehicle Is in Left-Turn Lane.**—The rule of the road contained in this section does not apply where there are three lanes available to the motorist and the forward vehicle is in the left-turn lane and the overtaking vehicle is in the through-traffic lane. *Anderson v. Talman Office Supplies*, 234 N. C. 142, 66 S. E. (2d) 677 (1951). See *Anderson v. Talman Office Supplies*, 236 N. C. 519, 73 S. E. (2d) 141 (1952).

**Or Where Vehicles Are Proceeding in Opposite Directions.**—Absent unusual circumstances, this section has no bearing where the collision is between vehicles proceeding in opposite directions. *McGinnis v. Robinson* 252 N. C. 574, 114 S. E. (2d) 365 (1960).

**The violation of this section, etc.**—

In accord with 2nd paragraph in original. See *Clark v. Emerson*, 245 N. C. 387, 95 S. E. (2d) 880 (1957).

In accord with 3rd paragraph in original. See *Sheldon v. Childers*, 240 N. C. 449, 82 S. E. (2d) 396 (1954).

A violation of subsection (b) prior to the 1959 amendment was formerly regarded as negligence per se. *Cowan v. Murrows Transfer, Inc.*, 262 N.C. 550, 138 S.E.2d 228 (1964).

**Common-law rule of ordinary care applies.** *Cowan v. Murrows Transfer, Inc.*, 262 N.C. 550, 138 S.E.2d 228 (1964).

And a violation of subsection (b) is only evidence to be considered with other facts and circumstances in determining whether the violator used due care. *Cowan*

*v. Murrows Transfer, Inc.*, 262 N.C. 550, 138 S.E.2d 228 (1964).

While the failure of the operator of a motor vehicle passing another vehicle in open country to give audible warning of the intent to pass is not negligence per se, if there is evidence tending to show circumstances which would support a finding that a reasonably prudent person under similar conditions would not have attempted to pass without sounding his horn and that defendant driver failed to do so, and that such failure was a proximate cause of the accident, the issue of negligence is for the determination of the jury. *McPherson v. Haire*, 262 N.C. 71, 136 S.E.2d 224 (1964).

**But Motorist Not Relieved of All Duty to Give Warning.**—The 1959 amendment of subsection (b) does not mean that an overtaking and passing motorist is relieved of all duty to give audible warning; it simply means that a failure to give such warning may or may not constitute a want of due care, depending upon the circumstances of the particular case. *Cowan v. Murrows Transfer, Inc.*, 262 N.C. 550, 138 S.E.2d 228 (1964).

**Where Driver of Forward Vehicle Has Signaled Intention to Turn Left.**—Where the driver of a preceding vehicle traveling in the same direction gives a clear signal of his intention to turn left into an intersecting road and leaves sufficient space to his right to permit the overtaking vehicle to pass in safety, the provisions of subsection (a) of this section do not apply, and the overtaking vehicle may pass to the right of the overtaken vehicle, but this rule does not relieve the driver of the overtaking vehicle of the duty of observing other pertinent statutes, including the duty to give audible warning of his intention to pass as required by subsection (b) of this section. *Ward v. Cruse*, 236 N. C. 400, 72 S. E. (2d) 835 (1952).

**Where Driver of Forward Vehicle Fails to Signal Intention to Turn Left.**—Though the forward driver fails to signal before making a left turn, yet the driver overtaking and passing the forward driver may be guilty of contributory negligence for not complying with this section. *Lyerly v. Griffin*, 237 N. C. 686, 75 S. E. (2d) 730 (1953).

Where the driver of the stopped truck has given no clear signal of his intention to make a left turn, but the truck standing on the right of the highway merely has on the left rear and left fender a red light

flashing on and off, it would seem that the driver of an automobile approaching at night from the rear, in the exercise of ordinary care, is bound to approach with his automobile under control, so as to reduce his speed or stop, if necessary, to avoid injury. *Weavil v. C. W. Myers Trading Post, Inc.*, 245 N. C. 106, 95 S. E. (2d) 533 (1956).

While plaintiff's evidence that he did not hear the car which attempted to pass him was sufficient to establish a violation of this section and hence, prior to the 1959 amendment, was sufficient to justify an affirmative answer to the issue of negligence notwithstanding defendant's positive testimony that the horn was sounded, it was manifest that plaintiff's admitted violation of § 20-154 in making a "U" turn to his left without ascertaining that he could do so in safety and without giving the required signal was a proximate cause of the collision justifying a nonsuit against him. *Tallent v. Talbert*, 249 N. C. 149, 105 S. E. (2d) 426 (1958).

**No Duty to Sound Horn in Business or Residential District.**—The driver of the defendant's truck was under no duty to sound his horn before passing or attempting to pass a vehicle proceeding in the same direction in another lane, while traveling within a business or residential district. *Schloss v. Hallman*, 255 N. C. 686, 122 S. E. (2d) 51? (1961).

In a business district of a city, the requirement of this section that the driver of the following vehicle shall sound his horn before attempting to pass does not apply. *Ervin v. Cannon Mills Co.*, 233 N. C. 415, 64 S. E. (2d) 431 (1951).

**Warning Must Be Given in Reasonable Time.**—The warning required by this section must be given to the driver of the vehicle in front in reasonable time to avoid injury which would probably result from a left turn. *Sheldon v. Childers*, 240 N. C. 449, 82 S. E. (2d) 396 (1954); *Boykin v. Bisette*, 260 N.C. 295, 132 S.E.2d 616 (1963).

The duty imposed by this section upon the driver of the overtaking vehicle to sound his horn before attempting to pass must be regarded as requiring that warning be given to the driver of the vehicle being overtaken in reasonable time to avoid injury which would likely result from a left turn. In the absence of such

warning from the driver of the overtaking vehicle, knowledge of his intention to pass may not be ascribed to the driver of the forward vehicle, and the duty rests upon him who is attempting to pass another vehicle proceeding in the same direction on the highway to observe this section and to exercise due care to see that he can pass in safety. *Lyerly v. Griffin*, 237 N. C. 686, 75 S. E. (2d) 730 (1953).

**Vehicle Need Not Pass Two Feet to Left of Center Line.**—Subsection (a) of this section does not require that a vehicle must pass at least two feet to the left of the center line of the highway in passing another vehicle traveling in the same direction, but only that it pass at least two feet to the left of the other vehicle. *Eason v. Grimsley*, 255 N. C. 494, 121 S. E. (2d) 885 (1961).

**Instruction Embracing Requirements of Section Held Error.**—In an action involving the alleged negligence of defendant in failing to yield to plaintiff's intestate one-half the highway as the respective vehicles, traveling in opposite directions, passed each other, an instruction embracing the statutory duty of a driver of a vehicle overtaking and passing another vehicle traveling in the same direction is prejudicial error. *Lookabill v. Regan*, 245 N. C. 500, 96 S. E. (2d) 421 (1957).

Where the uncontroverted evidence supports a finding that the driver of the defendant's car violated subsection (a) of this section as to the duty of the driver of an overtaking vehicle, but there is neither allegation nor evidence that such violation was a proximate cause of the collision, an instruction based on that subsection is erroneous and prejudicial. *McGinnis v. Robinson*, 252 N. C. 574, 114 S. E. (2d) 365 (1960).

**Applied in** *Clifton v. Turner*, 257 N. C. 92, 125 S. E. (2d) 339 (1962); *Pate v. Hair*, 208 F. Supp. 455 (1962); *Bass v. Roberson*, 261 N.C. 125, 134 S.E.2d 157 (1964); *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

**Cited in** *Citizens Nat. Bank v. Phillips*, 236 N. C. 470, 73 S. E. (2d) 323 (1952); *Harris v. Davis*, 244 N. C. 579, 94 S. E. (2d) 649 (1956); *Rudd v. Stewart*, 255 N. C. 90, 120 S. E. (2d) 601 (1961); *Porter v. Philyaw*, 204 F. Supp. 285 (1962); *Caudill v. Nationwide Mut. Ins. Co.*, 264 N.C. 674, 142 S.E.2d 616 (1965).

### § 20-150. Limitations on privilege of overtaking and passing.

(c) The driver of a vehicle shall not overtake and pass any other vehicle proceeding in the same direction at any steam or electric railway grade crossing nor at any intersection of highway unless permitted so to do by a traffic or police

officer. For the purposes of this section the word "intersection of highway" shall be defined and limited to intersections designated and marked by the State Highway Commission by appropriate signs, and street intersections in cities and towns.

(d) The driver of a vehicle shall not drive to the left side of the center line of a highway upon the crest of a grade or upon a curve in the highway where such center line has been placed upon such highway by the State Highway Commission, and is visible.

(e) The driver of a vehicle shall not overtake and pass another on any portion of the highway which is marked by signs or markers placed by the State Highway Commission stating or clearly indicating that passing should not be attempted. (1937, c. 407, s. 112; 1955, c. 862; c. 913, s. 2; 1957, c. 65, s. 11.)

**Editor's Note.**—The first 1955 amendment added the second sentence of subsection (c), and the second 1955 amendment, effective July 1, 1955, added subsection (e).

The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission" in subsections (c), (d) and (e).

As the rest of the section was not changed, only subsections (c), (d) and (e) are set out.

**No rule of law compels one vehicle to travel indefinitely behind the other.** *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

**And no rule gives one the unqualified right to overtake and pass the other.** *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

**Statutes of this kind have no application to multiple lane highways.** *Byerly v. Shell*, 312 F. (2d) 141 (1962).

The provisions of subsections (d) and (e) were plainly not intended to apply to multiple highways which furnish parallel lanes on which vehicles moving in the same direction may pass without encountering traffic coming from the opposite direction. *Byerly v. Shell*, 312 F. (2d) 141 (1962).

That multiple-lane highways were not within the contemplation of the North Carolina legislature when this section was passed is indicated by subsections (d) and (e) of this section which provide that the driver of a vehicle shall not drive to the left side of the center of the highway upon the crest of a grade or upon a curve in the highway and that a driver of a vehicle shall not pass another vehicle on any part of the highway marked by prohibitory signs placed by the State Highway Commission. *Byerly v. Shell*, 312 F. (2d) 141 (1962).

**And It Is Not Negligence to Pass at Intersection on Dual Highway.** — Under the proper interpretation of the North Carolina statutes, it is not unlawful and negligent per se for one vehicle to pass an-

other at an intersection on a dual highway. *Byerly v. Shell*, 312 F. (2d) 141 (1962).

**But the exercise of careful lookout is especially indicated on a highway having a passing lane.** *State v. Fuller*, 259 N. C. 111, 130 S. E. (2d) 61 (1963).

**Negligence Per Se.**—

In accord with 2nd paragraph in original. See *Ferris v. Whitaker*, 123 F. Supp. 356 (1954); *Adams v. Godwin*, 252 N. C. 471, 114 S. E. (2d) 76 (1960).

**As to violation of subsection (c) being negligence per se**, see *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

A violation of this section, relating to the limitations on privilege of overtaking and passing another vehicle, is negligence per se, and, if injury proximately results therefrom, the injured party is entitled to recover. *Johnson v. Harris*, 166 F. Supp. 417 (1958); *Rouse v. Jones*, 254 N. C. 575, 119 S. E. (2d) 628 (1961).

**A private driveway is not, etc.—**

In accord with original. See *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

**Litigation between Overtaking Motorist and Driver of Overtaken Vehicle.**—Although this section is designed primarily to prevent collision between an overtaking automobile and a vehicle coming from the opposite direction, its provisions are germane to litigation between an overtaking motorist and the driver of an overtaken vehicle if there is evidence to the effect that the underlying accident was occasioned by an unsuccessful effort on the part of the former to pass the latter upon a marked curve. The driver of the overtaken vehicle is certainly not required in such case to anticipate that the latter will attempt to pass in violation of the section. *Walker v. American Bakeries Co.*, 234 N. C. 440, 67 S. E. (2d) 459 (1951).

Subsections (b) and (d) of this section are harmonious rather than conflictive. They are not designed to regulate the behaviour of the operator of an overtaking automobile in any event unless he is

traveling upon a curve in the highway. Whether the one statutory regulation or the other applies to the driver of an overtaking vehicle proceeding upon a curve in the highway depends on whether the curve is marked by a visible center line placed upon the highway by the State Highway and Public Works Commission. Where the curve is so marked, the action of the operator of the overtaking automobile is governed by subdivision (d), which forbids him to drive to the left side of the center line in order to pass the overtaken vehicle; and where the curve is not so marked, the conduct of the driver of the overtaking automobile is controlled by subdivision (b), which permits him to pass the overtaken vehicle unless his view along the highway is obstructed within a distance of five hundred feet. *Walker v. American Bakeries Co.*, 234 N. C. 440, 67 S. E. (2d) 459 (1951).

The meaning of subsection (c) of this section is that one motorist may not pass another going in the same direction under either of two conditions: (1) At any place designated and marked by the State Highway Commission as an intersection; (2) at any street intersection in any city or town. *Adams v. Godwin*, 252 N. C. 471, 114 S. E. (2d) 76 (1960).

An intersection under subsection (c) of this section must be designated and marked by the Highway Commission by appropriate signs, and overtaking and passing another vehicle at "a crossover" is not a violation of this section, and therefore not negligence per se. *Bennet v. Livingston*, 250 N. C. 586, 108 S. E. (2d) 843 (1959).

#### Contributory Negligence, etc.—

Nonsuit on the ground of contributory negligence was erroneously entered, since on such motion only plaintiff's evidence should be considered, and since plaintiff's evidence did not compel the inference that his negligence contributed as a proximate cause to his injury and damage. *Pruett v. Inman*, 252 N. C. 520, 114 S. E. (2d) 360 (1960).

Area of Special Hazard.—Attempt of truck driver to pass backfiller tractor travelling in same direction in area of special hazard held not negligence as a matter of law under the circumstances, but truck driver's negligence and contributory negligence of tractor driver were questions for the jury. *Sloan v. Glenn*, 245 N. C. 55, 95 S. E. (2d) 81 (1956).

Same—Notice. — Signs in construction area marked "One Way Road," "Slow" and "Men Working," the presence of dirt piled along the highway and a ditch-digging

machine at work on side of the highway constituted notice to driver of oil transport truck that he was approaching a zone of special hazard. *Sloan v. Glenn*, 245 N. C. 55, 95 S. E. (2d) 81 (1956).

Purpose of Yellow Lines.—Yellow lines are designed primarily to prevent collision between an overtaking and passing automobile and a vehicle coming from the opposite direction, and to protect occupants of other cars, pedestrians and property on the highway. *Rushing v. Polk*, 258 N. C. 256, 128 S. E. (2d) 675 (1962); *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

Presence and crossing of yellow line are evidential details in the totality of circumstances in a case. *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

Overtaking and Passing at Highway Intersection as Negligence.—This section prohibits a motorist from overtaking and passing at highway intersections, and the violation of this section is negligence. *Crotts v. Overnite Transportation Co.*, 246 N. C. 420, 98 S. E. (2d) 502 (1957).

In the case of a two-lane roadway in which traffic moves in both directions, the need to prohibit passing at intersections is obvious since the driver in the rear may reasonably anticipate that the car in the lead may desire to turn to the left. To such a situation the statute clearly applies. *Byerly v. Shell*, 312 F. (2d) 141 (1962).

Evidence Sufficient to Show Violation of Paragraph (d).—See *State v. Goins*, 233 N. C. 460, 64 S. E. (2d) 289 (1951).

Evidence Insufficient to Show Violation of Section.—Evidence held not to compel the conclusion that plaintiff's driver attempted to pass defendant's vehicle at an intersection in violation of this section. *Carolina Cas. Ins. Co. v. Cline*, 238 N. C. 133, 76 S. E. (2d) 374 (1953).

Negligence Proximate Cause of Collision.—A collision occurred when an overtaking motorist attempted to pass a truck while the latter was making a left turn at an intersection, without passing "beyond the center of the intersection" as required by § 20-153. It was held that the act of the motorist in violating subsection (c) of this section was the sole proximate cause of the collision. *Ferris v. Whitaker*, 123 F. Supp. 356 (1954).

Instruction Erroneous as Nullifying Provisions of Section. — See *Walker v. American Bakeries Co.*, 234 N. C. 440, 67 S. E. (2d) 459 (1951).

Applied in *Bass v. Roberson*, 261 N.C. 125, 134 S.E.2d 157 (1964); *Taney v. Brown*, 262 N.C. 438, 137 S.E.2d 827

(1964); *Knight v. Seymour*, 263 N.C. 790, 140 S.E.2d 410 (1965).

Cited in *Citizens Nat. Bank v. Phillips*, 236 N. C. 470, 73 S. E. (2d) 323 (1952); *Sheldon v. Childers*, 240 N. C. 449, 82 S. E. (2d) 396 (1954) (as to subsection (c));

*Kirkman v. Baucom*, 246 N. C. 510, 98 S. E. (2d) 922 (1957); *McGinnis v. Robinson*, 252 N. C. 574, 114 S. E. (2d) 365 (1960); *Bundy v. Belue*, 253 N. C. 31, 116 S. E. (2d) 200 (1960); *McPherson v. Haire*, 262 N.C. 71, 136 S.E.2d 224 (1964).

§ 20-150.1. **When passing on the right is permitted.**—The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

- (a) When the vehicle overtaken is in a lane designated for left turns;
- (b) Upon a street or highway with unobstructed pavement of sufficient width which have been marked for two or more lanes of moving vehicles in each direction and are not occupied by parked vehicles;
- (c) Upon a one-way street, or upon a highway on which traffic is restricted to one direction of movement when such street or highway is free from obstructions and is of sufficient width and is marked for two or more lanes of moving vehicles which are not occupied by parked vehicles;
- (d) When driving in a lane designating a right turn on a red traffic signal light. (1953, c. 679.)

**Editor's Note.**—The act inserting this section became effective January 1, 1954.

For brief comment on this section, see 31 N. C. Law Rev. 418.

Applied in *Schloss v. Hallman*, 255 N. C. 686, 122 S. E. (2d) 513 (1961).

§ 20-151. **Driver to give way to overtaking vehicle.**—The driver of a vehicle about to be overtaken and passed by another vehicle approaching from the rear shall, unless the overtaking and passing is being made upon the right as permitted in § 20-150.1, give way to the right in favor of the overtaking vehicle on suitable and audible signal being given by the driver of the overtaking vehicle. In any event the driver of the overtaken vehicle shall not increase the speed of his vehicle until completely passed by the overtaking vehicle. (1937, c. 407, s. 113; 1955, c. 913, s. 4.)

**Editor's Note.**—The 1955 amendment, effective July 1, 1955, rewrote this section.

A violation of this section is negligence per se. *Rouse v. Jones*, 254 N. C. 575, 119 S. E. (2d) 628 (1961).

**Duty of Driver of Overtaken Car.**—The driver of an overtaken car was driving in the proper lane at approximately the maximum lawful speed, but there was evidence that when an overtaking car drew abreast his car it was apparent that the overtaking vehicle was in a position of peril by reason of the near approach of a meeting vehicle. The driver of the overtaken car did not re-

duce speed but accelerated his speed and raced the passing car. Under the circumstances thus presented, it was the duty of the driver of the overtaken car not to increase the speed of his car until the overtaking car had completely passed. *Rouse v. Jones*, 254 N. C. 575, 119 S. E. (2d) 628 (1961).

Applied in *Queen v. Jarrett*, 258 N. C. 405, 128 S. E. (2d) 894 (1963); *Pate v. Hair*, 208 F. Supp. 455 (1962).

Cited in *Jones v. C. B. Atkins Co.*, 259 N. C. 655, 131 S. E. (2d) 371 (1963).

§ 20-152. **Following too closely.**—(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, with regard for the safety of others and due regard to the speed of such vehicles and the traffic upon and condition of the highway.

(b) The driver of any motor truck, when travelling upon a highway outside of a business or residence district, shall not follow another motor truck within three hundred feet, but this shall not be construed to prevent one motor truck overtaking and passing another. (1937, c. 407, s. 114; 1949, c. 1207, s. 4.)

**Editor's Note.**—

This section has been set out in order to correct a typographical error in subsection (a).

Subsection (a) of this section is a statutory declaration of the common law that the driver of a motor vehicle shall not follow another vehicle more closely than

is reasonable and prudent, with regard for the safety of others and due regard to the speed of such vehicles and the traffic upon and condition of the highway. *Black v. Gurley Milling Co., Inc.*, 257 N. C. 730, 127 S. E. (2d) 515 (1962).

#### Negligence Per Se.—

In accord with original. See *Smith v. Rawlins*, 253 N. C. 67, 116 S. E. (2d) 184 (1960); *Fox v. Hollar*, 257 N. C. 65, 125 S. E. (2d) 334 (1962); *Hamilton v. McCash*, 257 N. C. 611, 127 S. E. (2d) 214 (1962); *Gowens v. Morgan & Sons Poultry Co.*, 238 F. Supp. 399 (M.D.N.C. 1964).

A violation of this section is negligence per se. *Burnett v. Corbett*, 264 N.C. 341, 141 S.E.2d 468 (1965).

The driver of a motor vehicle is negligent if he violates the requirement of subsection (a) of this section, and his negligence in that particular is actionable if it proximately causes injury to the person or property of another. *Cozart v. Hudson*, 239 N. C. 279, 78 S. E. (2d) 881 (1954).

A motorist is prohibited by this section from following another vehicle more closely than is reasonable and prudent under the circumstances with regard to the traffic and condition of the highway, and the violation of this section is negligence. *Crotts v. Overnite Transportation Co.*, 246 N. C. 420, 98 S. E. (2d) 502 (1957).

#### Section Inapplicable to Act of Passing.—

If the defendant were in the act of passing, then this section would have no application and provide no standard by which the court might judge. *Gowens v. Morgan & Sons Poultry Co.*, 238 F. Supp. 399 (M.D.N.C. 1964).

**Inferences from Fact of Collision.** — Ordinarily the mere fact of a collision with

the vehicle ahead furnishes some evidence that the motorist to the rear was not keeping a proper lookout or that he was following too closely. *Burnett v. Corbett*, 264 N.C. 341, 141 S.E.2d 468 (1965).

**Sudden Peril.**—If the peril suddenly confronting a defendant is due to his failure to keep a safe distance behind another vehicle and maintain a proper lookout, the fact that care was exercised after discovery of the peril would not excuse the negligent conduct. *Gowens v. Morgan & Sons Poultry Co.*, 238 F. Supp. 399 (M.D.N.C. 1964).

**The condition and effectiveness of his brakes must be taken into consideration** by a motorist in determining what is a safe distance and a safe speed at which he may follow another vehicle. *Crotts v. Overnite Transportation Co.*, 246 N. C. 420, 98 S. E. (2d) 502 (1957).

**Vehicles Stopping One Behind the Other.**—The statutory prohibition against following too closely a vehicle traveling in the same direction has no application to the distance between vehicles stopping one behind another on the highway. There is no prescribed distance within which one car must stop behind another stopped car. *Royal v. McClure*, 244 N. C. 186, 92 S. E. (2d) 762 (1956).

**Applied in Pacific Fire Ins. Co. v. Sis-trunk Motors, Inc.**, 241 N. C. 67, 84 S. E. (2d) 301 (1954); *Hall v. Little*, 262 N.C. 618, 138 S.E.2d 282 (1964); *Brown v. Hale*, 263 N.C. 176, 139 S.E.2d 210 (1964).

**Cited in Clifton v. Turner**, 257 N. C. 92, 125 S. E. (2d) 339 (1962); *Dunlap v. Lee*, 257 N. C. 447, 126 S. E. (2d) 62 (1962); *Jones v. C. B. Atkins Co.*, 259 N. C. 655, 131 S. E. (2d) 371 (1963).

**§ 20-153. Turning at intersection.**—(a) Except as otherwise provided in this section, the driver of a vehicle intending to turn to the right at an intersection shall approach such intersection in the lane for traffic nearest to the right-hand side of the highway, and in turning shall keep as closely as practicable to the right-hand curb or edge of the highway, and when intending to turn to the left shall approach such intersection in the lane for the traffic to the right of and nearest to the center of the highway, and in turning shall pass beyond the center of the intersection, passing as closely as practicable to the right thereof before turning such vehicle to the left. When a vehicle is being operated on a three-lane street or highway, the driver thereof intending to turn to the left at an intersection shall approach the intersection in the lane nearest to the center of the highway and designated for use by vehicles traveling in the same direction as the vehicle about to turn.

(1955, c. 913, s. 5.)

**Editor's Note.**—The 1955 amendment, effective July 1, 1955, added the second sentence of subsection (a). As the rest of

the section was not changed it is not set out.

**Provision Intended for Protection of**

**Vehicle Coming in from Left on Intersecting Road.**—This section which requires that the driver of a vehicle when intending to turn to the left shall pass beyond the center of the intersection is intended for the protection of a vehicle coming in from the left on the intersecting road. Ferris v. Whitaker, 123 F. Supp. 356 (1954).

When a motorist approaches from the rear a vehicle standing in the left-turn lane, he has the right to assume that the driver of that vehicle will turn to the left upon the change of traffic signal. He has the right, and it is his duty, to pass the vehicle on its right. Anderson v. Talman Office Supplies, 234 N. C. 142, 66 S. E. (2d) 677 (1951). See Anderson v. Talman Office Supplies, 236 N. C. 519, 73 S. E. (2d) 141 (1952).

**A violation of subsection (a) is negligence per se, etc.**—

In accord with original. See Simmons v. Rogers, 247 N. C. 340, 100 S. E. (2d) 849 (1957); Pearsall v. Duke Power Co., 258 N. C. 639, 129 S. E. (2d) 217 (1963).

**Negligence Not Proximate Cause of Collision.**—A collision occurred when an overtaking motorist attempted to pass a truck while the latter was making a left turn at an intersection, without passing "beyond the center of the intersection" as required by § 20-153. It was held that the act of the motorist in violating § 20-150 (c), prohibiting an overtaking driver from passing at an intersection, was the sole proximate cause of the collision. Ferris v. Whitaker, 123 F. Supp. 356 (1954).

**Inferences from Fact of Collision.**—The principle that the mere fact of a collision

with a vehicle ahead furnishes some evidence that the following motorist was negligent as to speed, was following too closely, or failed to keep a proper lookout is not absolute; the negligence, if any, depends upon the circumstances. Powell v. Cross, 263 N.C. 764, 140 S.E.2d 393 (1965).

**Question for Jury.**—If plaintiff violated this section by turning left without passing beyond the center of the intersection and was guilty of contributory negligence per se, it was for the jury to say whether such negligence proximately caused or contributed to plaintiff's injuries and damage, bearing in mind that reasonable foreseeability is an essential element of proximate cause. White v. Lacey, 245 N. C. 364, 96 S. E. (2d) 1 (1957).

**Charge to Jury.**—When the failure to explain the law so the jury could apply it to the facts is specifically called to the court's attention by a juror's request for information, it should tell the jury how to find the intersection of the streets as fixed by subsection (e) of § 20-38 and how, when the motorist reaches the intersection, he is required to drive in making a left turn. Pearsall v. Duke Power Co., 258 N. C. 639, 129 S. E. (2d) 217 (1963).

**Quoted in part in** Ervin v. Cannon Mills Co., 233 N. C. 415, 64 S. E. (2d) 431 (1951).

**Cited in** Hudson v. Transit Co., 250 N. C. 435, 108 S. E. (2d) 900 (1959); Ray v. French Broad Electric Membership Corp., 252 N. C. 380, 113 S. E. (2d) 806 (1960); McPherson v. Haire, 262 N.C. 71, 136 S.E.2d 224 (1964).

### § 20-154. Signals on starting, stopping or turning.

(b) The signal herein required shall be given by means of the hand and arm in the manner herein specified, or by any mechanical or electrical signal device approved by the Department, except that when a vehicle is so constructed or loaded as to prevent the hand and arm signal from being visible, both to the front and rear, the signal shall be given by a device of a type which has been approved by the Department: Provided that in the case of any motor vehicle manufactured or assembled after July 1, 1953 the signal device with which such motor is equipped shall be presumed prima facie to have been approved by the Commissioner of Motor Vehicles. Irrespective of the date of manufacture of any motor vehicle a certificate from the Commissioner of Motor Vehicles to the effect that a particular type of signal device has been approved by his Department shall be admissible in evidence in all the courts of this State.

Whenever the signal is given the driver shall indicate his intention to start, stop, or turn by extending the hand and arm from and beyond the left side of the vehicle as hereinafter set forth.

Left turn—hand and arm horizontal, forefinger pointing.

Right turn—hand and arm pointed upward.

Stop—hand and arm pointed downward.

All hand and arm signals shall be given from the left side of the vehicle and



all signals shall be maintained or given continuously for the last one hundred feet traveled prior to stopping or making a turn. Provided, that in all areas where the speed limit is 45 miles per hour or higher and the operator intends to turn from a direct line of travel, a signal of intention to turn from a direct line of travel shall be given continuously during the last 200 feet traveled before turning; and provided further that the violation of this section shall not constitute negligence per se.

Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, a signal lamp or lamps or mechanical signal device when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds 24 inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles except combinations operated by farmers in hauling farm products.

(1955, c. 1157, s. 9; 1957, c. 488, s. 2; 1965, c. 768.)

**Cross Reference.**—As to applicability of section to vehicles meeting as they approach intersection, see note to § 20-155.

**Editor's Note.**—

The 1955 amendment, effective July 1, 1955, added the last paragraph of subsection (b). The 1957 amendment added the proviso and the last sentence to the first paragraph of subsection (b).

The 1965 amendment, effective July 1, 1965, added the provisos at the end of the next to last paragraph in subsection (b).

As the rest of the section was not affected by the amendments, only subsection (b) is set out.

A number of the cases cited in the note below were decided prior to the 1965 amendment to subsection (b), which added the provisos as to duration of signal and as to violation not constituting negligence per se.

For note on "Turning and Stopping—Signals by Drivers", see 29 N. C. Law Rev. 439.

**The manifest object, etc.**—

The manifest purpose of this section is to promote safety in the operation of automobiles on the highways, and not to obstruct vehicular traffic. *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

**Construction.**— This section must be given a reasonable and realistic interpretation to effect the legislative purpose. *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

This section imposes two duties upon a motorist intending to turn, (1) to see that the movement can be made in safety, and (2) to give the required signal when the operation of any other vehicle may be affected. *Tart v. Register*, 257 N. C. 161, 125 S. E. (2d) 754 (1962); *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

This section requires of one operating a

motor vehicle before starting or stopping or turning from the direct line that he is traveling to first see that such movement can be made in safety, and when the operation of another vehicle by such movement may be affected, shall give a signal plainly visible to the driver of the other vehicle of his intent to make such movement. *Porter v. Philyaw*, 204 F. Supp. 285 (1962).

The provisions of this section impose two duties upon a motorist intending to turn from a direct line upon a highway: (1) To exercise reasonable care to see that such movement can be made in safety, and (2) to give the required signal whenever the operation of any other vehicle may be affected by such movement, plainly visible to the driver of such other vehicle, of the intention to make such movement. *McNamara v. Outlaw*, 262 N.C. 612, 138 S.E.2d 287 (1964).

**The Requirement that a Motorist, etc.**—

In accord with original. See *White v. Lacey*, 245 N. C. 364, 96 S. E. (2d) 1 (1957); *Williams v. Tucker*, 259 N. C. 214, 130 S. E. (2d) 306 (1963); *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

Subsection (a) of this section does not mean that a motorist may not make a left turn on a highway unless the circumstances be absolutely free from danger. Only reasonable care must be exercised in determining that the movement may be made in safety. *Tart v. Register*, 257 N. C. 161, 125 S. E. (2d) 754 (1962).

A motorist is not required to ascertain that a turning motion is absolutely free from danger. *Cowan v. Murrows Transfer, Inc.*, 262 N.C. 550, 138 S.E.2d 228 (1964).

The provisions of subsection (a) do not require infallibility of a motorist, and do not mean that he cannot make a left turn

upon a highway unless the circumstances be absolutely free from danger. *McNamara v. Outlaw*, 262 N.C. 612, 138 S.E.2d 287 (1964).

**Making Left Turn without Signalling.—**

The provisions of this section do not require the driver of a motor vehicle intending to make a left turn upon a highway to signal his purpose to turn in every case. The duty to give a statutory signal of an intended left turn does not arise in any event unless the operation of some "other vehicle may be affected by such movement." And even then the law does not require infallibility of the motorist. It imposes upon him the duty of giving a statutory signal of his intended left turn only in case the surrounding circumstances afford him reasonable grounds for apprehending that his making the left turn upon the highway might affect the operation of another vehicle. *Blanton v. Carolina Dairy, Inc.*, 238 N. C. 382, 77 S. E. (2d) 922 (1953).

**Giving Both Hand and Mechanical Signals Not Required.—**There is nothing in this section or in the decisions that requires under any conditions that a hand signal and a mechanical or electrical signal shall both be given before making a left turn. *Rudd v. Stewart*, 255 N. C. 90, 120 S. E. (2d) 601 (1961).

**Giving Signal Does Not Relieve Driver of Other Duties.—**The requirement in this section that a prescribed hand signal be given of intention to make a left turn in traffic does not constitute full compliance with the mandate also expressed that before turning from a direct line the driver shall first see that such movement can be made in safety, nor does the performance of this mechanical act alone relieve the driver of the common-law duty to exercise due care in other respects. *Ervin v. Cannon Mills Co.*, 233 N. C. 415, 64 S. E. (2d) 431 (1951); *Simmons v. Rogers*, 247 N. C. 340, 100 S. E. (2d) 849 (1957).

**Signaler Does Not Acquire Right to Make Uninterrupted Turn.—**An allegation that the proper turn signal was given does not support the conclusion that the signaler thereby acquired the right to make an uninterrupted turn, or that the turn made pursuant thereto was lawful. *Tart v. Register*, 257 N. C. 161, 125 S. E. (2d) 754 (1962).

**Duty to See That Turn May Be Made in Safety.—**The signal would be futile if the movement could not be made in safety; and, therefore, there is a complete failure of duty upon the part of the driver of the turning car, if he does not first use rea-

sonable care to see that the turn may be made in safety. *Ervin v. Cannon Mills Co.*, 233 N. C. 415, 64 S. E. (2d) 431 (1951).

Where cars are meeting at an intersection and one intends to turn across the lane of travel of the other, subsection (b) of § 20-155 and subsection (a) of this section apply, and the driver making the turn is under duty to give a plainly visible signal of his intention to turn, and ascertain that such movement can be made in safety, without regard to which vehicle entered the intersection first. *Fleming v. Drye*, 253 N. C. 545, 117 S. E. (2d) 416 (1960); *King v. Sloan*, 261 N.C. 562, 135 S.E.2d 556 (1964).

The giving of a signal for a left turn does not give the signaler an absolute right to make the turn immediately, regardless of circumstances, but the signaler must first ascertain that the movement may be made safely. *Eason v. Grimsley*, 255 N. C. 494, 121 S. E. (2d) 885 (1961); *McNamara v. Outlaw*, 262 N.C. 612, 138 S.E.2d 287 (1964).

The driver of an automobile may be required to give, not only the statutory signals, but also other signals, or to slacken speed or take other steps to avoid a collision, if the surrounding circumstances and conditions require it. The giving of the statutory signals is the least the law requires. *Ervin v. Cannon Mills Co.*, 233 N. C. 415, 64 S. E. (2d) 431 (1951).

The prescribed hand signal should be maintained for a sufficient length of time to enable the driver of the following vehicle to observe it and to understand therefrom what movement is intended. *Ervin v. Cannon Mills Co.*, 233 N. C. 415, 64 S. E. (2d) 431 (1951); *McNamara v. Outlaw*, 262 N.C. 612, 138 S.E.2d 287 (1964).

A signal must be maintained for a sufficient distance and length of time to enable the driver of the following vehicle to observe it and to understand therefrom what movement is intended. *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

**Right to Assume That Driver Will Give Signal.—**While ordinarily a motorist may assume and act on the assumption that the driver of a vehicle approaching from the opposite direction will comply with statutory requirements as to signaling before making a left turn across his path, he is not entitled to indulge in this assumption after he sees or by the exercise of due care ought to see that the approaching driver is turning to his left across the highway to enter an intersecting road.

*Jernigan v. Jernigan*, 236 N. C. 430, 72 S. E. (2d) 912 (1952)

**Right to Assume That Signaler Will Delay Until Turn May Be Made Safely.**—When the circumstances do not allow the signaler a reasonable margin of safety, other motorists affected have the right to assume that he will delay his movement until it may be made in safety. *Eason v. Grimsley*, 255 N. C. 494, 121 S. E. (2d) 885 (1961).

**And That Approaching Motorist Will Exercise Due Care.**—In considering whether he can turn with safety and whether he should give a statutory signal of his purpose, the driver of a motor vehicle, who undertakes to make a left turn in front of an approaching motorist, has the right to take it for granted, in the absence of notice to the contrary, that the oncoming motorist will maintain a proper lookout, drive at a lawful speed, and otherwise exercise due care to avoid collision with the turning vehicle. *McNamara v. Outlaw*, 262 N.C. 612, 138 S.E.2d 287 (1964).

The approach of a police vehicle giving a signal by siren does not nullify or suspend the provisions of this section, or relieve a motorist of the duty to ascertain, before turning to his right, that such movement can be made in safety, or to signal any vehicle approaching from the rear. *Anderson v. Talman Office Supplies*, 234 N. C. 142, 66 S. E. (2d) 677 (1951). See *Anderson v. Talman Office Supplies*, 236 N. C. 519, 73 S. E. (2d) 141 (1952).

**Effect of Traffic Signals at Intersection.**—Where the evidence disclosed that the street intersection in question had electrically operated traffic signals, with the usual red, yellow, and green lights, the rights of a motorist at such intersection were held to be controlled by the traffic signals and not by this section. *White v. Cothran*, 260 N.C. 510, 133 S.E.2d 132 (1963).

**Duty on Starting after Having Stopped for Red Light.**—After stopping for a red light at an intersection, before starting again, a driver should not only have the green light or go sign facing him, but he should also see and determine in the exercise of due care that such movement can be made in safety. *Troxler v. Central Motor Lines, Inc.*, 240 N. C. 420, 82 S. E. (2d) 342 (1954).

**Electrical Signal Device.**—Evidence that defendant driver gave signal of intention to turn left by an electrical signal device operated by a lever on the steering col-

umn, is competent to be considered by the jury on the issue of the contributory negligence of such operator, notwithstanding the absence of evidence that such signal device had been approved by the Department of Motor Vehicles, since, apart from this section, it is for the jury to decide whether the signal was in fact given, whether it indicated a left turn by the operator of the car, and whether the driver of the other car was negligent in failing to observe and heed such signal. *Queen City Coach Co. v. Fultz*, 246 N. C. 523, 98 S. E. (2d) 860 (1957).

**Question for Jury.—**

Whether, according to the evidence, red signal lights on a stopped truck flashing on and off were sufficient to indicate a left turn of the truck was for the jury to decide. *Weavil v. C. W. Myers Trading Post, Inc.*, 245 N. C. 106, 95 S. E. (2d) 533 (1956).

Whether signal lights would blink, and whether, if they would blink, they were "plainly visible" as required by this section, are questions for the jury. *Eason v. Grimsley*, 255 N. C. 494, 121 S. E. (2d) 885 (1961).

**Violation of Section as Negligence Per Se.—**

In accord with 3rd paragraph in original. See *Hall v. Carroll*, 255 N. C. 326, 121 S. E. (2d) 547 (1961).

In accord with 5th paragraph in original. See *Bradham v. McLean Trucking Co.*, 243 N. C. 708, 91 S. E. (2d) 891 (1956); *Tart v. Register*, 257 N. C. 161, 125 S. E. (2d) 754 (1962); *Farmers Oil Co. v. Miller*, 264 N.C. 101, 141 S.E.2d 41 (1965).

The 1965 amendment added a proviso to subsection (b) which states: ". . . the violation of this section shall not constitute negligence per se."—Ed. Note.

A violation of the provision that the driver of any vehicle upon a public highway, before turning from a direct line, shall first see that such movement can be made in safety is negligence per se. *Cowan v. Murrows Transfer, Inc.*, 262 N.C. 550, 138 S.E.2d 228 (1964).

If the defendant turns left across the highway to enter a driveway without giving the statutory signal, such violation of this section is negligence per se, and if it proximately causes the injury, entitles plaintiff to an affirmative answer to the issue of negligence. *Queen City Coach Co. v. Fultz*, 246 N. C. 523, 98 S. E. (2d) 860 (1957).

Where it may be inferred from plaintiff's evidence that defendant has failed to ob-

serve either of the statutory requirements of subsection (a) of this section or § 20-155 (b) and injury has been suffered by plaintiff because of such failure, plaintiff has made out a prima facie case of actionable negligence. *Wiggins v. Ponder*, 259 N. C. 277, 130 S. E. (2d) 402 (1963).

**Violation Proximately Causing Injury Is Actionable.—**

In accord with original. See *Ervin v. Cannon Mills Co.*, 233 N. C. 415, 64 S. E. (2d) 431 (1951).

**Proximate Cause Is Question for Jury.—**

If plaintiff violated this section and was guilty of contributory negligence per se, it was for the jury to say whether such negligence proximately caused or contributed to plaintiff's injuries and damage, bearing in mind that reasonable foreseeability is an essential element of proximate cause. *White v. Lacey*, 245 N. C. 364, 96 S. E. (2d) 1 (1957).

**Plaintiff's Violation of Section Held Proximate Cause of Collision.**—While plaintiff's evidence was sufficient to establish a violation of § 20-149 in that defendant did not sound his horn before attempting to pass, it was manifest that plaintiff's admitted violation of this section in making a "U" turn to his left without ascertaining that he could do so in safety and without giving the required signal was a proximate cause of the collision justifying a nonsuit against him. *Talent v. Talbert*, 249 N. C. 149, 105 S. E. (2d) 426 (1958).

**Failure to Give Hand Signal Held Not Proximate Cause of Collision.**—See *Cozart v. Hudson*, 239 N. C. 279, 78 S. E. (2d) 881 (1954).

**Evidence held not to compel conclusion that sole proximate cause of collision was illegal left turn made by driver of other car.** *Jernigan v. Jernigan*, 236 N. C. 430, 72 S. E. (2d) 912 (1952).

**Contributory Negligence Barring Recovery.—**

Plaintiff truck driver held guilty of contributory negligence in turning left without seeing that movement could be made in safety, and he could not recover damages from colliding with tractor-trailer. *Gasperson v. Rice*, 240 N. C. 660, 83 S. E. (2d) 665 (1954).

**Instruction Held Erroneous.**—An instruction stating in substance that defend-

ants must first prove that plaintiff failed to ascertain safe turning conditions and, having proved this, must go further and prove that plaintiff failed to signal his intention to turn, and that the failure to signal was the proximate cause of the collision, placed an unwarranted burden on defendants. *Mitchell v. White*, 256 N. C. 437, 124 S. E. (2d) 137 (1962).

Where there is no evidence that defendant driver failed to give the signal for a left turn, as required by this section, and no evidence that defendant was traveling at excessive speed at the time, it is error for the court to instruct the jury upon the issue of the driver's negligence in regard to turn signals and excessive speed. *Textile Motor Freight, Inc. v. DuBose*, 260 N. C. 497, 133 S.E.2d 129 (1963).

**Evidence Showing Violation of Section.**—See *Powell v. Lloyd*, 234 N. C. 481, 67 S. E. (2d) 664 (1951).

**Evidence of Negligence Sufficient for Jury.**—Evidence that defendant driver attempted to turn left into a dirt road without giving a plain and visible signal of his intention to do so, did not keep a proper lookout, and did not heed plaintiff's warning horn, resulting in a collision with plaintiff's vehicle as plaintiff, traveling in the same direction, was attempting to pass, is sufficient to be submitted to the jury on the issue of negligence. *Eason v. Grimsley*, 255 N. C. 494, 121 S. E. (2d) 885 (1961).

**Applied in** *Badders v. Lassiter*, 240 N. C. 413, 82 S. E. (2d) 357 (1954); *Shoe v. Hood*, 251 N. C. 719, 112 S. E. (2d) 542 (1960); *Scarborough v. Ingram*, 256 N. C. 87, 122 S. E. (2d) 798 (1961); *Parker v. Bruce*, 258 N. C. 341, 128 S. E. (2d) 561 (1962); *Queen v. Jarrett*, 258 N. C. 405, 128 S. E. (2d) 894 (1963); *Faulk v. Althouse Chemical Co.*, 259 N. C. 395, 130 S. E. (2d) 684 (1963); *Mayberry v. Allred*, 263 N.C. 780, 140 S.E.2d 406 (1965).

**Cited in** *Matheny v. Central Motor Lines*, 233 N. C. 673, 65 S. E. (2d) 361 (1951); *Morrisette v. A. G. Boone Co.*, 235 N. C. 162, 69 S. E. (2d) 239 (1952); *Aldridge v. Hasty*, 240 N. C. 353, 82 S. E. (2d) 331 (1954); *Emerson v. Munford*, 242 N. C. 241 87 S. E. (2d) 306 (1955); *Hollowell v. Archbell*, 250 N. C. 716, 110 S. E. (2d) 262 (1959); *McPherson v. Haire*, 262 N.C. 71, 136 S.E.2d 224 (1964); *Correll v. Gaskins*, 263 N.C. 212, 139 S.E.2d 202 (1964).

**§ 20-155. Right-of-way.**—(a) When two vehicles approach or enter an intersection and/or junction at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right except as otherwise provided in § 20-156 and except where the vehicle on the right is

required to stop by a sign erected pursuant to the provisions of § 20-158 and except where the vehicle on the right is required to yield the right-of-way by a sign erected pursuant to the provisions of § 20-158.1.

(d) The driver of any vehicle approaching but not having entered a traffic circle shall yield the right-of-way to a vehicle already within such traffic circle. (1937, c. 407, s. 117; 1949, c. 1016, s. 2; 1955, c. 913, ss. 6, 7.)

**Editor's Note.—**

The 1955 amendment, effective July 1, 1955, added that part of subsection (a) which follows the reference to § 20-156 in line four. It also added subsection (d). As the rest of the section was not changed only subsections (a) and (d) are set out.

For brief comment on the right-of-way as between vehicles on a paved road and those entering from unpaved roads, see 34 N. C. Law Rev. 81.

**Term "and/or" Not Approved.**— See *Gibson v. Central Manufacturers' Mut. Ins. Co.*, 232 N. C. 712, 62 S. E. (2d) 320 (1950); *Brady v. Nehi Beverage Co.*, 242 N. C. 32, 86 S. E. (2d) 901 (1955).

**Section Applies to Intersections Not Covered by Other Rules.**— This section announces the rule with respect to use of intersections not covered by other rules. *McEwen Funeral Service, Inc. v. Charlotte City Coach Lines, Inc.*, 248 N. C. 146, 102 S. E. (2d) 816 (1958).

**Where there are no stop signs or traffic control devices at a street intersection,** neither street is favored over the other, notwithstanding that one is paved and the other is not, and the right of way at such intersection is governed by subsections (a) and (b) of this section. *Mallette v. Ideal Laundry & Dry Cleaners, Inc.*, 245 N. C. 652, 97 S. E. (2d) 245 (1957); *Rhyne v. Bailey*, 254 N. C. 467, 119 S. E. (2d) 385 (1961).

Where by reason of automatic traffic lights, stop or caution signs, or other devices, one street at an intersection is favored over the other, and one street is thereby made permanently or intermittently dominant and the other servient, this section has no application. *White v. Phelps*, 260 N.C. 443, 132 S.E.2d 902 (1963).

Ordinarily, when traffic lights are installed at an intersection, the relative rights of motorists approaching on intersecting streets are determinable with reference thereto rather than by the provisions of this section. *Cogdell v. Taylor*, 264 N.C. 421, 142 S.E.2d 36 (1965).

Absent traffic lights, the relative rights of motorists are determinable with reference to this section. *Cogdell v. Taylor*, 264 N.C. 424, 142 S.E.2d 36 (1965).

**Entering Intersection "at Approximately the Same Time."**—

In accord with 1st paragraph in original. See *Brady v. Nehi Beverage Co.*, 242 N. C. 32, 86 S. E. (2d) 901 (1955); *Downs v. Odom*, 250 N. C. 81, 108 S. E. (2d) 65 (1959).

In accord with 2nd paragraph in original. See *Bennett v. Stephenson*, 237 N. C. 377, 75 S. E. (2d) 147 (1953); *Brady v. Nehi Beverage Co.*, 242 N. C. 32, 86 S. E. (2d) 901 (1955); *Taylor v. Brake*, 245 N. C. 553, 96 S. E. (2d) 686 (1957).

**Duty of Driver Approaching from Left.**

—If the driver of the automobile on the left approaching an intersection sees, or in the exercise of reasonable prudence should see an automobile approaching from his right in such a manner that apparently the two automobiles will reach the intersection at approximately the same time, it is his duty to decrease his speed, bring his automobile under control and if necessary stop, and to yield the right-of-way to the driver of the automobile on his right in order to enable him to proceed and thus avoid a collision. The law imposes this duty on the driver of an automobile approaching an intersecting highway unless the automobile coming from his right on the intersecting highway is a sufficient distance away to warrant the assumption that he can proceed before the other automobile operated at a reasonable speed reaches the crossing. *Bennett v. Stephenson*, 237 N. C. 377, 75 S. E. (2d) 147 (1953).

When the driver of a motor vehicle on the left comes to an intersection and finds no one approaching it on the other street within such distance as reasonably to indicate danger of collision, he is under no obligation to stop or wait, but may proceed to use such intersection as a matter of right. *Carr v. Stewart*, 252 N. C. 118, 113 S. E. (2d) 18 (1960).

**Speed Not Preventing Application of Rule.**—The fact that the defendant's automobile, which was approaching from the plaintiff's right, was being driven at the speed of 35 to 40 miles per hour in a residential district with no other vehicle in view would not prevent the application of the rule as to right-of-way for automobiles entering an intersection at the same time, in the absence of evidence that the speed

of defendant's automobile proximately caused the collision. *Bennett v. Stephenson*, 237 N. C. 377, 75 S. E. (2d) 147 (1953).

**Right to Assume That Driver Approaching from Left Will Yield Right-of-Way.**— If two automobiles approach an intersection at approximately the same time, the driver of the automobile on the right, in approaching the intersection, has the right to assume that the driver of the automobile coming from the left will yield the right-of-way and stop or slow down sufficiently to permit the other to pass in safety. *Bennett v. Stephenson*, 237 N. C. 377, 75 S. E. (2d) 147 (1953). See *Finch v. Ward*, 238 N. C. 290, 77 S. E. (2d) 661 (1953).

A driver with the right-of-way at an intersection is under no duty to anticipate disobedience of law or negligence on the part of others, but in the absence of anything which puts him on notice, or should put him on notice, to the contrary, he is entitled to assume, and to act on the assumption, that others will obey the law, exercise reasonable care and yield to him the right-of-way. *Carr v. Lee*, 249 N. C. 712, 107 S. E. (2d) 544 (1959).

Where evidence is uncontradicted that defendant with the right of way entered the intersection operating truck at a speed of five or ten miles per hour, he had the right to assume, and to act on the assumption, in the absence of notice to the contrary, that the operator of the automobile in which plaintiff was riding would recognize his right of way and grant him a free passage over the intersection. *Brady v. Nehi Beverage Co.*, 242 N. C. 32, 86 S. E. (2d) 901 (1955).

A driver having the right of way may act upon the assumption, in the absence of notice to the contrary, that the other motorist will recognize his right of way and grant him a free passage over the intersection. *Carr v. Stewart*, 252 N. C. 118, 113 S. E. (2d)-18 (1960).

**Or That Driver Will Not Block Lane by Turning.**—A driver intending to go straight through an intersection has the right to assume and act on the assumption that all other travelers will observe the law and not block his lane of travel by a left turn without first ascertaining that such move can be made in safety. *Harris v. Parris*, 260 N.C. 524, 133 S.E.2d 195 (1963).

A through driver is required to give notice of any intended change in direction through an intersection, and, in the absence of such notice, other travelers are required to assume that he intends to con-

tinue through in his proper lane of traffic. *Harris v. Parris*, 260 N.C. 524, 133 S.E.2d 195 (1963).

**"Right-of-Way" Defined.**— The expression "right-of-way" has been interpreted to mean the right of a vehicle to proceed uninterruptedly in a lawful manner in the direction in which it is moving in preference to another vehicle approaching from a different direction into its path. *Bennett v. Stephenson*, 237 N. C. 377, 75 S. E. (2d) 147 (1953).

**Right-of-Way Is Not Absolute.**— One who has the right-of-way at an intersection does not have the absolute right-of-way in the sense that he is not bound to use ordinary care in the exercise of his right. When he sees, or by the exercise of due care should see, that an approaching driver cannot or will not observe the traffic laws, he must use such care as an ordinarily prudent person would use under the same or similar circumstances to avoid collision and injury. His duty under such circumstances consists in keeping a reasonable lookout, keeping his vehicle under control, and taking reasonable precautions to avoid injury to persons and property. *Carr v. Lee*, 249 N. C. 712, 107 S. E. (2d) 544 (1959).

Where vehicles involved in a collision were meeting as they approached the intersection, subdivision (b) of this section and § 20-154 are applicable. *Fowler v. Atlantic Co.*, 234 N. C. 542, 67 S. E. (2d) 496 (1951); *Fleming v. Drye*, 253 N. C. 545, 117 S. E. (2d) 416 (1960).

**Entering Intersection Ahead of Other Car.**—

In an action to recover damages resulting from a collision at a street intersection, plaintiff's evidence that she entered the intersection first and that defendants entered the intersection from her left was sufficient to take the case to the jury over defendants' motion to nonsuit. *Harrison v. Kapp*, 241 N. C. 408, 85 S. E. (2d) 337 (1955).

Where defendant's truck entered the intersection before the automobile in which plaintiff was riding reached the intersection, and the truck approached the intersection from the automobile's right side of the road, the truck had the right of way. *Brady v. Nehi Beverage Co.*, 242 N. C. 32, 86 S. E. (2d) 901 (1955).

**If Vehicle on Left Has Already Entered Intersection.**—

In accord with original. See *Taylor v. Brake*, 245 N. C. 553, 96 S. E. (2d) 686 (1957).

If the automobile approaching from the

left reaches the intersection first and has already entered the intersection, the driver of the automobile on the right is under duty to permit the other automobile to pass in safety. *Bennett v. Stephenson*, 237 N. C. 377, 75 S. E. (2d) 147 (1953).

**Rule Where Driver Has Brought Automobile to a Complete Stop.**—The rule as to right-of-way prescribed by this section applies to moving vehicles approaching an intersection at approximately the same time. Where the driver has already brought his automobile to a complete stop, thereafter the duty would devolve upon him to exercise due care to observe approaching vehicles and to govern his conduct accordingly. One who is required to stop before entering a highway should not proceed, with oncoming vehicles in view, until in the exercise of due care he can determine that he can do so with reasonable assurance of safety. *Matheny v. Central Motor Lines*, 233 N. C. 673, 65 S. E. (2d) 361 (1951); *Badders v. Lassiter*, 240 N. C. 413, 82 S. E. (2d) 357 (1954).

**Private Road or Drive.**—The exception in subsection (a) relates to entering from a "private road or drive." *Brady v. Nehi Beverage Co.*, 242 N. C. 32, 86 S. E. (2d) 901 (1955).

**Subsection (a) Inapplicable to Vehicles Proceeding in Opposite Directions.** — Where motorists are proceeding in opposite directions and meeting at an intersection controlled by automatic traffic lights, subsection (a) of this section has no application. *Shoe v. Hood*, 251 N. C. 719, 112 S. E. (2d) 543 (1960); *Wiggins v. Ponder*, 259 N. C. 277, 130 S. E. (2d) 402 (1963).

Where motorists are proceeding in opposite directions and meeting at an intersection, subsection (c) of this section has no application. *Fleming v. Drye*, 253 N. C. 545, 117 S. E. (2d) 416 (1960).

**Duty of Driver Turning Left.** — The driver desiring to turn left at the intersection may move into the intersection when the signal facing him is green, but before turning left is charged with the duty to yield the right of way under this section. *Hudson v. Petroleum Transit Co.*, 250 N. C. 435, 108 S. E. (2d) 900 (1959).

Where cars are meeting at an intersection and one intends to turn across the lane of travel of the other, subsection (b) of this section and subsection (a) of § 20-154 apply, and the driver making the turn is under duty to give a plainly visible signal of his intention to turn, and ascertain that such movement can be made in safety, without regard to which vehicle entered the intersection first. *Fleming v. Drye*, 253 N. C.

545, 117 S. E. (2d) 416 (1960); *King v. Sloan*, 261 N.C. 562, 135 S.E.2d 556 (1964).

It is incumbent upon a motorist, before making a left turn at an intersection, to give a plainly visible signal of his intention to turn and to ascertain that the movement can be made in safety. This, without regard to which vehicle enters the intersection first. *Wiggins v. Ponder*, 259 N. C. 277, 130 S. E. (2d) 402 (1963).

**If Vehicle Turning Has Already Entered Intersection.**—Under subsection (b) of this section, the vehicle first reaching an intersection which has no stop sign or traffic signal has the right of way over a vehicle subsequently reaching it, whether the vehicle in the intersection is proceeding straight ahead or turning in either direction; and it is the duty of the driver of the vehicle not having entered the intersection to delay his progress and allow the vehicle which first entered the intersection to pass in safety. *Carr v. Stewart*, 252 N. C. 118, 113 S. E. (2d) 18 (1960).

If the jury should find that plaintiff was already in the intersection, giving the statutory left-turn signal, at a time when defendant was 150 feet away, it was defendant's duty to have delayed her entrance into the intersection until plaintiff had cleared it entirely. *Mayberry v. Allred*, 263 N.C. 780, 140 S.E.2d 406 (1965).

**Failure to Yield Right-of-Way Held Proximate Cause of Collision.**—See *Freeman v. Preddy*, 237 N. C. 734, 76 S. E. (2d) 159 (1953).

**Emergency ambulances are expressly exempted from the requirements of this section.** *Upchurch v. Hudson Funeral Home, Inc.*, 263 N.C. 560, 140 S.E.2d 17 (1965).

**Evidence Supporting Inference That Defendant Negligently Failed to Yield Right-of-Way.**—See *Donlop v. Snyder*, 234 N. C. 627, 68 S. E. (2d) 316 (1951); *Tripp v. Harris*, 260 N.C. 200, 132 S.E.2d 322 (1963).

**Evidence Raising Issue of Negligence.**—Evidence that defendant failed to yield the right of way to the plaintiff who was on the right, and that defendant was driving at 50 miles per hour through the intersection, raised the issue of defendant's negligence, and the motion for nonsuit at the close of all the evidence was properly denied. *Price v. Gray*, 246 N. C. 162, 92 S. E. (2d) 884 (1957).

**Prima Facie Case of Negligence.**—Where it may be inferred from plaintiff's evidence that defendant has failed to observe either of the statutory requirements of § 20-154 (a) or subsection (b) of this section and injury has been suffered by

plaintiff because of such failure, plaintiff has made out a prima facie case of actionable negligence. *Wiggins v. Ponder*, 259 N. C. 277, 130 S. E. (2d) 462 (1963).

The pleadings and the evidence were insufficient to support plaintiff's theory that plaintiff had the right of way by virtue of subsection (b) of this section. *Taylor v. Brake*, 245 N. C. 553, 96 S. E. (2d) 686 (1957).

**Court Not Required to Read Applicable Statutes to Jury.**—Where the trial court charges the law in regard to the statutory provisions in regard to the right of way at an intersection, and applies the law to the evidence in the case, objection on the ground that the court failed to charge on

the statutes is without merit, it not being required that the court read the applicable statutes to the jury. *Kennedy v. James*, 252 N. C. 434, 113 S. E. (2d) 889 (1960).

Applied in *Primm v. King*, 249 N. C. 228, 106 S. E. (2d) 223 (1958); *Greene v. Meredith*, 264 N.C. 178, 141 S.E.2d 287 (1965).

Quoted in part in *Donlop v. Snyder*, 234 N. C. 627, 68 S. E. (2d) 316 (1951); *Jordan v. Blackwelder*, 250 N. C. 189, 103 S. E. (2d) 429 (1959).

Stated in *Smith v. Buie*, 243 N. C. 209, 90 S. E. (2d) 514 (1955).

Cited in *Kelly v. Ashburn*, 256 N. C. 338, 123 S. E. (2d) 775 (1962).

### § 20-156. Exceptions to the right-of-way rule.

**Cross Reference.**—See note to § 20-140.

**Editor's Note.**—

For note on liability of municipality for accident involving fire truck responding to an emergency call for inhalator, see 30 N. C. Law Rev. 89.

**Power of State Illustrated.**—Subsection (a) of this section and § 20-165.1 illustrate the power of the State to regulate the time and manner of entering a public highway. *Moses v. State Highway Comm'n*, 261 N.C. 316, 134 S.E.2d 664 (1964).

**Duty of Driver Entering Highway to Look for Approaching Vehicles.**—In order to comply with subsection (a) of this section the driver of a vehicle entering a public highway from a private road or drive is required to look for vehicles approaching on such highway, and this is required to be done at a time when this precaution may be effective. *Gantt v. Hobson*, 240 N. C. 426, 82 S. E. (2d) 384 (1954). See also *Clark v. Emerson*, 245 N. C. 387, 95 S. E. (2d) 880 (1957).

In order to comply with this section, a driver entering a public highway from a private drive is required to look for vehicles approaching on such highway, to look at a time when the precaution may be effective, to yield the right-of-way to vehicles traveling on the highway, and to defer entry until the movement may be made in safety. *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).

Before entering a public highway from a private driveway, the operator of a motor vehicle is required to exercise due care to see that the intended movement can be made in safety. *Smith v. Nunn*, 257 N. C. 108, 125 S. E. (2d) 351 (1962).

Abutting owner's right of access must be exercised with due regard to the safety of others who have an equal right to use

the highway. *State Highway Comm'n v. Raleigh Farmers Mkt., Inc.*, 263 N.C. 622, 139 S.E.2d 904 (1965).

**Right to Assume That Driver Entering Highway Will Comply with Section.**—The operator of an automobile traveling upon a public highway in this State is under no duty to anticipate that the driver of an automobile entering the public highway from a private road or drive will fail to yield the right-of-way to all vehicles on such public highway, as required by subsection (a) of this section, and in the absence of anything which gives or should give notice to the contrary, he is entitled to assume and to act upon the assumption, even to the last moment, that the driver of the automobile so entering the public highway from a private road or drive will, in obedience to the section, yield the right-of-way. *Garner v. Pittman*, 237 N. C. 328, 75 S. E. (2d) 111 (1953).

One operating his motorcycle upon the highway was under no duty to assume that a motorist would fail to yield to him the right-of-way which was rightfully his, and he was entitled to this assumption even to the last moment. *Whiteside v. Rooks*, 197 F. Supp. 313 (1961).

**Right-of-Way on Dirt Ramp across Highway.**—This section is applicable at such times as a dirt ramp across a highway is open for public travel, but it does not apply at such times as the ramp is closed by the flagmen. At the times when the ramp is closed public travelers have no right to use it, but must stop and yield the right-of-way to contractor's machinery. The flagmen's signal to stop is at least equivalent to a legally established stop sign or stop light at an intersection. *C. C. T. Equipment Co. v. Hertz Corp.*, 256 N. C. 277, 123 S. E. (2d) 802 (1962).



Irrespective of subsection (a), a contractor for the improvement of an airport, who is granted permission to maintain a dirt ramp across a highway, is under a duty, before operating its earth-moving equipment onto and across the ramp, to exercise due care to see that such movement can be made with safety and without injury to users of the highway. *C. C. Mangum, Inc. v. Gasperson*, 262 N.C. 32, 136 S.E.2d 234 (1964).

**When Emergency Vehicle Accorded Right-of-Way.**—If the operator of an authorized emergency vehicle bona fide believes an emergency exists which requires expeditious movement and in fact has such belief and meets the statutory test by giving warning, he is accorded the necessary privilege of the right-of-way. *Williams v. Sossoman's Funeral Home, Inc.*, 248 N. C. 524, 103 S. E. (2d) 714 (1958).

No duty rests on the operator of a motor vehicle making normal use of a highway to yield the right-of-way to another vehicle on an emergency mission until an appropriate warning has been directed to him, and he has reasonable opportunity to yield his prior right. *McEwen Funeral Service, Inc. v. Charlotte City Coach Lines, Inc.*, 248 N. C. 146, 102 S. E. (2d) 816 (1958).

**Effect of Traffic Lights on Privileges of Emergency Vehicles.**—The General Assembly did not intend the right-of-way privileges accorded emergency ambulances

by this section to be extended to apply to intersections controlled by automatic traffic lights. *Upchurch v. Hudson Funeral Home, Inc.*, 263 N.C. 560, 140 S.E.2d 17 (1965).

The audible sound which this section requires is such a sound as was in fact heard and comprehended, or which should have been heard and its meaning understood, by a reasonably prudent operator called upon to yield the right-of-way. *McEwen Funeral Service, Inc. v. Charlotte City Coach Lines, Inc.*, 248 N. C. 146, 102 S. E. (2d) 816 (1958); *Williams v. Sossoman's Funeral Home, Inc.*, 248 N. C. 524, 103 S. E. (2d) 714 (1958).

**Right of Operator of Emergency Vehicle to Assume That Other Drivers Will Yield.**—The operator of an authorized emergency vehicle, while on an emergency call, has the right to proceed upon the assumption that when the required signal by siren is given, other users of the highway will yield the right-of-way. *Williams v. Sossoman's Funeral Home, Inc.*, 248 N. C. 524, 103 S. E. (2d) 714 (1958).

**Applied in** *Nantz v. Nantz*, 255 N. C. 357, 121 S. E. (2d) 561 (1961); *State v. Gurley*, 257 N. C. 270, 125 S. E. (2d) 445 (1962).

**Quoted in** *Brady v. Nehi Beverage Co.*, 242 N. C. 32, 86 S. E. (2d) 901 (1955).

**Cited in** *Fleming v. Drye*, 253 N. C. 545, 117 S. E. (2d) 416 (1960).

## § 20-157. What to do on approach of police or fire department vehicles; driving over fire hose or blocking fire-fighting equipment.

(c) Outside of the corporate limits of any city or town it shall be unlawful for the driver of any vehicle other than one on official business to follow any fire apparatus travelling in response to a fire alarm closer than four hundred (400) feet or to drive into or park such vehicle within a space of four hundred (400) feet from where fire apparatus has stopped in answer to a fire alarm.

(d) It shall be unlawful to drive a motor vehicle over a fire hose or any other equipment that is being used at a fire at any time, or to block a fire-fighting apparatus or any other equipment from its source of supply regardless of its distance from the fire. (1937, c. 407, s. 119; 1955, cc. 173, 744.)

**Local Modification.**—Guilford (driving over fire hose or blocking fire fighting apparatus): 1953, c. 301.

**Editor's Note.**—The first 1955 amendment added subsection (c). The second 1955 amendment also added a new subsection designated (c) in the amendatory act. The subsection added by the second 1955 amendment has been designated (d) above. As subsections (a) and (b) were not affected by the amendments they are not set out.

This section does not apply to ambu-

lances. *Upchurch v. Hudson Funeral Home, Inc.*, 263 N.C. 560, 140 S.E.2d 17 (1965).

**Approach of Police Vehicle Does Not Nullify Provisions of Section 20-154.**—See annotations under § 20-154

**Or Authorize Turn Which Cannot Be Made in Safety.**—This section, requiring a motorist to pull over to the right-hand curb upon the approach of a police vehicle, does not authorize such motorist to cut sharply to the right into another traffic lane immediately in front of a ve-

hicle to his rear at a time and under circumstances which indicate such movement could not be made in safety. *Ander-son v. Talman Office Supplies*, 234 N. C. 142, 66 S. E. (2d) 677 (1951). See *Ander-son v. Talman Office Supplies*, 236 N. C. 519, 73 S. E. (2d) 141 (1952).

**Warrant Fatally Defective.**—A warrant charging violation of subsection (a) of this

section, which fails to charge that defend-ant was driving a motor vehicle at the time he failed to heed a police siren, is fatally defective. *State v. Wallace* 251 N. C. 378, 111 S. E. (2d) 714 (1959).

**Applied in** *State v. McRae*, 240 N. C. 334, 82 S. E. (2d) 67 (1954) (as to subsec-tion (a)); *State v. Wells*, 259 N. C. 173, 130 S. E. (2d) 299 (1963).

§ 20-158. **Vehicles must stop and yield right-of-way at certain through highways.**—(a) The State Highway Commission, with reference to State highways, and local authorities, with reference to highways under their jurisdiction, are hereby authorized to designate main traveled or through high-ways by erecting at the entrance thereto from intersecting highways signs notify-ing drivers of vehicles to come to full stop before entering or crossing such desig-nated highway, and whenever any such signs have been so erected it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto and yield the right-of-way to vehicles operating on the designated main traveled or through highway and approaching said intersection. No failure so to stop, however, shall be considered contributory negligence per se in any action at law for injury to person or property; but the facts relating to such failure to stop may be con-sidered with the other facts in the case in determining whether the plaintiff in such action was guilty of contributory negligence.

(b) This section shall not interfere with the regulations prescribed by towns and cities.

(c) When a stop light has been erected or installed at any intersection in this State outside of the corporate limits of a municipality, no operator of a vehicle approaching said intersection shall enter the same with said vehicle while the stop light is emitting a red light or stop signal for traffic moving on the highway and in the direction that said approaching vehicle is traveling. All such stop lights emitting alternate red and green lights shall be so arranged and placed that the red light shall appear at the top of the signaling unit and the green light shall appear at the bottom of the signaling unit.

(d) Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than ten dollars or imprisoned not more than ten days. (1937, c. 407, s. 120; 1941, c. 83; 1949, c. 583, s. 2; 1955, c. 384, s. 1; c. 913, s. 7; 1957, c. 65, s. 11.)

**Editor's Note.**—

The first 1955 amendment, effective July 1, 1955 added the second sentence of sub-section (c), and the second 1955 amend-ment, also effective July 1, 1955, added to the first sentence of subsection (a) the re-quirement as to yielding the right-of-way.

The 1957 amendment substituted "State Highway Commission" for "State High-way and Public Works Commission" in subsection (a).

**"At the Entrance."**—The stop signs re-ferred to in this statute are signs erected "at the entrance" to the main traveled or through highway. A sign six hundred feet away from an intersection cannot reason-ably be said to be at the entrance thereto. *Gilliland v. Ruke*, 280 F (2d) 544 (1960).

**"Regulations."**—"Regulations," as men-tioned in subsection (b), necessarily means the ordinances adopted by municipalities

for the control of traffic at intersections—rules pertaining to right of way. *Upchurch v. Hudson Funeral Home, Inc.*, 263 N.C. 560, 140 S.E.2d 17 (1965).

**State Highways.**—Highways which are built and maintained in part out of funds contributed by the federal government and which form links in an interstate system and are designated as U S highways, are State highways under the supervision and control of the State Highway and Public Works Commission and this section is applicable to these just as it is to other State highways. *Yost v Hall*, 233 N. C. 463, 64 S. E. (2d) 554 (1951).

**Undesignated Highways.** — Unnamed dirt road and named paved road which in-tersected were public roads of equal dig-nity where neither were designated "main travelled or through highway" by State Highway and Public Works Commission.

*Brady v. Nehi Beverage Co.*, 242 N. C. 32, 86 S. E. (2d) 901 (1955).

**Designation of Streets by Municipal Authorities.**—Where two streets of a municipality intersect, testimony identifying one as the through street and the other as the cross street, on which there is a stop sign to the right of a driver thereon approaching the intersection, connotes that the streets have been so designated and the sign erected by action of the municipal authorities. *Smith v. Buie*, 243 N. C. 209, 90 S. E. (2d) 514 (1955).

The legislature took recognition of the fact that all highway intersections are not of equal importance because of the density of traffic on one highway as compared to the flow on an intersecting highway. Hence a rule was prescribed for this situation by this section requiring operators of motor vehicles on a servient highway to stop in accordance with signs commanding them to do so. This was supplemented in 1955 by the provisions of § 20-158.1. *McEwen Funeral Service, Inc. v. Charlotte City Coach Lines, Inc.*, 248 N. C. 146, 102 S. E. (2d) 816 (1958).

The purpose of highway stop-signs is to enable the driver of a motor vehicle to have opportunity to observe the traffic conditions on the highways and to determine when in the exercise of due care he might enter upon the intersecting highway with reasonable assurance of safety to himself and others. *Morrisette v. A. G. Boone Co.*, 235 N. C. 162, 69 S. E. (2d) 239 (1952); *Edwards v. Vaughn*, 238 N. C. 89, 76 S. E. (2d) 359 (1953); *Badders v. Lassiter*, 240 N. C. 413, 82 S. E. (2d) 357 (1954).

The purpose to be served by placing a stop sign some distance from the intersection of a servient and dominant highway is to give the motorist ample time to slow down and stop before entering the zone of danger. And when the driver of a motor vehicle stops at a stop sign on a servient highway and then proceeds into the intersection without keeping a lookout and ascertaining whether he can enter or cross the intersecting highway with reasonable safety, he ignores the intent and purpose of this section. *Edwards v. Vaughn*, 238 N. C. 89, 76 S. E. (2d) 359 (1953).

The erection of stop signs on an intersecting highway or street is a method of giving the public notice that traffic on one is favored over the other and that a motorist facing a stop sign must yield. *Kelly v. Ashburn*, 256 N. C. 338, 123 S. E. (2d) 775 (1962).

Subsection (c) of this section is confined

to red and green lights at intersections outside of municipal corporate limits. It makes no reference to amber lights and can have no effect where the intersection is within municipal corporate limits. *Wilson v. Kennedy*, 248 N. C. 74, 102 S. E. (2d) 459 (1958); *Williams v. Sossoman's Funeral Home, Inc.*, 248 N. C. 524, 103 S. E. (2d) 714 (1958); *Hudson v. Petroleum Transit Co.*, 250 N. C. 435, 108 S. E. (2d) 900 (1959); *Shoe v. Hood*, 251 N. C. 719, 112 S. E. (2d) 543 (1960).

Subsection (c) applies only to the regulation of traffic by automatic signal lights at intersections outside of the corporate limits of a municipality. *Cogdell v. Taylor*, 264 N.C. 424, 142 S.E.2d 36 (1965).

**Authority of Municipalities under Subsection (b).**—Subsection (c) of this section with respect to traffic lights is limited to those lights outside of towns and cities, but cities are not denied the authority to regulate the movement of traffic at street intersections under subsection (b). *McEwen Funeral Service, Inc. v. Charlotte City Coach Lines, Inc.*, 248 N. C. 146, 102 S. E. (2d) 816 (1958).

By implication, at least, this section gives municipalities plenary power to regulate traffic at intersections. *Upchurch v. Hudson Funeral Home, Inc.*, 263 N.C. 560, 140 S.E.2d 17 (1965).

This section does not debar municipalities from requiring ambulances to observe traffic lights. *Upchurch v. Hudson Funeral Home, Inc.*, 263 N.C. 560, 140 S.E.2d 17 (1965).

**Duty to Stop Depends upon Presence of Stop Sign.**—The language of this section indicates that the duty to stop depends upon the presence of a stop sign at the time the driver approaches the intersection. He is commanded to stop "in obedience" to the stop sign. If no such sign is in sight and the driver is not aware that there should be one, there is nothing to obey and hence no statutory duty to stop. *Gilliland v. Ruke*, 280 F (2d) 544 (1960).

**Presumption That Signs Were Erected by Lawful Authority.**—Stop signs at intersections are in such general use and their function so well known that a motorist, in the absence of notice to the contrary, may presume they were erected by lawful authority. The presumption is one of fact and, like other presumptions of fact, is rebuttable. *Kelly v. Ashburn*, 256 N. C. 338, 123 S. E. (2d) 775 (1962).

**Where Stop Sign Has Been Removed or Defaced.**—A collision at an intersection where a stop sign has been erected and then removed or defaced may result from the negligence of one party, or both, or

neither. *Kelly v. Ashburn*, 256 N. C. 338, 123 S. E. (2d) 775 (1962).

**This section does not require that a motorist stop where a stop sign is located.** It requires that he, in obedience to the notice provided by the stop sign, bring his car to a full stop before entering the highway and yield the right of way to vehicles approaching the intersection on the highway. *Clifton v. Turner*, 257 N. C. 92, 125 S. E. (2d) 339 (1962); *Howard v. Melvin*, 262 N.C. 569, 138 S.E.2d 238 (1964).

**Failure to Stop at Intersection Not Negligence Per Se.—**

In accord with 1st paragraph in original. See *Johnson v. Bell*, 234 N. C. 522, 67 S. E. (2d) 658 (1951). And see *Satterwhite v. Bocelato*, 130 F. Supp. 825 (1955), wherein the evidence justified a finding of negligence.

The failure of a driver along a servient highway to stop before entering an intersection with a dominant highway is not contributory negligence per se, but is to be considered with other facts in evidence in determining the issue. *Hawes v. Atlantic Refining Co.*, 236 N. C. 643, 74 S. E. (2d) 17 (1953); *Primm v. King*, 249 N. C. 228, 106 S. E. (2d) 223 (1958); *State v. Sealy*, 253 N. C. 802, 117 S. E. (2d) 793 (1961).

Failure to stop at a stop sign and yield the right of way is not negligence per se, but it is evidence of negligence that may be considered with other facts in the case in determining whether a party thereto was guilty of negligence or contributory negligence. *Johnson v. Bass*, 256 N. C. 716, 125 S. E. (2d) 19 (1962).

**But Is Evidence of Negligence Sufficient to Support Verdict.—**While a failure to stop and yield the right of way to traffic on the dominant highway is not negligence per se, it is evidence of negligence, and, when the proximate cause of injury, is sufficient to support a verdict for plaintiff. *Wooten v. Russell*, 255 N. C. 699, 122 S. E. (2d) 603 (1961).

**Duty of Motorist before Starting from Position on Subservient Highway.—**It is the duty of a motorist before starting from his position on a subservient highway into a dominant highway to exercise due care to see that such movement can be made in safety. *Morrisette v. A. G. Boone Co.*, 235 N. C. 162, 69 S. E. (2d) 239 (1952).

The driver on the subservient highway is not only required to stop, but, further, is required thereafter to exercise due care to see that he may enter the dominant highway in safety. *Satterwhite v. Bocelato*, 130 F. Supp. 825 (1955).

A driver of a motor vehicle about to enter a highway protected by stop signs must stop as directed, look in both directions and permit all vehicles to pass which are at such a distance and traveling at such a speed that it would be imprudent for him to proceed into the intersection. *Matheny v. Central Motor Lines*, 233 N. C. 673, 65 S. E. (2d) 361 (1951).

A motorist traveling on a servient highway on which a stop sign has been erected at an intersection with a dominant highway may not lawfully enter such intersection until he has stopped and observed the traffic on the dominant highway and determined in the exercise of due care that he may enter such intersection with reasonable assurance of safety to himself and others. *Primm v. King*, 249 N. C. 228, 106 S. E. (2d) 223 (1958).

This section not only requires the driver on the servient highway or street to stop, but such driver is further required, after stopping, to exercise due care to see that he may enter or cross the dominant highway or street in safety before entering thereon. *Jordan v. Blackwelder*, 250 N. C. 189, 108 S. E. (2d) 429 (1959); *Wooten v. Russell*, 255 N. C. 699, 122 S. E. (2d) 603 (1961); *Howard v. Melvin*, 262 N.C. 569, 138 S.E.2d 238 (1964).

**The right of one starting from a stopped position to undertake to cross an intersection** would depend largely upon the distance from the intersection of approaching vehicles and their speed, and unless under the circumstances he would reasonably apprehend no danger of collision from an approaching vehicle it would be his duty to delay his progress until the vehicle has passed. *Badders v. Lassiter*, 240 N. C. 413, 82 S. E. (2d) 357 (1954).

**Inadvertent Violation of Section. —**Where there is an unintentional or inadvertent violation of this section, such violation, standing alone, does not constitute culpable negligence in the law of crimes as distinguished from actionable negligence in the law of torts. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature, when tested by the rule of reasonable provision, amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others. *State v. Sealy*, 253 N. C. 802, 117 S. E. (2d) 793 (1961).

**Where Stop Signs Located at Points from Which Driver Cannot Get Unobstructed View of Highway.—**Though stop signs, due to the surrounding physical con-

ditions, are located at points from which the driver of a motor vehicle cannot get an unobscured vision of the intersecting highway for a sufficient distance to ascertain whether it can be entered or crossed with reasonable safety, this does not relieve a driver on a servient highway from the duty to look and observe traffic conditions on the dominant highway, and to make such observation, before entering or crossing the same, as may be necessary to determine whether or not it would be reasonably safe to enter or cross such highway. *Edwards v. Vaughn*, 238 N. C. 89, 76 S. E. (2d) 359 (1953).

#### Right of Way.—

When the driver of an automobile is required to stop at an intersection he must yield the right of way to an automobile approaching on the intersecting highway, and unless the approaching automobile is far enough away to afford reasonable ground for the belief that he can cross in safety he must delay his progress until the other vehicle has passed. *Matheny v. Central Motor Lines*, 233 N. C. 673, 65 S. E. (2d) 361 (1951); *Badders v. Lassiter*, 240 N. C. 413, 82 S. E. (2d) 357 (1954).

#### Duty of Driver Having Right of Way.

—The driver on a favored highway protected by a statutory stop sign does not have the absolute right-of-way in the sense he is not bound to exercise care toward traffic approaching on an intersecting unfavored highway. It is his duty, notwithstanding his favored position, to observe ordinary care, that is, that degree of care which an ordinarily prudent person would exercise under similar circumstances. In the exercise of such duty it is incumbent upon him in approaching and traversing such an intersection (1) to drive at a speed no greater than is reasonable and prudent under the conditions then existing, (2) to keep his motor vehicle under control, (3) to keep a reasonably careful lookout, and (4) to take such action as an ordinarily prudent person would take in avoiding collision with persons or vehicles upon the highway when, in the exercise of due care, danger of such collision is discovered or should have been discovered. *Primm v. King*, 249 N. C. 228, 106 S. E. (2d) 223 (1958); *King v. Powell*, 252 N. C. 506, 114 S. E. (2d) 265 (1960); *Stockwell v. Brown*, 254 N. C. 662, 119 S. E. (2d) 795 (1961).

The driver on a favored highway protected by a statutory stop sign under this section does not have the absolute right of way in the sense he is not bound to

exercise care toward traffic approaching on an intersecting unfavored highway. It is his duty, notwithstanding his favored position, to observe ordinary care. *Williamson v. Randall*, 248 N. C. 20, 102 S. E. (2d) 381 (1958).

The driver of plaintiff's truck on the dominant highway protected by a statutory stop sign did not have the absolute right of way, in the sense he was not bound to exercise the care toward defendant's pickup truck approaching on the intersecting servient road. *Scott v. Darden*, 259 N. C. 167, 130 S. E. (2d) 42 (1963).

#### Right to Assume That Automobile Will Stop as Required by Statute.—

The operator of an automobile, traveling upon a designated main traveled or through highway and approaching an intersecting highway, is under no duty to anticipate that the operator of an automobile approaching on such intersecting highway will fail to stop as required by the statute, and, in the absence of anything which gives, or should give notice to the contrary, he will be entitled to assume and to act upon the assumption, even to the last moment, that the operator of the automobile on the intersecting highway will act in obedience to the statute, and stop before entering such designated highway. *Hawes v. Atlantic Refining Co.*, 236 N. C. 643, 74 S. E. (2d) 17 (1953); *Caughron v. Walker*, 243 N. C. 153, 90 S. E. (2d) 305 (1955); *Smith v. Buie*, 243 N. C. 209, 90 S. E. (2d) 514 (1955); *Jackson v. McCoury*, 247 N. C. 502, 101 S. E. (2d) 377 (1958); *King v. Powell*, 252 N. C. 506, 114 S. E. (2d) 265 (1960); *Wooten v. Russell*, 255 N. C. 699, 122 S. E. (2d) 603 (1961).

While the driver of a car along the dominant highway is entitled to assume that the operator of a car along the intersecting servient highway will stop before entering the intersection, the driver along the dominant highway is nevertheless required to exercise the care of an ordinarily prudent person under similar circumstances to keep a reasonably careful lookout, not to exceed a speed which is reasonable and prudent under the circumstances, and to take such care as a reasonably prudent man would exercise to avoid collision when danger of a collision is discovered, or should have been discovered. *Blalock v. Hart*, 239 N. C. 475, 80 S. E. (2d) 373 (1954); *Caughron v. Walker*, 243 N. C. 153, 90 S. E. (2d) 305 (1955); *Jackson v. McCoury*, 247 N. C. 502, 101 S. E. (2d) 377 (1958).

A motorist proceeding along a favored highway is entitled to assume that traffic

on an intersecting secondary highway will yield him the right of way, and the effect of his right to rely on this assumption is not lost because warning signs have been misplaced or removed. *Kelly v. Ashburn*, 256 N. C. 338, 123 S. E. (2d) 775 (1962).

Applied in *Powell v. Daniel*, 236 N. C. 489, 73 S. E. (2d) 143 (1952); *Edens v. Carolina Freight Carriers Corp.*, 247 N. C. 391, 100 S. E. (2d) 878 (1957); *State v. Wells*, 259 N. C. 173, 130 S. E. (2d) 299

(1963); *Keith v. King*, 263 N.C. 118, 139 S.E.2d 21 (1964).

Cited in *State v. Bournais*, 240 N. C. 311, 82 S. E. (2d) 115 (1954); *Currin v. Williams*, 248 N. C. 32, 102 S. E. (2d) 455 (1958); *Williams v. Sossoman's Funeral Home, Inc.*, 248 N. C. 524, 103 S. E. (2d) 714 (1958); *Tucker v. Moorefield*, 250 N. C. 340, 108 S. E. (2d) 637 (1959); *Hunt v. Cranford*, 253 N. C. 381, 117 S. E. (2d) 18 (1960).

**§ 20-158.1. Erection of "yield right-of-way" signs.**—The State Highway Commission, with reference to State highways, and cities and towns with reference to highways and streets under their jurisdiction, are authorized to designate main traveled or through highways and streets by erecting at the entrance thereto from intersecting highways or streets, signs notifying drivers of vehicles to yield the right-of-way to drivers of vehicles approaching the intersection on the main traveled or through highway. Notwithstanding any other provisions of this chapter, except § 20-156, whenever any such yield right-of-way signs have been so erected, it shall be unlawful for the driver of any vehicle to enter or cross such main traveled or through highway or street unless he shall first slow down and yield the right-of-way to any vehicle in movement on the main traveled or through highway or street which is approaching so as to arrive at the intersection at approximately the same time as the vehicle entering the main traveled or through highway or street. No failure to so yield the right-of-way shall be considered negligence or contributory negligence per se in any action at law for injury to person or property, but the facts relating to such failure to yield the right-of-way may be considered with the other facts in the case in determining whether either party in such action was guilty of negligence or contributory negligence. Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than ten dollars (\$10.00) or imprisoned for not more than ten days. (1955, c. 295; 1957, c. 65, s. 11.)

**Editor's Note.**—The 1957 amendment substituted "State Highway Commission" for "State Highway and Public Works Commission."

**Section Supplements § 20-158.** — *McEwen Funeral Service, Inc. v. Charlotte City Coach Lines, Inc.*, 248 N. C. 146, 102 S. E. (2d) 816 (1958).

### § 20-161. Stopping on highway.

This section is inapplicable to a motor vehicle parked in a residential district in a city or town on a street which constitutes no part of the highway system. *Smith v. Goldsboro Iron & Metal Co.*, 257 N. C. 143, 125 S. E. (2d) 377 (1962).

**The Word "Park", etc.**—

In accord with 2nd paragraph in original. See *Morris v. Jenrette Transport Co.*, 235 N. C. 568, 70 S. E. (2d) 845 (1952); *Meece v. Dickson*, 252 N. C. 300, 113 S. E. (2d) 578 (1960); *Saunders v. Warren*, 264 N.C. 200, 141 S.E.2d 308 (1965).

In accord with 4th paragraph in original. See *Morris v. Jenrette Transport Co.*, 235 N. C. 568, 70 S. E. (2d) 845 (1952).

**Emergency ambulances are expressly excepted** from the requirements of this section. *Upchurch v. Hudson Funeral Home, Inc.*, 263 N.C. 560, 140 S.E.2d 17 (1965).

Quoted in *Johnson v. Bass*, 256 N. C. 716, 125 S. E. (2d) 19 (1962).

*Royal v. McClure*, 244 N. C. 186, 92 S. E. (2d) 762 (1956); *Meece v. Dickson*, 252 N. C. 300, 113 S. E. (2d) 578 (1960).

The uncontradicted statement of defendant, offered in evidence by plaintiff through its witness, and explained by the testimony of defendant, refuted the theory of "a parking" of defendant's tractor-trailer at the place of the collision in question, within the meaning of subsection (a) of this section. *Harris Express v. Jones*, 236 N. C. 542, 73 S. E. (2d) 301 (1952).

**Meaning of Practicable.**—It has been held that the word "practicable" as used in such a statute is not synonymous with

"convenient"; to be sure it is not to be construed as meaning "possible". *Cronenberg v. United States*, 123 F. Supp. 693 (1954).

**"Truck" Includes United States Mobile Post Office Vehicle.**—The word "truck" as used in this section includes a mobile highway post office vehicle. *Cronenberg v. United States*, 123 F. Supp. 693 (1954).

**"Truck" Does Not Include Three-Quarter Ton Truck.**—The part of this section requiring the driver of a truck, trailer or semi-trailer to display red flares or lanterns when disabled upon the highway is not applicable to a three-quarter ton truck. *Freshman v. Stallings*, 128 F. Supp. 179 (1955).

This section has no reference to a mere temporary stop for a necessary purpose when there is no intent to break the continuity of the "travel." *Royal v. McClure*, 244 N. C. 186, 92 S. E. (2d) 762 (1956).

Deputy sheriff did not violate this section when he temporarily stopped his car on the right side of the highway in order to speak to an intoxicated pedestrian. *Skinner v. Evans*, 243 N. C. 760, 92 S. E. (2d) 209 (1956).

The stopping of a police car on a highway solely to enable police officers to determine whether the driver of another car had a driver's license does not constitute a parking of the police car in violation of subsection (a). *Kinsey v. Town of Kenly*, 263 N.C. 376, 139 S.E.2d 686 (1965).

**But Temporary Stop Must Be for Necessary Purpose.**—A temporary stopping must be for a necessary purpose, and under such conditions that it is impossible to avoid leaving such vehicle in such position, that is, occupying traveled portion of the highway, or not leaving the clearance declared in subsection (a). *Melton v. Crotts*, 257 N. C. 121, 125 S. E. (2d) 396 (1962).

**Violation of this section is negligence per se.** *Hughes v. Vestal*, 264 N.C. 500, 142 S.E.2d 361 (1965).

The requirement of setting out proper warning flares is absolute and a violation of it is negligence per se. *Barrier v. Thomas & Howard Co.*, 205 N. C. 425, 117 S. E. 626 (1933); *Caulder v. Gresham*, 224 N. C. 402, 30 S. E. (2d) 312 (1944); and several other cases. The statute requires that red flares or lanterns be displayed "not less than two hundred feet in the front and rear of such vehicle". The flares were placed only 45 feet from the vehicle. *Cronenberg v. United States*, 123 F. Supp. 693 (1954).

A failure to meet the requirements of

this section, relating to the display of warning signals when a truck, etc., is disabled on the highway, convicts of negligence which is actionable if such failure was one of the proximate causes of the collision. *Taylor v. United States*, 156 F. Supp. 763 (1957).

**Automobile Need Not Display Warning Signals.**—The requirement of this section with respect to placing "red flares or lanterns" on the highway applies to trucks, trailers or semitrailers disabled on the highway, and not to automobiles. *Rowe v. Murphy*, 250 N. C. 627, 109 S. E. (2d) 474 (1959).

**But Obligation to Light Vehicle at Night Is Not Affected.**—This section does not conflict with nor reduce the obligation imposed on the operator of a vehicle stopped or parked on the highway at night to light his vehicle as required by §§ 20-129 and 20-134. To the extent that *Meece v. Dickson*, 252 N. C. 300, 113 S. E. (2d) 578 (1960), may be construed as conflicting, it is overruled. *Melton v. Crotts*, 257 N. C. 121, 125 S. E. (2d) 396 (1962).

**Parking on a Paved Highway, etc.**—

The fact that the tail light of defendant's truck after a collision was still burning did not excuse him from leaving it on the paved portion of a highway. *Freshman v. Stallings*, 128 F. Supp. 179 (1955).

**Section Not Violated, etc.**—

The parking of a disabled vehicle as far as possible on the right shoulder, leaving more than 15 feet upon the main traveled portion of the highway for the free passage of traffic, at a place where the drivers of other cars have a clear view of the parked automobile for a distance of more than 200 feet in both directions, is not a violation of this section. *Rowe v. Murphy*, 250 N. C. 627, 109 S. E. (2d) 474 (1959).

**Disabled Truck Not Moved to Shoulder of Highway.**—Where one of the truck's tires was flat and the motor was out of commission, but with the man power present the truck could have been removed onto the shoulder, failure to do so constituted negligence. *Freshman v. Stallings*, 128 F. Supp. 179 (1955).

**Leaving a disabled marine corps wrecker standing on the highway in the nighttime without lights and warning signals required by § 20-134 and this section constituted negligence.** *United States v. First-Citizens Bank & Trust Co.*, 208 F. (2d) 280 (1953), affirming *Rosenblatt v. United States*, 112 F. Supp. 114 (1953).

**Negligence Held Proximate Cause of Collision.**—Negligence of the government's servants in failing to provide proper and statutory warning when a mo-

bile highway post office vehicle became disabled on the highway was held one of the proximate causes of collision and resulting death and injuries. *Cronenberg v. United States*, 123 F. Supp. 693 (1954).

**Right to Assume That Driver of Disabled Truck Will Display Warning Signals.**—A motorist has the right to assume that the driver of any truck becoming disabled on the highway after sundown will display red flares or lanterns as required by this section. *Chaffin v. Brame*, 233 N. C. 377, 64 S. E. (2d) 276 (1951); *United States v. First Citizens Bank & Trust Co.*, 208 F. (2d) 280 (1953), affirming *Rosenblatt v. United States*, 112 F. Supp. 114 (1953); *Towe v. Stokes*, 117 F. Supp. 880 (1954).

Driver of disabled truck has reasonable time to display warning signals. The law will not hold him to be negligent in failing to do that which he has not had time to do. Thus where the plaintiff's car approached before the driver of the defendant's tractor-trailer had time, after it stopped, to get out of the cab, the tractor-trailer was not parked or left standing upon the paved portion of the highway in violation of subdivision (a). *Morris v. Jenrette Transport Co.*, 235 N. C. 568, 70 S. E. (2d) 845 (1952).

The provisions of subsection (a) of this section are limited by subsection (c). *Melton v. Crofts*, 257 N. C. 121, 125 S. E. (2d) 396 (1962).

The word "impossible" in subsection (c) must be construed as meaning that the car must be disabled to the extent that it is not reasonably practical to move the car so as to leave such 15 feet for the free passage of other cars. *Melton v. Crofts*, 257 N. C. 121, 125 S. E. (2d) 396 (1962).

"Impossible" is to be construed in a reasonable practical sense. *Melton v. Crofts*, 257 N. C. 121, 125 S. E. (2d) 396 (1962).

The words "such position" at the end of subsection (c) must not be construed as meaning that, if it was possible for the car to be moved at all, it would be beyond the protection of the statute. "Such position" refers back to the words, "on the paved or improved or main traveled portion of a highway." *Melton v. Crofts*, 257 N. C. 121, 125 S. E. (2d) 396 (1962).

**§ 20-161.1. Regulation of night parking or leaving standing a vehicle at entering into a highway shall permit the burning when such lights face oncoming**

**Guest's contributory negligence barred recovery** from driver for negligence in parking vehicle in violation of this section.

**Exception in Subsection (c) Is Question for Jury.**—

Whether a puncture or blowout is such disablement of a motor vehicle as to justify the driver in stopping partially on the paved portion of the highway is ordinarily a question for the jury unless the facts are admitted. *Melton v. Crofts*, 257 N. C. 121, 125 S. E. (2d) 396 (1962).

**Burden of Proving Application of Subsection (c).**—If plaintiff has established a violation of subsection (a) and defendant relies on subsection (c), defendant must carry the burden of justifying his act in stopping at a proper place and for a permissible period of time. *Melton v. Crofts*, 257 N. C. 121, 125 S. E. (2d) 396 (1962).

**Application Depends upon Facts of Each Case.**—Defendant's claim of protection by virtue of subsection (c) of this section must be tested by the facts of each case. *Melton v. Crofts*, 257 N. C. 121, 125 S. E. (2d) 396 (1962).

**Guest's contributory negligence barred recovery** from driver for negligence in parking vehicle in violation of this section. *Basnigh v. Wilson*, 245 N. C. 548, 96 S. E. (2d) 699 (1957).

**As to negligence of one defendant insulating negligence of other**, see *McLaney v. Anchor Motor Freight, Inc.*, 236 N. C. 714, 74 S. E. (2d) 36 (1953).

**Proximate Cause Is Jury Question.**—Whether a violation of this section is the proximate cause of injury in a particular case is ordinarily a question for the jury. *Hughes v. Vestal*, 264 N.C. 500, 142 S.E.2d 361 (1965).

**Evidence Insufficient to Show Violation as Proximate Cause.** — See *Saunders v. Warren*, 264 N.C. 200, 141 S.E.2d 308 (1965).

**Applied in** *Parrish v. Bryant*, 237 N. C. 256, 74 S. E. 726 (1953); *Chandler v. Forsyth Royal Crown Bottling Co.*, 257 N. C. 245, 125 S. E. (2d) 584 (1962).

**Cited in** *Keener v. Beal*, 246 N. C. 247, 98 S. E. (2d) 19 (1957); *McDonald v. Patton*, 240 F. (2d) 424 (1957); *Correll v. Gaskins*, 263 N.C. 212, 139 S.E.2d 202 (1964).

**parking on highways.** — No person night on a highway or on a side road bright lights of said vehicle to continue traffic. (1953, c. 1052.)

*Basnigh v. Wilson*, 245 N. C. 548, 96 S. E. (2d) 699 (1957).



### § 20-162. Parking in front of fire hydrant, fire station or private driveway.

**Violation of Section a Misdemeanor.**—The violation of this section by parking within 25 feet from the intersection of curb lines at an intersection of highways within a municipality is a misdemeanor, notwithstanding that the prima facie rule of evidence created by § 20-162.1 is invoked. *State v. Rumpfelt*, 241 N. C. 375, 85 S. E. (2d) 398 (1955).

**§ 20-162.1. Prima facie rule of evidence for enforcement of parking regulations.**—Whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found upon any street, alley or other public place contrary to and in violation of the provisions of any statute or of any municipal ordinance limiting the time during which any such vehicle may be parked or prohibiting or otherwise regulating the parking of any such vehicle, it shall be prima facie evidence in any court in the State of North Carolina that such vehicle was parked and left upon such street, alley or public way or place by the person, firm or corporation in whose name such vehicle is then registered and licensed according to the records of the department or agency of the State of North Carolina, by whatever name designated, which is empowered to register such vehicles and to issue licenses for their operation upon the streets and highways of this State; provided, that no evidence tendered or presented under the authorization contained in this section shall be admissible or competent in any respect in any court or tribunal, except in cases concerned solely with violation of statutes or ordinances limiting, prohibiting or otherwise regulating the parking of automobiles or other vehicles upon public streets, highways, or other public places.

Any person convicted pursuant to this section shall be subject to a penalty of \$1.00. (1953, c. 879, ss. 1, 1½.)

**Editor's Note.**—The act inserting this section exempted Madison and Sampson counties. But Session Laws 1953, c. 978, made the section applicable to Sampson County.

For brief comment on this section, see 31 N. C. Law Rev. 410.

**Purpose of Section.**—In *State v. Scoggin*, 236 N. C. 19, 72 S. E. (2d) 54 (1952), the Supreme Court said: "We should not, in the absence of a legislative rule of evidence to the contrary, consider mere ownership of a motor vehicle, parked in violation of a city ordinance, and no more, sufficient to sustain a criminal conviction." It seems apparent that as a result of this decision and the language quoted above therefrom, the General Assembly at its 1953 Session enacted the statute which is

**Rule of Evidence in § 20-162.1 Applies.**—The prima facie rule of evidence created by § 20-162.1 is applicable to prosecutions for violation of this section. *State v. Rumpfelt*, 241 N. C. 375, 85 S. E. (2d) 398 (1955).

Cited in *Basnight v. Wilson*, 245 N. C. 548, 96 S. E. (2d) 699 (1957).

now this section. *State v. Rumpfelt*, 241 N. C. 375, 85 S. E. (2d) 398 (1955).

**Creates No Criminal Offense but Prescribes Rule of Evidence.**—This section creates no criminal offense, but prescribes that when the prima facie rule of evidence therein set forth is relied upon by the State in a criminal prosecution, the punishment shall be a penalty of \$1.00. *State v. Rumpfelt*, 241 N. C. 375, 85 S. E. (2d) 398 (1955).

The word "penalty" is used in this section in the broad sense of punishment and not in the sense of a penalty recoverable in a civil action. *State v. Rumpfelt*, 241 N. C. 375, 85 S. E. (2d) 398 (1955).

**Section Applicable to Violation of § 20-162.**—See note to § 20-162.

### § 20-163. Motor vehicle left unattended; brakes to be set and engine stopped.

**Violation of this section is negligence per se**, but it must be a proximate cause of the injury to be actionable. *Arnett v. Yeago*, 247 N. C. 356, 100 S. E. (2d) 855 (1957); *Watts v. Watts*, 252 N. C. 352, 113 S. E. (2d) 720 (1960).

When a vehicle is parked, subsection (b) of § 20-124 and this section require a setting of the brakes and a violation of these statutes is negligence. *Bundy v. Belue*, 253 N. C. 31, 116 S. E. (2d) 200 (1960).

**Violation Inferred from Runaway Auto-**

**mobile.**—The fact that an automobile ran down the street for a considerable distance immediately after it was parked, permits the inference that plaintiff's intestate did not

turn its front wheels to the curb of the street, as required by § 20-124 and this section. *Watts v. Watts*, 252 N. C. 352, 113 S. E. (2d) 720 (1960).

### § 20-164. Driving on mountain highways.

Applied in *Horton v. Peterson*, 238 N. C. 446, 78 S. E. (2d) 181 (1953).

§ 20-165.1. **One-way traffic.**—In all cases where the State Highway Commission has heretofore, or may hereafter lawfully designate any highway or other separate roadway, under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof, it shall be unlawful for any person to willfully drive or operate any vehicle on said highway or roadway except in the direction so indicated by said signs. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars (\$50.00) or imprisoned for not more than thirty (30) days. (1957, c. 1177.)

**Editor's Note.** — By virtue of Session Laws 1957, c. 65, § 11, "State Highway Commission" has been substituted for "State Highway and Public Works Commission."

**Power of State Illustrated.**—This section and § 20-156 (a) illustrate the power

of the State to regulate the time and manner of entering a public highway. *Moses v. State Highway Comm'n*, 261 N.C. 316, 134 S.E.2d 664 (1964).

Cited in *State Highway Comm'n v. Raleigh Farmers Mkt., Inc.*, 263 N.C. 622, 139 S.E.2d 904 (1965).

§ 20-166. **Duty to stop in event of accident or collision; furnishing information or assistance to injured person, etc.; persons assisting exempt from civil liability.**—(a) The driver of any vehicle involved in an accident or collision resulting in injury or death to any person shall immediately stop such vehicle at the scene of such accident or collision, and any person violating this provision shall upon conviction be punished as provided in § 20-182.

(b) The driver of any vehicle involved in an accident or collision resulting in damage to property and in which there is not involved injury or death of any person shall immediately stop his vehicle at the scene of the accident or collision and shall give his name, address, operator's or chauffeur's license number and the registration number of his vehicle to the driver or occupants of any other vehicle involved in the accident or collision or to any person whose property is damaged in the accident or collision; provided, if the driver or other occupants of the other vehicle or vehicles involved in the accident or collision or the person or persons whose property is damaged in the accident or collision are not known, the driver shall furnish the information required by this subsection to the nearest available peace officer. Any person violating the provisions of this subsection shall be guilty of a misdemeanor and fined or imprisoned, or both, in the discretion of the court.

(c) The driver of any vehicle involved in any accident or collision resulting in injury or death to any person shall also give his name, address operator's or chauffeur's license number and the registration number of his vehicle to the person struck or the driver or occupants of any vehicle collided with, and shall render to any person injured in such accident or collision reasonable assistance, including the carrying of such person to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person, and it shall be unlawful for any person to violate this provision, and such violator shall be punishable as provided in § 20-182.

(d) Any person who renders first aid or emergency assistance at the scene of a motor vehicle accident on any street or highway to any person injured as a result of such accident, shall not be liable in civil damages for any acts or omissions relating to such services rendered, unless such acts or omissions amount to

wanton conduct or intentional wrongdoing. (1937, c. 407, s. 128; 1939, c. 10, ss. 1, 1½; 1943, c. 439; 1951, cc. 309, 794, 823; 1953, cc. 394, 793; c. 1340, s. 1; 1955, c. 913, s. 8; 1965, c. 176.)

**Editor's Note.—**

The first 1953 amendment inserted the words "or collision" at several places in this section. The second 1953 amendment, which added a new subsection, relating to accident reports, was superseded by G. S. 20-166.1. The third 1953 amendment, effective July 1, 1953, repealed former subsections (d)-(g), relating to accident reports now covered by G. S. 20-166.1.

The 1955 amendment, effective July 1, 1955, rewrote subsection (b) and deleted the words "or damage to property" after the word "person" in line two of subsection (c).

The 1965 amendment added subsection (d).

For brief comment on the 1953 amendments, see 31 N. C. Law Rev. 419.

**Purpose.**—The purpose of the requirement that a motorist stop and identify himself is to facilitate investigation. *State v. Smith*, 264 N.C. 575, 142 S.E.2d 149 (1965).

**Driver Must Stop at Scene of Accident.—**

Proof of charge for failure to stop automobile at scene of accident held wholly lacking. *State v. Wall*, 243 N. C. 238, 90 S. E. (2d) 383 (1955).

**Failure to stop is the gist of the offense.** *State v. Smith*, 264 N.C. 575, 142 S.E.2d 149 (1965).

**Section does not restrict offense to public highway.** *State v. Smith*, 264 N.C. 575, 142 S.E.2d 149 (1965).

**Failure to Stop or Flight from Scene as Evidence of Conscious Wrong.**—A defendant's failure to stop as required by this section, or immediate flight from scene of the injury, affords sufficient evidence of conscious wrong, or dereliction on his part, to warrant the jury in so concluding *Edwards v. Cross*, 233 N. C. 354, 64 S. E. (2d) 6 (1951).

**Failure to Give Name, Address, etc.**—Defendant cannot be convicted of charge that he failed to give his name, address, etc., as required by subsection (c) where the evidence showed that all others involved in the accident were either killed or so seriously injured that there was no one to whom defendant could give a report. *State v. Wall*, 243 N. C. 238, 90 S. E. (2d) 383 (1955).

Evidence by the State was to the effect that the injured party was unconscious after the accident and, certainly, no useful

purpose could have been served by undertaking to give the unconscious man the information required by this section. The law does not require a party to do a vain and useless thing. *State v. Coggin*, 263 N.C. 457, 139 S.E.2d 701 (1965).

**Person Instantly Killed.**—A defendant may not be convicted of failing to give assistance to a person injured in a collision when the evidence discloses that such person was instantly killed in the collision. *State v. Wall*, 243 N. C. 238, 90 S. E. (2d) 383 (1955).

**Warrant Charging Violation of Subdivision (c).**—A warrant which charges that the defendant, while driving a motor vehicle, was involved in an accident and left the scene without complying with the requirements of subdivision (c) of this section fails to charge the commission of any criminal offense. *State v. Morris*, 235 N. C. 393, 70 S. E. (2d) 23 (1952).

**Failure of indictment to designate street or highway on which collision occurred is not fatal.** *State v. Smith*, 264 N.C. 575, 142 S.E.2d 149 (1965).

**Warrant May Cure Defective Indictment in Case Transferred for Jury Trial. —**

Where a prosecution for violating this section, a misdemeanor in the exclusive jurisdiction of a municipal-county court, is transferred to the superior court upon defendant's demand for a jury trial, the jurisdiction of the superior court is limited to the charge in the warrant; therefore, the warrant constitutes an essential part of the record, so that any failure of the indictment to identify the property damaged and the owner thereof is cured when the warrant supplies this information, thus affording defendant protection against another prosecution for the same offense. *State v. Smith*, 264 N.C. 575, 142 S.E.2d 149 (1965).

**What State Must Prove to Secure Conviction.**—In order to convict the defendant on a count which charged a violation of subsection (a) of this section, it was necessary for the State to prove that on the occasion in question, the defendant was the operator of a named automobile which the State contended drove down a given street; that this vehicle was involved in an accident or collision with the alleged victim; and that knowing he had struck the victim, the defendant failed to stop his vehicle immediately at the scene. *State v. Overman*, 257 N. C. 464, 125 S. E. (2d) 920 (1962).

To secure a conviction on a count which charged a violation of subsection (c), the State was required to prove that the defendant was the operator of a vehicle which had been involved in an accident or collision which resulted in injury to the alleged victim; that defendant failed to give his name, address, operator's license number, and the registration number of his vehicle to the alleged victim; that it was apparent that medical treatment was necessary to the alleged victim but that defendant failed to render him reasonable assistance, including carrying him to a physician or surgeon for medical treatment. *State v. Overman*, 257 N. C. 464, 125 S. E. (2d) 920 (1962).

If the State satisfied the jury beyond a reasonable doubt that defendant was the driver of an automobile involved in an accident resulting in injuries to the six named persons in the indictment, and did unlawfully, wilfully, and feloniously fail to stop such automobile at the scene of the accident, it would be sufficient to justify the conviction of the defendant on the first count in the indictment; it would not be necessary for the State to prove that all of the six named persons were killed, as alleged in the indictment. *State v. Wilson*, 264 N.C. 373, 141 S.E.2d 801 (1965).

**Absence of Fault No Defense.**—Absence of fault on the part of the driver is not a defense to the charge of failure to stop. *State v. Smith*, 264 N.C. 575, 142 S.E.2d 149 (1965).

**Evidence Sufficient for Jury.**—

Evidence held sufficient to take case to

jury as to whether defendant failed to render reasonable assistance to injured persons as required by this section. *State v. Wall*, 243 N. C. 238, 90 S. E. (2d) 383 (1955).

**Instruction.**—

The defendant was entitled to have the trial judge instruct the jury that the burden was on the State to establish beyond a reasonable doubt that the defendant knowingly or intentionally failed to render reasonable assistance to his injured passenger, including the carrying of him to a physician or surgeon for medical or surgical treatment if it was apparent that such treatment was necessary. *State v. Coggin*, 263 N.C. 457, 139 S.E.2d 701 (1965).

**Guest Passenger Not Ipso Facto Guilty as Aider and Abettor.**—If the owner and driver of an automobile fails to stop and give his name, address and license number, after an accident resulting in injury to a person, in violation of this section, an occupant of the car, merely because he is a guest passenger in the car driven by the owner, is not guilty as an aider and abettor. *State v. Dutch*, 246 N. C. 438, 98 S. E. (2d) 475 (1957).

**Applied in** *State v. Smith*, 238 N. C. 82, 76 S. E. (2d) 363 (1953); *State v. Nall*, 239 N. C. 60, 79 S. E. (2d) 354 (1953); *State v. Hollingsworth*, 263 N.C. 158, 139 S.E.2d 235 (1964).

**Cited in** *State v. Collins*, 247 N. C. 248, 100 S. E. (2d) 492 (1957); *Punch v. Landis*, 258 N. C. 114, 128 S. E. (2d) 224 (1962).

### § 20-166.1. Reports and investigations required in event of collision.

—(a) The driver of a vehicle involved in a collision resulting in injury to or death of any person or total property damage to an apparent extent of one hundred dollars (\$100.00) or more shall immediately, by the quickest means of communication, give notice of the collision to the local police department if the collision occurs within a municipality, or if the collision occurs outside of a municipality to the nearest station of the State Highway Patrol or to the office of the sheriff or other qualified rural police of the county wherein the collision occurred.

(b) The driver of any vehicle involved in a collision resulting in injury to or death of any person or total property damage to an apparent extent of one hundred dollars (\$100.00) or more, shall, within twenty-four hours after the collision, forward a written report of the collision to the Department.

(c) Notwithstanding any other provisions of this section, the driver of any motor vehicle which collides with another motor vehicle left parked or unattended on any street or highway of this State shall immediately report the collision to the owner of such parked or unattended motor vehicle. Such report shall include the time, date and place of the collision, the driver's name, address, operator's or chauffeur's license number and the registration number of the vehicle being operated by the driver at the time of the collision, and such report may be oral or in writing.

In the event the driver is for any reason unable to make the report required

by the preceding paragraph, such driver shall make and file a report of the collision in the same manner and subject to the same requirements as in the case of a collision as provided in subsections (a) and (b) of this section. Notwithstanding other provisions of this section, any report made pursuant to either paragraph of this subsection shall be competent in any civil action for the sole purpose of establishing the identity of the person operating the moving vehicle at the time of colliding with the parked or unattended vehicle. The other provisions of this section shall be applicable to such reports except when the same are in conflict with those specifically set out in this subsection. Provided, the report required in the event that the driver is unable to report the collision to the owner of the parked or unattended vehicle shall be made in all cases regardless of the amount of the damage incurred.

Any person who violates this subsection is guilty of a misdemeanor and shall be punishable by fine or imprisonment, or both, in the discretion of the court.

(d) The Department may require the driver of a vehicle involved in a collision which is required to be reported by this section to file a supplemental report when the original report is insufficient in the opinion of the department, and the Department may require witnesses of a collision to render reports.

(e) It shall be the duty of the State Highway Patrol or the sheriff's office or other qualified rural police to investigate all collisions required to be reported by this section when the collisions occur outside the corporate limits of a city or town; and it shall be the duty of the police department of each city or town to investigate all collisions required to be reported by this section when the collisions occur within the corporate limits of the city or town. Every law enforcement officer who investigates a collision as required by this subsection, whether the investigation is made at the scene of the collision or by subsequent investigations and interviews, shall, within twenty-four hours after completing the investigation, forward a written report of the collision to the Department if the collision occurred outside the corporate limits of a city or town, or to the police department of the city or town if the collision occurred within the corporate limits of such city or town. Police departments should forward such reports to the Department within ten days of the date of the collision. Provided, when a collision occurring outside the corporate limits of a city or town is investigated by a duly qualified law enforcement officer other than a member of the State Highway Patrol, as permitted by this section, such other officer shall forward a written report of the collision to the office of the sheriff or rural police of the county wherein the collision occurred and the office of the sheriff or rural police shall forward such reports to the Department within ten days of the date of the collision. The reports by law enforcement officers shall be in addition to, and not in place of, the reports required of drivers by this section.

When any person involved in an automobile collision shall die as a result of said collision within a period of twelve months following said collision, and such death shall not have been reported in the original report, it shall be the duty of investigating enforcement officers to file a supplemental report setting forth the death of such person.

(f) Every person holding the office of coroner in this State shall report to the Department the death of any person as a result of a collision involving a motor vehicle and the circumstances of the collision within five days following such death. Every hospital shall notify the coroner of the county in which the collision occurred of the death within the hospital of any person who dies as a result of injuries apparently sustained in a collision involving a motor vehicle.

(g) With respect to a collision between a common carrier and another vehicle, which collision is required to be reported by this section, the common carrier shall make a written report of the collision to the Department within ten days from the date of the collision, and the report shall be in addition to the report required of the driver. When the original report submitted by a common

carrier is insufficient in the opinion of the Department, the Department may require it to file a supplemental report.

(h) The Department shall prepare and shall upon request supply to police, coroners, sheriffs, and other suitable agencies, or individuals, forms for collision reports calling for sufficiently detailed information to disclose with reference to a highway collision the cause, conditions then existing, and the persons and vehicles involved. All collision reports required by this section shall be made on forms supplied or approved by the Department.

(i) All collision reports, including supplemental reports, above mentioned, except those made by State, city or county police, shall be without prejudice and shall be for the use of the Department and shall not be used in any manner as evidence, or for any other purpose in any trial, civil or criminal, arising out of such collision except that the Department shall furnish upon demand of any court a properly executed certificate stating that a particular collision report has or has not been filed with the Department solely to prove a compliance with this section.

The reports made by State, city, or county police, and coroners but no other reports required under this section shall be subject to the inspection of members of the general public at all reasonable times, and the Department shall furnish a copy of any such report to any member of the general public who shall request the same, upon receipt of a fee of one dollar (\$1.00) for a certified copy, or fifty cents (50¢) for an uncertified copy. The Department is authorized to furnish without charge to departments of the governments of the United States, states, counties, and cities certified or uncertified copies of such collision reports for official use. Funds received under the provisions of this subsection shall be used by the Department to defray the costs of furnishing copies of reports authorized by this section and shall be in addition to any funds appropriated by the General Assembly.

Nothing herein provided shall prohibit the Department from furnishing to interested parties only the name or names of insurers and insured and policy number shown upon any reports required under this section.

(j) The Department shall receive collision reports required to be made by this section and may tabulate and analyze such reports and publish annually, or at more frequent intervals, statistical information based thereon as to the number, cause and location of highway collisions.

Based upon its findings after analysis, the Department may conduct further necessary detailed research to determine more fully the cause and control of highway collisions. It may further conduct experimental field tests within areas of the State from time to time to prove the practicability of various ideas advanced in traffic control and collision prevention. (1953, c. 1340, s. 2; 1955, c. 913, s. 9; 1963, c. 1249; 1965, c. 577.)

**Cross Reference.**—See note to § 20-166

**Editor's Note.**—The act inserting this section became effective July 1, 1953.

The 1955 amendment, effective July 1, 1955, added the proviso to the second paragraph of subsection (c).

The 1963 amendment deleted the word "certified" formerly preceding the word "copy" near the middle of the first sentence of the second paragraph of subsection (i), added "for a certified copy, or fifty cents (50¢) for an uncertified copy" at the end of such sentence, and added

the last sentence of the second paragraph in subsection (i).

The 1965 amendment added the third paragraph in subsection (i).

For brief comment on this section, see 31 N. C. Law Rev. 419.

**Applied in** *Lane v. Iowa Mut. Ins. Co.*, 258 N. C. 318, 128 S. E. (2d) 398 (1962).

**Stated in** *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

**Cited in** *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

§ 20-169. **Powers of local authorities.** — Local authorities, except as expressly authorized by § 20-141 and § 20-158 shall have no power or authority to alter any speed limitations declared in this article or to enact or enforce any rules or regulations contrary to the provisions of this article, except that local

authorities shall have power to provide by ordinances for the regulation of traffic by means of traffic or semaphores or other signaling devices on any portion of the highway where traffic is heavy or continuous and may prohibit other than one-way traffic upon certain highways, and may regulate the use of the highways by processions or assemblages and except that local authorities shall have the power to regulate the speed of vehicles on highways in public parks, but signs shall be erected giving notices of such special limits and regulations. Signaling devices of a stop light nature erected pursuant to this section and which emit alternate red and green lights shall be so arranged and placed that the red light shall appear at the top and the green light shall appear at the bottom of the signaling unit. Provided, that all traffic signs, signals, markings, islands, and all other traffic control devices installed or erected on streets or highways on the State highway system within the corporate limits of a municipality shall be subject to the approval of the State Highway Commission and be installed or erected in substantial conformance with the specifications set forth in the Manual on Uniform Traffic Control Devices for Streets and Highways, or any subsequent revisions of the same, published by the United States Department of Commerce, Bureau of Public Roads and dated June, 1961. Provided further that the State Highway Commission is authorized and directed to assume the cost of installing and erecting such traffic control devices provided the same are installed and erected with the approval of the State Highway Commission and in conformity with this section, and the State Highway Commission is authorized and directed to assume the costs of altering existing traffic control devices on the State highway system to conform to the said specifications set out above. (1937, c. 407, s. 131; 1949, c. 947, s. 2; 1955, c. 384, s. 2; 1963, c. 559.)

**Local Modification.** — City of Greensboro: 1953, c. 1075.

**Editor's Note.**—The 1955 amendment, effective July 1, 1955, added the second sentence.

The 1963 amendment, effective Oct. 1, 1963, added the two provisos at the end of the section.

**Automatic Traffic Control Signals.**—In consequence of this section, a town acted within the limits of its authority as a municipal corporation in installing its automatic traffic control signals and enacting an ordinance to compel their observance. *Cox v. Hennis Freight Lines*, 236 N. C. 72, 72 S. E. (2d) 25 (1952).

This section authorizes municipal corporations to install automatic traffic control signals and compel their observance by ordinance. *Upchurch v. Hudson Funeral Home, Inc.*, 263 N.C. 560, 140 S.E.2d 17 (1965).

**Ambulances May Be Required to Observe Lights.**—The provisions of this section are sufficiently broad to authorize the adoption of an ordinance requiring ambu-

lances to observe traffic lights. *Upchurch v. Hudson Funeral Home, Inc.*, 263 N.C. 560, 140 S.E.2d 17 (1965).

**Violation of Ordinance Negligence Per Se.** — The violation of a valid ordinance adopted pursuant to this section requiring a motorist to stop in obedience to a red traffic control signal is negligence per se. *Curran v. Williams*, 248 N. C. 32, 102 S. E. (2d) 455 (1958).

**Legal Rights Depend on Ordinance.**—When automatic traffic control signals are installed pursuant to municipal ordinance authorized by this section, the respective rights of motorists depend upon the provisions of the particular ordinance authorizing such installation. *Cogdell v. Taylor*, 264 N.C. 424, 142 S.E.2d 36 (1965).

**Allegation and Proof of Ordinance.**—Before legal rights may be predicated on an ordinance regulating traffic by means of automatic signal control devices, such an ordinance must be alleged and established by proper evidence. *Smith v. Buie*, 243 N. C. 209, 90 S. E. (2d) 514 (1955).

## Part 11. Pedestrians' Rights and Duties.

### § 20-172 Pedestrians subject to traffic control signals.

Quoted in *Spencer v. McDowell Motor Co.*, 236 N. C. 239, 72 S. E. (2d) 598 (1952).

**§ 20-173. Pedestrians' right-of-way at cross-walks.**

**Relative Rights of Pedestrians and Motorists in Absence of Signals.**—In the absence of signals controlling traffic, the relative rights of pedestrians and motorists are prescribed by this section and § 20-174. *Griffin v. Pancoast*, 257 N. C. 52, 125 S. E. (2d) 310 (1962).

Both pedestrian and motorist have the right to assume the other will obey the rules of the road and accord the right-of-way to the one having that privilege. *Griffin v. Pancoast*, 257 N. C. 52, 125 S. E. (2d) 310 (1962).

**Pedestrian's Right-of-Way Not Affected by Failure to Mark Cross-Walk.**—If a pedestrian was crossing at an intersection, as

defined in § 20-38 (1), he had the right-of-way, and that right was not affected by the failure to mark a place at the intersection for pedestrians to use in crossing. *Griffin v. Pancoast*, 257 N. C. 52, 125 S. E. (2d) 310 (1962).

Applied in *Keaton v. Blue Bird Taxi Co.*, 241 N. C. 589, 86 S. E. (2d) 93 (1955); *Falls v. Williams*, 261 N.C. 413, 134 S.E.2d 670 (1964); *Blake v. Mallard*, 262 N.C. 62, 136 S.E.2d 214 (1964); *Nix v. Earley*, 263 N.C. 795, 140 S.E.2d 402 (1965).

Cited in *Spencer v. McDowell Motor Co.*, 236 N. C. 239, 72 S. E. (2d) 598 (1952); *Reeves v. Campbell*, 264 N.C. 224, 141 S.E.2d 296 (1965).

**§ 20-174. Crossing at other than cross-walks.**

**Cross Reference.**—See note to § 20-173.

**Crossing between Adjacent Intersections, etc.**—

In accord with original. See *Bass v. Roberson*, 261 N.C. 125, 134 S.E.2d 157 (1964).

It is unlawful for a pedestrian to cross between intersections at which traffic control signals are in operation except in a marked cross-walk, but where a pedestrian violates this provision a motorist is nonetheless required to exercise due care to avoid colliding with him. *State v. Call*, 236 N. C. 333, 72 S. E. (2d) 752 (1952).

**Duty of Pedestrian to Yield Right of Way.**—

A pedestrian crossing the highway at a place which is not within a marked cross-walk or within an unmarked cross-walk at an intersection, is under duty to yield the right of way to vehicles along the highway, subject to the duty of a motorist to exercise due care to avoid colliding with any pedestrian and to give warning by sounding horn whenever necessary. *Garmon v. Thomas*, 241 N. C. 412, 85 S. E. (2d) 589 (1955).

If a pedestrian was not injured at an intersection but was struck when he stepped into a street at some point between one intersection and the next, the motorist would have the right of way. This right of way would, of course, be subject to the provisions of subsection (e). *Griffin v. Pancoast*, 257 N. C. 52, 125 S. E. (2d) 310 (1962).

**And to Keep Timely Lookout.**—It is the duty of pedestrians to look before starting across a highway and, in the exercise of reasonable care for their own safety, to keep a timely lookout for approaching motor traffic on the highway to see what should have been seen and could have

been seen if they looked before starting across the highway. *Rosser v. Smith*, 260 N.C. 647, 133 S.E.2d 499 (1963).

**Motorist May Assume Pedestrian Will Obey Law.**—Where a pedestrian elects not to cross an intersection at a point where he has the right of way, but at a point where the motorist has the right of way, the motorist has the right to assume, until put on notice to the contrary, that the pedestrian will obey the law and yield the right of way. *Jenkins v. Thomas*, 260 N.C. 768, 133 S.E.2d 694 (1963).

**Pedestrian Need Not Yield, etc.**—

A pedestrian crossing an intersection as defined by § 20-38 (1), even though there is no marked cross-walk at that point, has the right of way over a motorist traversing the intersection. *Jenkins v. Thomas*, 260 N.C. 768, 133 S.E.2d 694 (1963).

**Walking on Traveled, etc.**—

It is unlawful to walk on the right-hand shoulder of a highway along the traveled portion thereof. *Simpson v. Wood*, 260 N.C. 157, 132 S.E.2d 369 (1963).

A pedestrian walking on the right-hand side of the highway, along the traveled portion thereof, does not have to be on the hard surface or the traveled portion thereof to be in violation of this section. *Simpson v. Wood*, 260 N.C. 157, 132 S.E.2d 369 (1963).

Evidence that plaintiff was walking about two feet from the pavement on the right-hand side of the highway was sufficient to establish a violation of this section, which was evidence of negligence to be considered along with the other facts and circumstances involved in determining whether or not the plaintiff was guilty of contributory negligence. *Simpson v. Wood*, 260 N.C. 157, 132 S.E.2d 369 (1963).

**Violation of Section Not Negligence Per**



Se.—The violation by a pedestrian of subsections (a), (b) and (e) of this section is not negligence per se, but is evidence to be considered along with other evidence upon the question of such pedestrian's negligence. *Moore v. Bezalla*, 241 N. C. 190, 84 S. E. (2d) 817 (1954); *Simpson v. Curry*, 237 N. C. 260, 74 S. E. (2d) 649 (1953).

**Pedestrian Held Guilty of Contributory Negligence.**—Plaintiff was guilty of contributory negligence as a matter of law in failing to yield the right of way to defendant's vehicle, which he should have seen in time to have avoided the injury if he had exercised reasonable care for his own safety and kept a timely lookout. *Garmon v. Thomas*, 241 N. C. 412, 85 S. E. (2d) 589 (1955).

**The failure of a pedestrian to yield the right of way as required by subsection (a) is not contributory negligence per se, but is evidence to be considered with other evidence in the case upon the issue.** *Citizens Nat. Bank v. Phillips*, 236 N. C. 470, 73 S. E. (2d) 323 (1952); *Simpson v. Curry*, 237 N. C. 260, 74 S. E. (2d) 649 (1953); *Goodson v. Williams*, 237 N. C. 291, 74 S. E. (2d) 762 (1953); *Landini v. Steelman*, 243 N. C. 146, 90 S. E. (2d) 377 (1955); *Gamble v. Sears*, 252 N. C. 706, 114 S. E. (2d) 677 (1960).

It is to be left to the jury to consider a violation of this section as evidence of negligence along with the other evidence in determining whether or not a pedestrian contributed to his own injury and was, therefore, guilty of contributory negligence. *Simpson v. Wood*, 260 N.C. 157, 132 S.E.2d 369 (1963).

The failure of a pedestrian crossing a roadway at a point other than a crosswalk to yield the right of way to a motor vehicle is not contributory negligence per se; it is only evidence of negligence. *Holloway v. Holloway*, 262 N.C. 258, 136 S.E.2d 559 (1964); *Blake v. Mallard*, 262 N.C. 62, 136 S.E.2d 214 (1964).

However, the court will nonsuit a plaintiff-pedestrian on the ground of contributory negligence when all the evidence so clearly establishes his failure to yield the right of way as one of the proximate causes of his injuries that no other reasonable conclusion is possible. *Blake v. Mallard*, 262 N.C. 62, 136 S.E.2d 214 (1964).

**Duty to Avoid Striking Pedestrian Who Fails to Yield Right of Way.**—Even though a pedestrian failed to yield the right of way as required by this section, it was the duty of the driver of an approaching vehicle, both at common law and un-

der the express provisions of subsection (e), to "exercise due care to avoid colliding with" the pedestrian. *Simpson v. Curry*, 237 N. C. 260, 74 S. E. (2d) 649 (1953); *Landini v. Steelman*, 243 N. C. 146, 90 S. E. (2d) 377 (1955); *Gamble v. Sears*, 252 N. C. 706, 114 S. E. (2d) 677 (1960).

It is the duty of a motor vehicle operator both at common law and under the express provisions of this section to "exercise due care to avoid colliding" with pedestrians on the highway. *Rosser v. Smith*, 260 N.C. 647, 133 S.E.2d 499 (1963).

**Warning Should Be Given Pedestrian.**—

A workman crossing a highway in an area marked by signs reading "Men Working" is in a lawful place where he has a right to be, and when apparently oblivious of danger, he is entitled to a signal of approach as much as, if not more than, an ordinary pedestrian in the highway. *Kellogg v. Thomas*, 244 N. C. 722, 94 S. E. (2d) 903 (1956).

**Duty of Motorist to Child.**—This section imposes upon a driver the legal duty to exercise proper precaution to avoid injury to a child if by the exercise of reasonable care he can and should observe the child upon the street. *Washington v. Davis*, 249 N. C. 65, 105 S. E. (2d) 202 (1958).

In a prosecution for manslaughter in the deaths of two small boys who were struck by defendant's car as defendant was attempting to pass another vehicle traveling in the same direction, evidence that the children were walking on the hard surface when they were struck and that the preceding car speeded up as defendant attempted to pass it, requires the court to instruct the jury upon the conduct of the children in walking on the hard surface and the conduct of the other driver in increasing his speed as bearing upon the question of whether defendant's negligence was a proximate cause of the deaths. *State v. Harrington*, 260 N.C. 663, 133 S.E.2d 452 (1963).

**Duty Where Pedestrian Oblivious to Danger.**—Where a pedestrian elects not to cross an intersection at a point where he has the right of way, but at a point where the motorist has the right of way, the mere fact that the pedestrian is oblivious to danger does not impose a duty on the motorist to yield the right of way; that duty arises when, and only when, the motorist sees, or in the exercise of reasonable care should see, that the pedestrian is not aware of the approaching danger and for

that reason will continue to expose himself to peril. *Jenkins v. Thomas*, 260 N.C. 768, 133 S.E.2d 694 (1963).

**Subsection (e) States the Common Law.—**

Independent of statute, it is the duty of the motorist at common law to exercise due care to avoid colliding with a pedestrian. *Gamble v. Sears*, 252 N. C. 706, 114 S. E. (2d) 677 (1960).

Subsection (e) of this section states the common-law rule of negligence. *Gathings v. Sehorn*, 255 N. C. 503, 121 S. E. (2d) 873 (1961).

**Instruction as to Crossing between Intersections Held Error.—**Where all the evidence tended to show that the injured pedestrian had crossed the street in the middle of a block between intersections at which traffic control signals were in operation, and there was no evidence that there was a marked cross-walk at the place, an instruction to the effect that the pedestrian had a right to cross in the middle of the block and that motorists were under duty to do what was necessary for her protection, constituted prejudicial error. *State v. Call*, 236 N. C. 333, 72 S. E. (2d) 752 (1952).

**Instructions as to Walking on Traveled Portion of Highway.—**Where the evidence is conflicting as to whether plaintiff pedestrian was walking on her left-hand or her right-hand side of the highway, the court should charge the jury on the various aspects of the evidence to the effect that if she was walking on her left-hand side of the highway it was her duty to yield the right of way to vehicles upon the roadway, and that if she was walking on her right-hand side it was in violation of the statute, subsections (a) and (d) of this section, and an instruction that the duty of a pedestrian to yield the right of way applies only to traffic approaching from the front when he

is walking on his left side of the highway, must be held for error. *Spencer v. McDowell Motor Co.*, 236 N. C. 239, 72 S. E. (2d) 598 (1952).

**Failure to Charge Statute.—**Where the jury found that defendant was negligent, failure to charge specifically on this statute would not be prejudicial to plaintiff. *Gathings v. Sehorn*, 255 N. C. 503, 121 S. E. (2d) 873 (1961).

**Evidence Sufficient to Show Noncompliance with Subsection (e).—**See *Register v. Gibbs*, 233 N. C. 456, 64 S. E. (2d) 280 (1951).

**Evidence Disclosing Contributory Negligence of Pedestrian. —**See *Barbee v. Perry*, 246 N. C. 538, 98 S. E. (2d) 794 (1957).

**Evidence Warranting Nonsuit. —**Evidence disclosing that plaintiff-pedestrian, instead of crossing at an intersection where he had the right of way, elected to cross some 100 feet south of the intersection, and that he was struck by defendant motorist who was traveling, with his lights on, some 25 miles per hour in a 35 mile per hour zone, was held to warrant nonsuit in the absence of evidence not only that plaintiff was oblivious to the danger but that defendant saw, or in the exercise of reasonable care should have seen, that plaintiff was not aware of the approaching danger. *Jenkins v. Thomas*, 260 N.C. 768, 133 S.E.2d 694 (1963).

Applied in *Combs v. United States*, 122 F. Supp. 280 (1954) (as to subsection (e)); *Holland v. Malpass*, 255 N. C. 395, 121 S. E. (2d) 576 (1961) (as to subsection (a)); *Nix v. Earley*, 263 N.C. 795, 140 S.E.2d 402 (1965).

Cited in *Keaton v. Blue Bird Taxi Co.*, 241 N. C. 589, 86 S. E. (2d) 93 (1955); *Jenks v. Morrison*, 258 N. C. 96, 127 S. E. (2d) 895 (1962).

**§ 20-174.1. Sitting or lying upon highways or streets prohibited.—**(a) No person shall wilfully stand, sit, or lie upon the highway or street in such a manner as to impede the regular flow of traffic.

(b) Any person convicted of violating this section shall be punished by fine or imprisonment, or both in the discretion of the court. (1965, c. 137.)

**§ 20-175. Pedestrians soliciting rides, employment, business or funds upon highways or streets.—**(a) No person shall stand in any portion of the State highways, except upon the shoulders thereof, for the purpose of soliciting a ride from the driver of any motor vehicle.

(b) No person shall stand or loiter in the main traveled portion, including the shoulders and median, of any State highway or street, excluding sidewalks, or stop any motor vehicle for the purpose of soliciting employment, business or contributions from the driver or occupant of any motor vehicle that impedes the normal movement of traffic on the public highways or streets: Provided that the

provisions of this subsection shall not apply to licensees, employees or contractors of the State Highway Commission or of any municipality engaged in construction or maintenance or in making traffic or engineering surveys.

(c) Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars (\$50.00) or imprisoned for not more than thirty (30) days. (1937, c. 407, s. 136; 1965, c. 673.)

**Editor's Note.**—The 1965 amendment rewrote this section.

#### Part 12. Penalties.

§ 20-176. **Penalty for misdemeanor.**—(a) It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this article unless such violation is by this article or other law of this State declared to be a felony.

(b) Unless another penalty is in this article or by the laws of this State provided, every person convicted of a misdemeanor for the violation of any provision of this article shall be punished by a fine of not more than one hundred dollars (\$100.00) or by imprisonment in the county or municipal jail for not more than sixty days, or by both such fine and imprisonment: Provided, that upon conviction for the following offenses—operating motor vehicles without displaying registration number plates issued therefor; permitting or making any unlawful use of registration number plates, or permitting the use of registration by a person not entitled thereto, and violation of §§ 20-116, 20-117, 20-122, 20-123, 20-124, 20-125, 20-126, 20-127, 20-128, 20-129, 20-130, 20-131, 20-132, 20-133, 20-134, 20-142, 20-143, 20-144, 20-146, 20-147, 20-148, 20-150, 20-151, 20-152, 20-153, 20-154, 20-155, 20-156, 20-157, 20-159, 20-160, 20-161, 20-162, 20-163, 20-165—the punishment therefor shall be a fine not to exceed fifty dollars (\$50.00), or imprisonment not to exceed thirty days for each offense. (1937, c. 407, s. 137; 1951, c. 1013, s. 7; 1957, c. 1255.)

**Editor's Note.**—

The 1957 amendment deleted "and not less than ten dollars (\$10.00)" formerly appearing after "\$50.00" near the end of the section.

**Driving Without Lights.** — Subsection (b) prescribes punishment for driving a motor vehicle without lights during the period from a half hour after sunset to a half hour before sunrise in violation of § 20-129. *State v. Eason*, 242 N. C. 59, 86 S. E. (2d) 774 (1955).

Operating a motor vehicle on a public highway at night and without lights is a violation of § 20-129. Such violation is a misdemeanor under this section, and is negligence per se. *Williamson v. Varner*, 252 N. C. 446, 114 S. E. (2d) 92 (1960).

The violation of § 20-162 by parking within 25 feet from the intersection of curb lines at an intersection of highways within a municipality is a misdemeanor, notwithstanding that the prima facie rule of evidence created by § 20-162.1 is invoked. *State v. Rumpfelt*, 241 N. C. 375, 85 S. E. (2d) 398 (1955).

Applied in *State v. Daughtry*, 236 N. C. 316, 72 S. E. (2d) 658 (1952).

Cited in *Hinson v. Dawson*, 241 N. C. 714, 86 S. E. (2d) 585 (1955); *State v. Baucom*, 244 N. C. 61, 92 S. E. (2d) 426 (1956); *McEwen Funeral Service, Inc. v. Charlotte City Coach Lines, Inc.*, 248 N. C. 146, 102 S. E. (2d) 816 (1958).

§ 20-178. **Penalty for bad check.**—When any person, firm, or corporation shall tender to the Department any uncertified check for payment of any tax, fee or other obligation due by him under the provisions of this article and the bank upon which such check shall be drawn, shall refuse to pay it on account of insufficient funds of the drawer on deposit in such bank, and such check shall be returned to the Department, an additional tax shall be imposed by the Department upon such person, firm or corporation, which additional tax shall be equal to ten per cent (10%) of the tax or fee in payment of which such check was tendered: Provided, that in no case shall the additional tax be less than one dol-

lar (\$1.00); provided, further, that no additional tax shall be imposed if, at the time such check was presented for payment, the drawer had on deposit in any bank of this State funds sufficient to pay such check and by inadvertence failed to draw the check upon such bank, or upon the proper account therein. The additional tax imposed by this section shall not be waived or diminished by the Department. (1937, c. 407, s. 139; 1953, c. 1144.)

**Editor's Note.** — The 1953 amendment rewrote this section.

### § 20-179. Penalty for driving while under the influence of intoxicating liquor or narcotic drugs.

**Section Relates Only to Punishment.**— This section, with respect to second, third, and subsequent offenses, relates only to punishment. *State v. White*, 246 N. C. 587, 99 S. E. (2d) 772 (1957).

**Revocation of License Not Part of Punishment Fixed by Court.**— See G. S. 20-17 and note.

**Suspension of Sentence on Condition Defendant Not Operate Motor Vehicle during Period of Suspension.**— Upon defendant's conviction of operating a motor vehicle while under the influence of intoxicating beverage, the court may not suspend judgment upon condition that the defendant not operate a motor vehicle upon the public roads during the period of suspension unless defendant consents thereto, expressly or by implication. *State v. Cole*, 241 N. C. 576, 86 S. E. (2d) 203 (1955).

**Procedure in Prosecution for Subsequent Offense.**— No more evidence is required to convict a defendant for "drunk driving" pursuant to the provisions of this section for a second, third, or subsequent offense than is required for a conviction for a first offense, the only difference being that the State in such cases is required to allege and prove the second, third, or subsequent offenses before it is entitled to subject the accused to the higher penalty. Furthermore, in such cases, the defendant is entitled to know whether or not the State is seeking to exact a higher penalty because of a previous conviction or convictions. *State v. White*, 246 N. C. 587, 99 S. E. (2d) 772 (1957).

**Allegation of Prior Conviction.** — To make a person subject to the infliction of the heavier punishment to be imposed by the court for a second offense of driving while under the influence of intoxicating liquor or narcotic drugs, pursuant to this section, it is necessary that a prior conviction be alleged in the indictment or warrant for the second offense. *Harell v. Scheidt*, 243 N. C. 735, 92 S. E. (2d) 182 (1956).

**Effect of Allegation in Warrant.** — Where the violation charged in the origi-

nal warrant in the recorder's court alleged such violation as being a second offense, and the jurisdiction of the superior court was derivative, the superior court had no power to impose a penalty greater than that provided for a second offense, although the indictment in the superior court charged the violation as a third offense. *State v. White*, 246 N. C. 587, 99 S. E. (2d) 772 (1957).

**Question of Former Conviction Should Be Submitted to Jury.**— Where there is allegation and evidence that defendant had been adjudged guilty of violating § 20-138 on a prior occasion, but this feature was in no way submitted to or passed on by the jury, a verdict of guilty cannot be regarded as a conviction of a second offense within the meaning of this section. Whether there was a former conviction or not was for the jury, not for the court. *State v. Cole*, 241 N. C. 576, 86 S. E. (2d) 203 (1955).

**A plea of nolo contendere in a prior case is not the equivalent of a plea of guilty** as a basis for the pronouncement of judgment under this section. *State v. Stone*, 245 N. C. 42, 95 S. E. (2d) 77 (1956).

Where an indictment for driving a motor vehicle while under the influence of intoxicating liquor charges that defendant had theretofore been twice convicted for like offenses, but the proof discloses that defendant had entered a plea of nolo contendere in one of the prior instances, the court should not submit such instance to the jury, and the court's action in admitting evidence thereof must be held prejudicial. *State v. Stone*, 245 N. C. 42, 95 S. E. (2d) 77 (1956).

**If the State fails in its proof as to one or more of the alleged prior convictions,** this fact does not defeat the entire prosecution and require a verdict of not guilty. Rather, the court before submitting the case will eliminate the allegations in the warrant or indictment of which there is no competent evidence; and the jury in returning their verdict, will eliminate the

allegations which are not established by the evidence beyond a reasonable doubt. In short, the verdict should spell out, first, whether the jury find the defendant guilty of the violation of § 20-138 charged in the warrant or indictment, and if so, whether they further find that he was convicted of one or more of the alleged prior violations thereof. *State v. Stone*, 245 N. C. 42, 95 S. E. (2d) 77 (1956).

**Two Years' Imprisonment for First Offense Not Cruel or Unusual Punishment.**

—This section fixes no maximum period of imprisonment as punishment for the first offense of a violation of § 20-138, and it is well settled law in this jurisdiction that when no maximum time is fixed by the statute an imprisonment for two years

will not be held cruel or unusual punishment, as prohibited by N. C. Const., Art. I, § 14. *State v. Lee*, 247 N. C. 230, 100 S. E. (2d) 372 (1957).

**Applied in** *State v. Nall*, 239 N. C. 60, 79 S. E. (2d) 354 (1953); *State v. Broadway*, 256 N. C. 608, 124 S. E. (2d) 568 (1962); *State v. Morgan*, 263 N.C. 400, 139 S.E.2d 708 (1965).

**Stated in** *Fox v. Scheidt*, 241 N. C. 31, 84 S. E. (2d) 259 (1954); *State v. Green*, 251 N. C. 141, 110 S. E. (2d) 805 (1959).

**Cited in** *State v. Ball*, 255 N. C. 351, 121 S. E. (2d) 604 (1961); *State v. Thompson*, 257 N. C. 452, 126 S. E. (2d) 58 (1962); *Brewer v. Garner*, 264 N.C. 384, 141 S.E.2d 806 (1965).

**§ 20-180. Penalty for speeding.**—Every person convicted of violating G. S. 20-141 shall be guilty of a misdemeanor, and shall be punished as prescribed in G. S. 20-176 (b), except that any person convicted of violating G. S. 20-141 by operating a motor vehicle on a public street or highway in excess of eighty (80) miles per hour shall be punished by a fine of not less than fifty dollars (\$50.00), or imprisonment of not more than two years, or by both such fine and imprisonment, in the discretion of the court. (1937, c. 407, s. 141; 1947, c. 1067, s. 19; 1951, c. 182, s. 2; 1957, c. 1368, s. 2½; 1959, c. 913.)

**Editor's Note.**—

The 1957 amendment deleted the former references to §§ 20-140 and 20-140.1 relating to reckless driving.

The 1959 amendment added the part of the section following the word "misdemeanor" in line two.

**§ 20-181. Penalty for failure to dim, etc., beams of head lamps.**—Any person operating a motor vehicle on the highways of this State, who shall fail to shift, depress, deflect, tilt or dim the beams of the head lamps thereon whenever another vehicle is met on such highways or when following another vehicle at a distance of less than 200 feet, except when engaged in the act of overtaking and passing shall, upon conviction thereof, be fined not more than ten (\$10.00) dollars or imprisoned for not more than ten (10) days. (1939, c. 351, s. 3; 1955, c. 913, s. 1.)

**Editor's Note.**—The 1955 amendment, effective July 1, 1955, inserted the words "or when following another vehicle at a distance of less than 200 feet, except when engaged in the act of overtaking or passing."

**Right to Assume That Approaching Driver Will Dim Lights.**—A motorist may assume that whenever he meets another motor vehicle traveling in the op-

posite direction, its driver will seasonably dim its headlights and not persist in projecting its glaring light into his eyes. *Chaffin v. Brame*, 233 N. C. 377, 64 S. E. (2d) 276 (1951); *United States v. First Citizens Bank & Trust Co.*, 208 F. (2d) 280 (1953).

**Applied in** *Keener v. Beal*, 246 N. C. 247, 98 S. E. (2d) 19 (1957); *Beasley v. Williams*, 260 N.C. 561, 133 S.E.2d 227 (1963).

**§ 20-182. Penalty for failure to stop in event of accident involving injury or death to a person.**—Every person convicted of wilfully violating § 20-166, relative to the duties to stop or render aid or give the information required in the event of accidents, except as otherwise provided, involving injury or death to a person, shall be punished by imprisonment for not less than one nor more than five years, or in the State prison for not less than one nor more than five years, or by fine of not less than five hundred dollars or by both such fine and imprisonment. The Commissioner shall revoke the operator's or chauffeur's license of the person so convicted. In no case shall the court have power

to suspend judgment upon payment of costs. (1937, c. 407, s. 142; 1955, c. 913, s. 8.)

**Editor's Note.**—The 1955 amendment, effective July 1, 1955, inserted the words "or render aid or give the information required" near the beginning of the section.

**Instruction.** — The defendant was entitled to have the trial judge instruct the jury that the burden was on the State to establish beyond a reasonable doubt that the defendant knowingly or intentionally

failed to render reasonable assistance to his injured passenger, including the carrying of him to a physician or surgeon for medical or surgical treatment if it was apparent that such treatment was necessary. *State v. Coggin*, 263 N.C. 457, 139 S.E.2d 701 (1965).

Applied in *State v. Smith*, 238 N. C. 82, 76 S. E. (2d) 363 (1953).

**§ 20-183. Duties and powers of law enforcement officers; warning by local officers before stopping another vehicle on highway; warning tickets.**—(a) It shall be the duty of the law enforcement officers of the State and of each county, city, or other municipality to see that the provisions of this article are enforced within their respective jurisdictions, and any such officer shall have the power to arrest on sight or upon warrant any person found violating the provisions of this article. Such officers within their respective jurisdictions shall have the power to stop any motor vehicle upon the highways of the State for the purpose of determining whether the same is being operated in violation of any of the provisions of this article. Provided, that when any county, city, or other municipal law enforcement officer operating a motor vehicle overtakes another vehicle on the highways of the State, outside of the corporate limits of cities and towns, for the purpose of stopping the same or apprehending the driver thereof, for a violation of any of the provisions of this article, he shall, before stopping such other vehicle, sound a siren or activate a special light, bell, horn, or exhaust whistle approved for law enforcement vehicles under the provisions of G.S. 20-125 (b).

(b) In addition to other duties and powers heretofore existing, all law enforcement officers charged with the duty of enforcing the Motor Vehicle Laws are authorized to issue warning tickets to motorists for conduct constituting a potential hazard to the motoring public which does not amount to a definite, clear-cut, substantial violation of the Motor Vehicle Laws. Each warning ticket issued shall be prenumbered and shall contain information necessary to identify the offender, and shall be signed by the issuing officer. A copy of each warning ticket issued shall be delivered to such offender and a copy thereof forwarded by the issuing officer forthwith to the Driver License Division of the Department of Motor Vehicles but shall not be filed with or in any manner become a part of the offender's driving record. Warning tickets issued as well as the fact of issuance shall be privileged information and available only to authorized personnel of the Department for statistical and analytical purposes. (1937, c. 407, s. 143; 1961, c. 793; 1965, cc. 537, 999.)

**Editor's Note.** — The 1961 amendment added the proviso as to giving warning.

The first 1965 amendment, effective Oct. 1, 1965, designated the former provisions of this section as subsection (a) and added subsection (b).

The second 1965 amendment, effective Oct. 1, 1965, rewrote the first sentence in subsection (b).

Applied in *State v. Eason*, 242 N. C. 59, 86 S. E. (2d) 774 (1955).

Stated in *State v. Mobley*, 240 N. C. 476, 83 S. E. (2d) 100 (1954).

Cited in *State v. Cole*, 241 N. C. 576, 86 S. E. (2d) 203 (1955); *Lowe v. Department of Motor Vehicles*, 244 N. C. 353, 93 S. E. (2d) 448 (1956).

ARTICLE 3A.

*Motor Vehicle Law of 1947.*

Part 2. Safety Equipment Inspection of Motor Vehicles.

**§ 20-183.2. Safety equipment inspection required; inspection certificate.**—(a) Every motor vehicle registered, or required to be registered, in

North Carolina when operated on the highway must display a current approved certificate at such place on the vehicle as may be designated by the Commissioner, indicating that it has been inspected in accordance with the schedule set out in subsection (b) hereof and has been found to comply with the standards for safety equipment prescribed by this chapter. Thereafter, said vehicles shall display a current inspection certificate as required in subsection (c) hereof.

(b) Vehicles shall be inspected and display approval certificate required in subsection (a) above in accordance with and not later than the dates enumerated herein:

- (1) Vehicles whose last numerical digit on 1966 North Carolina license plate is three (3) shall be inspected and approved on or before March 31, 1966;
- (2) Vehicles whose last numerical digit on 1966 North Carolina license plate is four (4) shall be inspected and approved on or before April 30, 1966;
- (3) Vehicles whose last numerical digit on 1966 North Carolina license plate is five (5) shall be inspected and approved on or before May 31, 1966;
- (4) Vehicles whose last numerical digit on 1966 North Carolina license plate is six (6) shall be inspected and approved on or before June 30, 1966;
- (5) Vehicles whose last numerical digit on 1966 North Carolina license plate is seven (7) shall be inspected and approved on or before July 31, 1966;
- (6) Vehicles whose last numerical digit on 1966 North Carolina license plate is eight (8) shall be inspected and approved on or before August 31, 1966;
- (7) Vehicles whose last numerical digit on 1966 North Carolina license plate is nine (9) shall be inspected and approved on or before September 30, 1966;
- (8) Vehicles whose last numerical digit on 1966 North Carolina license plate is zero (0) shall be inspected and approved on or before October 31, 1966;
- (9) Vehicles whose last numerical digit on 1966 North Carolina license plate is one (1) shall be inspected and approved on or before November 30, 1966;
- (10) Vehicles whose last numerical digit on 1966 North Carolina license plate is two (2) shall be inspected and approved on or before December 31, 1966.

(c) Every inspection certificate issued under this part shall be valid for not less than twelve months and shall expire at midnight on the last day of the month designated on said inspection certificate. It shall be unlawful to operate any motor vehicle on the highway until there is displayed thereon a current inspection certificate, as provided by this part, indicating that the vehicle has been inspected within the previous twelve months and has been found to comply with the standards for safety equipment prescribed by this chapter.

- (d) (1) On and after February 16, 1966 all motor vehicle dealers in North Carolina shall, prior to retail sale of any new or used motor vehicle, have such motor vehicle inspected by an approved inspection station and have affixed thereto an approved inspection certificate as required by this part.
- (2) Except as provided for in subdivision (1) of this subsection, the purchaser of any new or used motor vehicle required to be inspected under this part, or of a vehicle brought into this State and required to be registered under the provisions of chapter 20 of the General Statutes of North Carolina, or any motor vehicle registered for the

year 1966 and for which a registration plate is issued, for that year, on or after February 16, 1966, may operate such vehicle or allow it to be operated on the highways of the State without inspection for not more than ten days.

(e) When a motor vehicle required to be inspected under this part shall, upon inspection, fail to meet the safety requirements of this part, the safety equipment inspection station making such inspection, shall issue an authorized receipt and statement for such vehicle indicating that it has been inspected and shall enumerate the defects found. The owner or operator may have such defects corrected at such place as he or she chooses. The vehicle may be reinspected at the safety equipment inspection station first making the inspection, without additional charge, or the owner or operator may have same inspected at another safety equipment inspection station. (1965, c. 734, s. 1.)

**Editor's Note.**—Former §§ 20-183.2 to 20-183.8, which derived from Session Laws 1947, c. 1067, and related to inspection of motor vehicles, were repealed by Session Laws 1949, c. 164.

**§ 20-183.3. Inspection requirements.** — Before an approval certificate may be issued for a motor vehicle, the vehicle must be inspected by a safety inspection equipment station, and if required by chapter 20 of the General Statutes of North Carolina, must be found to possess in safe operating condition the following articles and equipment:

- (1) Brakes
- (2) Lights
- (3) Horn
- (4) Steering mechanism
- (5) Windshield wiper
- (6) Directional signals.

The inspection requirements herein provided for shall not exceed the standards provided in the current General Statutes for such equipment. (1965, c. 734, s. 1.)

**§ 20-183.4. Licensing of safety equipment inspection stations.** — Every person, firm or agency with employees meeting the following qualifications shall, upon application, be issued a license designating the person, firm or agency as a safety equipment inspection station:

- (1) Be of good character and have a good reputation for honesty.
- (2) Have adequate knowledge of the equipment requirements of the Motor Vehicle Laws of North Carolina.
- (3) Be able to satisfactorily conduct the mechanical inspection required by this part.
- (4) Have adequate facilities as to space and equipment in order to check each of the items of safety equipment listed herein.
- (5) Have a general knowledge of motor vehicles sufficient to recognize a mechanical condition which is not safe.

Any person, firm or agency meeting the above requirements and desiring to be licensed as a motor vehicle inspection station may apply to the Commissioner of Motor Vehicles on forms provided by the Commissioner. The Commissioner shall cause an investigation to be made as to the applicant's qualifications, and if in the opinion of the Commissioner, the applicant fulfills such qualifications, he shall issue a certificate of appointment to such person, firm or agency as a safety equipment inspection station. Such appointment shall be issued without charge and shall be effective until cancelled by request of the inspection station or until suspended or revoked for cause following a hearing by the Commissioner. Any applicant who is refused a license, or any inspection station whose license has been suspended or revoked, may file a petition in the Superior Court of Wake County or in the superior court in his county of residence for a review of the action of the Com-



missioner. When such a petition is filed in the superior court twenty days' notice shall be given to the Commissioner of Motor Vehicles. The court may then hear evidence from the applicant and the Commissioner concerning the qualifications of the applicant, and the court may make such findings as the evidence shall warrant, and if found qualified shall order that the action of the Commissioner refusing, suspending or revoking the license be rescinded.

The Commissioner may designate the State or any political subdivision thereof or any person, firm or corporation as self inspectors for the sole purpose of inspecting vehicles owned or operated by such agencies, persons, firms, or corporations so designated. (1965, c. 734, s. 1.)

**§ 20-183.5. Supervision of safety equipment inspection stations.**—When a person, firm or agency is designated as a safety equipment inspection station the Commissioner of Motor Vehicles shall record such appointment and shall cause periodic checks to be made to determine that inspections are being conducted in accordance with this part, and shall cause investigations to be made of bona fide complaints received regarding any such inspection station. (1965, c. 734, s. 1.)

**§ 20-183.6. Commissioner of Motor Vehicles to establish procedures; unlawful possession, etc., of certificates.**—The Commissioner of Motor Vehicles shall establish procedures for the control, distribution, sale, refund, and display of certificates and for the accounting for proceeds of their sale, consistent with this article. It shall be unlawful knowingly to possess, affix, transfer, remove, imitate or reproduce an inspection certificate, except by direction of the Commissioner of Motor Vehicles under the terms of this article. (1965, c. 734, s. 1.)

**§ 20-183.7. Fees to be charged by safety equipment inspection station.**—Every inspection station, except self inspectors as designated herein, shall charge a fee of one dollar and fifty cents (\$1.50) for inspecting a motor vehicle to determine compliance with this article and shall give the operator a receipt indicating the articles and equipment approved and disapproved; provided, that inspection stations approved by the Commissioner, and operated under rules, regulations and supervision of any governmental agency, when inspecting vehicles required to be inspected by such agencies' rules and regulations and by the provisions of this part, may, upon approval by such inspection station and the payment of a fee of twenty-five cents (25¢), attach to the vehicle inspected a North Carolina inspection certificate as required by this part. When the receipt is presented to the inspection station which issued it, at any time within ninety days, that inspection station shall reinspect the motor vehicle free of additional charge until approved. When said vehicle is approved, and upon payment to the inspection station of the fee, the inspection station shall affix a valid inspection certificate to said motor vehicle, and said inspection station shall maintain a record of the motor vehicles inspected which shall be available for eighteen months. The Department of Motor Vehicles shall receive twenty-five cents (25¢) for each inspection certificate and these proceeds shall be placed in a fund designated the "Motor Vehicle Safety Equipment Inspection Fund," to be used under the direction and supervision of the Director of the Budget for the administration of this article. (1965, c. 734, s. 1.)

**§ 20-183.8. Commissioner of Motor Vehicles to issue regulations subject to approval of Governor; penalties for violation.**—(a) It is the intent of the article that the provisions herein shall be carried out by the Commissioner of Motor Vehicles for the safety and convenience of the motoring public. The Commissioner shall have authority to promulgate only such regulations as are reasonably necessary for the purpose of carrying out the provisions of this

inspection program, but such regulations shall not be effective until the same have been approved by the Governor.

(b) Violation of any provision of this article shall, upon conviction, be punishable by a fine not to exceed fifty dollars (\$50.00) or imprisonment not to exceed thirty days, except that the unauthorized reproduction of an inspection certificate shall be punishable as a forgery under G.S. 14-119. (1965, c. 734, s. 1.)

### ARTICLE 3C.

#### *Vehicle Equipment Safety Compact.*

§ 20-183.13. **Compact enacted into law; form of compact.**—The Vehicle Equipment Safety Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

#### VEHICLE EQUIPMENT SAFETY COMPACT

##### ARTICLE I. Findings and Purposes.

(a) The party states find that:

(1) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(2) There is a vital need for the development of greater interjurisdictional cooperation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(b) The purposes of this compact are to:

(1) Promote uniformity in regulation of and standards for equipment.

(2) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(3) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision (a) of this Article.

(c) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

##### ARTICLE II. Definitions.

As used in this compact:

(a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(c) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

##### ARTICLE III. The Commission.

(a) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission" hereinafter called the Commission. The Commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the per-

formance of his functions on the Commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the Commission in such form as the Commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the Commission for expenses actually incurred in attending Commission meetings or while engaged in the business of the Commission.

(b) The commissioners shall be entitled to one vote each on the Commission. No action of the Commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the Commission are cast in favor thereof. Action of the Commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(c) The Commission shall have a seal.

(d) The Commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The Commission may appoint an Executive Director and fix his duties and compensation. Such Executive Director shall serve at the pleasure of the Commission, and together with the treasurer shall be bonded in such amount as the Commission shall determine. The Executive Director also shall serve as secretary. If there be no Executive Director, the Commission shall elect a secretary in addition to the other officers provided by this subdivision.

(e) Irrespective of the Civil Service, personnel or other merit system laws of any of the party states, the Executive Director with approval of the Commission, or the Commission if there be no Executive Director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the Commission's functions, and shall fix the duties and compensation of such personnel.

(f) The Commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the Commission shall be eligible for Social Security coverage in respect of old age and survivor's insurance provided that the Commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a government agency or unit. The Commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The Commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(h) The Commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

(i) The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

(j) The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all Commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such

agencies or officers of each party state as the laws of such party state may provide.

(k) The Commission annually shall make to the governor and legislature of each party state a report covering the activities of the Commission for the preceding year, and embodying such recommendations as may have been issued by the Commission. The Commission may make such additional reports as it may deem desirable.

#### ARTICLE IV. Research and Testing.

The Commission shall have power to:

(a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(b) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the Commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

(d) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or coordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

#### ARTICLE V. Vehicular Equipment.

(a) In the interest of vehicular and public safety, the Commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the Commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this Article. No less than sixty (60) days after the publication of a report containing the results of such study, the Commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(b) Following the hearing or hearings provided for in subdivision (a) of this Article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the Commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the Commission will be fair and equitable and effectuate the purposes of this compact.

(c) Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the Commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(d) The Commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this Article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(e) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any Commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(f) Except as otherwise specifically provided in or pursuant to subdivisions

(e) and (g) of this Article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six (6) months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(g) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the Commission pursuant to this Article if such agency specifically finds, after public hearing on due notice, that a variation from the Commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the Commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

#### ARTICLE VI. Finance.

(a) The Commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: One third in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the Commission may employ such source or sources of information as, in its judgment present the most equitable and accurate comparisons among the party states. Each of the Commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(c) The Commission shall not pledge the credit of any party state. The Commission may meet any of its obligations in whole or in part with funds available to it under Article III (h) of this compact, provided that the Commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it under Article III (h) hereof, the Commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the Commission.

(e) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the Commission.

(f) Nothing contained herein shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

#### ARTICLE VII. Conflict of Interest.

(a) The Commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the Commission and contractors with the Commission, to the end that no member or employee or contractor shall have a pecuniary or

other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the Commission or on its behalf for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a Commission rule or regulation adopted pursuant to this Article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the Commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the Commission subject to cancellation by the Commission.

(b) Nothing contained in this Article shall be deemed to prevent a contractor for the Commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the Commission; nor to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

#### ARTICLE VIII. Advisory and Technical Committees.

The Commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

#### ARTICLE IX. Entry into Force and Withdrawal.

(a) This compact shall enter into force when enacted into law by any six or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

#### ARTICLE X. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. (1963, c. 1167, s. 1.)

**Editor's Note.**—The act from which this article was codified became effective July 1, 1963.

#### § 20-183.14. Legislative findings.—The General Assembly finds that:

- (1) The public safety necessitates the continuous development, modernization and implementation of standards and requirements of law relating to vehicle equipment, in accordance with expert knowledge and opinion.
- (2) The public safety further requires that such standards and require-

ments be uniform from jurisdiction to jurisdiction, except to the extent that specific and compelling evidence supports variation.

- (3) The Department of Motor Vehicles, acting upon recommendations of the Vehicle Equipment Safety Commission and pursuant to the Vehicle Equipment Safety Compact provides a just, equitable and orderly means of promoting the public safety in the manner and within the scope contemplated by this article. (1963, c. 1167, s. 2.)

**§ 20-183.15. Approval of rules and regulations by General Assembly required.**—Pursuant to Article V (e) of the Vehicle Equipment Safety Compact, it is the intention of this State and it is hereby provided that no rule, regulation or code issued by the Vehicle Equipment Safety Commission in accordance with Article V of the compact shall take effect until approved by act of the General Assembly. (1963, c. 1167, s. 3.)

**§ 20-183.16. Compact Commissioner.**—The Commissioner of this State on the Vehicle Equipment Safety Commission shall be the Commissioner of Motor Vehicles or such other officer of the Department as the Commissioner may designate. (1963, c. 1167, s. 4.)

**§ 20-183.17. Cooperation of State agencies authorized.**—Within appropriations available therefor, the departments, agencies and officers of the government of this State may cooperate with and assist the Vehicle Equipment Safety Commission within the scope contemplated by Article III (h) of the compact. The departments, agencies and officers of the government of this State are authorized generally to cooperate with said Commission. (1963, c. 1167, s. 5.)

**§ 20-183.18. Filing of documents.**—Filing of documents as required by Article III (j) of the compact shall be with the Secretary of State. (1963, c. 1167, s. 6.)

**§ 20-183.19. Budget procedure.**—Pursuant to Article VI (a) of the compact, the Vehicle Equipment Safety Commission shall submit its budgets to the Director of the Budget. (1963, c. 1167, s. 7.)

**§ 20-183.20. Inspection of financial records of Commission.**—Pursuant to Article VI (e) of the compact, the State Auditor is hereby empowered and authorized to inspect the accounts of the Vehicle Equipment Safety Commission. (1963, c. 1167, s. 8.)

**§ 20-183.21. "Executive head" defined.**—The term "executive head" as used in Article IX (b) of the compact shall, with reference to this State, mean the Governor. (1963, c. 1167, s. 9.)

#### ARTICLE 4.

##### *State Highway Patrol.*

**§ 20-185. Personnel; appointment; salaries.**—(a) The State Highway Patrol shall consist of a commanding officer, whose rank shall be designated by the Governor, and such additional subordinate officers and men as the Commissioner of Motor Vehicles, with the approval of the Governor and Advisory Budget Commission, shall direct. Members of the State Highway Patrol shall be appointed by the Commissioner, with the approval of the Governor, and shall serve at the pleasure of the Governor and Commissioner. The commanding officer, other officers and members of the State Highway Patrol shall be paid such salaries as may be established by the Division of Personnel of the Budget Bureau.

(b) The salary of any officer or member of the State Highway Patrol established pursuant to paragraph (a) of this section shall be paid to him so long as

his employment as such officer or member of the Patrol shall continue, notwithstanding his total or partial incapacity to perform any duties to which he may lawfully be assigned by the Commissioner of Motor Vehicles or commanding officer of the State Highway Patrol, if such incapacity be the result of an injury by accident arising out of and in the course of the performance by him of his official duties: Provided, however, that if such incapacity continue for more than one year from its inception, such officer or member of the State Highway Patrol shall during the further continuance of such incapacity be paid one-half of such established salary from the end of the first year of such incapacity to the end of the second year of such incapacity, or until his resumption of his regularly assigned duties, his retirement, resignation, or death, whichever first occurs and thereafter all payments to him pursuant to this paragraph shall cease. All payments of salary provided for in this paragraph (b) shall be made at the same time and in the same manner as other salaries are paid to members of the State Highway Patrol.

(c) The provisions of paragraph (b) of this section shall be in lieu of all compensation provided for the first two years of such incapacity by §§ 97-29 and 97-30 of the General Statutes of North Carolina, but shall be in addition to any other benefits or compensation to which such officer or member of the State Highway Patrol shall be entitled under the provisions of the Workmen's Compensation Act.

(d) The period for which the salary of any officer or member of the State Highway Patrol shall be paid to him, pursuant to paragraph (b) of this section, while he is incapacitated as a result of injury by accident arising out of and in the course of the performance of his official duties, shall not be charged against any sick or other leave to which he shall be entitled under any other provision of law.

(e) Any officer or member of the State Highway Patrol, who as a result of an injury by accident arising out of and in the course of the performance by him of his official duties, shall be totally or partially incapacitated to perform any duties to which he may be lawfully assigned, shall report such incapacity to the Commissioner of Motor Vehicles as soon as may be practicable in such manner as the Commissioner shall require. Upon the filing of such report, the Commissioner of Motor Vehicles shall determine the cause of such incapacity, and to what extent the claimant may be assigned to other than his normal duties. The finding of the Commissioner of Motor Vehicles shall determine the right of the claimant to benefits under paragraph (b) of this section, unless the claimant, within thirty (30) days after he receives notice thereof, files with the North Carolina Industrial Commission, upon such form as it shall require, a request for a hearing. Upon the filing of such request, the North Carolina Industrial Commission shall proceed to hear the matter in accordance with its regularly established procedure for hearing claims filed under the Workmen's Compensation Act, and shall report its findings to the Commissioner of Motor Vehicles. From the decision of the North Carolina Industrial Commission an appeal shall lie as in other matters heard and determined by such Commission. Any officer or member of the State Highway Patrol who shall refuse to perform any duties to which he may properly be assigned as the result of the finding of the Commissioner of Motor Vehicles, or of the North Carolina Industrial Commission, shall be entitled to no benefits pursuant to paragraph (b) of this section so long as such refusal shall continue.

(f) The benefits provided for members of the State Highway Patrol under the provisions of paragraphs (b), (c), (d), and (e) of this section shall be granted to the Director and assistant director of the License and Theft Enforcement Division of the Department and to members of the License and Theft Enforcement Division designated by the Commissioner as "Inspectors", in the same manner and under the same circumstances and subject to the same limitations



as if the Director and assistant director and the inspectors were members of the State Highway Patrol.

(g), (h): Struck out by 1961 Session Laws, c. 833, s. 6.2. (1929, c. 218, s. 1; 1931, c. 381; 1935, c. 324, s. 1; 1937, c. 313, s. 1; 1941, c. 36; 1947, c. 461, s. 1; 1953, c. 1195, s. 1; 1955, c. 372; 1957, c. 1394; 1959, cc. 370, 1320; 1961, c. 833, s. 6.2.)

**Editor's Note.**—

The 1953 amendment designated the former provisions as subsection (a) and added subsections (b)-(e).

The 1955 amendment added subsection (f).

The 1957 amendment added subsection (g).

The first 1959 amendment rewrote subsection (g) so as to bring accounting for

subsistence allowances within the purview of the regulations of the Internal Revenue Service. The second 1959 amendment added subsection (h).

The 1961 amendment, effective July 1, 1961, struck out subsections (g) and (h) providing subsistence allowances for members of the State Highway Patrol and driver-license examiners.

**§ 20-189. Patrolmen assigned to Governor's office.**—The Commissioner of Motor Vehicles, at the request of the Governor, shall assign and attach two members of the State Highway Patrol to the office of the Governor, there to be assigned such duties and perform such services as the Governor may direct. The salary of the State highway patrolmen so assigned to the office of the Governor shall be paid from appropriations made to the office of the Governor and shall be fixed in an amount to be determined by the Governor and the Advisory Budget Commission. (1941, cc. 23, 36; 1965, c. 1159.)

**Editor's Note.** — The 1965 amendment substituted "two members" for "one member" in the first sentence and "patrolmen" for "patrolman" in the last sentence.

**§ 20-190. Uniforms; motor vehicles and arms; expense incurred; color of vehicle.**—The Department of Motor Vehicles shall adopt some distinguishing uniform for the members of said State Highway Patrol, and furnish each member of the Patrol with an adequate number of said uniforms and each member of said Patrol force when on duty shall be dressed in said uniform. The Department of Motor Vehicles shall likewise furnish each member of the Patrol with a suitable motor vehicle, and necessary arms, and provide for all reasonable expense incurred by said Patrol while on duty, provided, that not less than seventy-nine per cent (79%) of the number of motor vehicles operated on the highways of the State by members of the State Highway Patrol shall be painted a uniform color of black and silver. (1929, c. 218, s. 5; 1941, c. 36; 1955, c. 1132, ss. 1, 1¼, 1¾; 1957, c. 478, s. 1; c. 673, s. 1; 1961, c. 342.)

**Editor's Note.**—The 1955 amendment, effective July 1, 1955, added the former second paragraph. The 1961 amendment deleted the former second paragraph and added its proviso to the first paragraph.

The 1957 amendments rewrote the former second paragraph.

**§ 20-190.1. Patrol vehicles to have sirens; sounding siren.**—Every motor vehicle operated on the highways of the State by officers and members of the State Highway Patrol shall be equipped with a siren. Whenever any such officer or member operating any unmarked car shall overtake another vehicle on the highway after sunset of any day and before sunrise for the purpose of stopping the same or apprehending the driver thereof, he shall sound said siren before stopping such other vehicle. (1957, c. 478, s. 1½.)

**§ 20-190.2. Signs showing highways patrolled by unmarked vehicles.**—The North Carolina State Highway Commission shall erect or cause to be erected signs at all points where paved highways enter this State from ad-

adjacent states stating that the highways are patrolled by unmarked police vehicles. (1957, c. 673, s. 2.)

**Editor's Note.** — By virtue of Session Laws 1957, c. 65, § 11, "State Highway Commission" has been substituted for "State Highway and Public Works Commission."

**§ 20-196.1. Use of airplanes to discover persons violating certain motor vehicle laws.**—The State Highway Patrol is hereby prohibited from using airplanes to discover violations of Part 10 of article 3 of chapter 20 of the General Statutes relating to operation of motor vehicles and rules of the road. This section shall not prohibit the use of airplanes in discovering persons engaged in unlawful racing on streets and highways and to those persons who fail to stop in the event of accidents and render assistance and furnish information with respect thereto to the nearest available peace officer. Nor shall this section prohibit the use of airplanes for observing unusually heavy congested traffic situations, such as occur during the State Fair, football games, and other such events, for the purpose of full coordination of traffic controls. (1963, c. 911, s. 1.)

**Editor's Note.**—The act inserting this section became effective July 1, 1963.

#### ARTICLE 6A.

##### *Motor Carriers of Migratory Farm Workers.*

**§ 20-215.1. Definitions.**—Unless the context otherwise requires, the following terms and phrases shall have, for the purpose of this article, the following meaning:

- (1) "Migratory farm worker" means any individual being transported by motor carrier to or from employment in agriculture.
- (2) "Motor carrier of migratory farm workers" means any person, firm or corporation who or which for compensation transports at any one time in North Carolina five (5) or more migratory farm workers to or from their employment by any motor vehicle, other than a passenger automobile or station wagon, except a migratory farm worker transporting himself or his immediate family, but does not include any "common carrier" certified by the North Carolina Utilities Commission or the Interstate Commerce Commission; provided, the provisions of this article shall not apply to the transportation of migratory farm workers on a vehicle owned by a farmer when such migratory farm workers are employed or to be employed by the farmer to work on his own farm or farm controlled by him.
- (3) "Motor vehicle" means any vehicle which is self-propelled, and any vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. (1961, c. 505, s. 1.)

**§ 20-215.2. Power to regulate; rules and regulations establishing minimum standards.**—Notwithstanding any other provisions of this chapter the North Carolina Department of Motor Vehicles, hereinafter referred to as "Department," is hereby vested with the power and duty to make and enforce reasonable rules and regulations applicable to motor carriers of migratory farm workers to and from their places of employment. The rules promulgated shall establish minimum standards:

- (1) For the construction and equipment of such vehicles, including coupling devices, lighting equipment, exhaust systems, rear-vision mirrors, brakes, steering mechanisms, tires, windshield wipers and warning devices.
- (2) For the operation of such vehicles, including driving rules, distribution of passengers and load, maximum hours of service for drivers, mini-

- imum requirements of age and skill of drivers, physical conditions of drivers and permits, licenses or other credentials required of drivers.
- (3) For the safety and comfort of passengers in such vehicles, including emergency kits, fire extinguishers, first-aid equipment, side walls, seating accommodations, tail gates or doors, rest and meal stops, maximum number of passengers, and safe means of ingress and egress. (1961, c. 505, s. 2.)

**§ 20-215.3. Adoption of I. C. C. regulations; public hearings on rules and regulations; distribution of copies.**—The Department may adopt and enforce rules and regulations promulgated by the Interstate Commerce Commission, insofar as the Department finds such rules to be practicable in this State; shall conduct public hearings in connection with the formulation and adoption of rules and regulations; and shall cause the distribution of copies of such rules as are promulgated to interested persons and groups. (1961, c. 505, s. 3.)

**§ 20-215.4. Violation of regulations a misdemeanor.**—The violation of any rule or regulation promulgated by the Department hereunder by any person, firm or corporation shall be a misdemeanor, punishable by a fine of not more than fifty dollars (\$50.00) or by imprisonment for a period of not more than thirty days, or by both such fine and imprisonment. (1961, c. 505, s. 4.)

**§ 20-215.5. Duties and powers of law enforcement officers.**—It shall be the duty of the law enforcement officers of the State, and of each county, city or town, to enforce the rules promulgated hereunder in their respective jurisdictions; and such officers shall have the power to stop any motor vehicle upon the highways of this State for the purpose of determining whether or not such motor vehicle is being operated in violation of such rules. (1961, c. 505, s. 5.)

## ARTICLE 7.

### *Miscellaneous Provisions Relating to Motor Vehicles.*

#### **§ 20-216. Passing horses or other draft animals.**

**Editor's note.**—The above catchline has been reprinted to correct an error.

**§ 20-217. Motor vehicles to stop for school, church and Sunday school busses in certain instances.**—Every person using, operating, or driving a motor vehicle upon or over the roads or highways of the State of North Carolina, or upon or over any of the streets of any of the incorporated towns and cities of North Carolina, upon approaching from any direction on the same highway any school bus or privately-owned bus transporting children to or from school or any church or Sunday school bus transporting children to or from church or Sunday school, while such bus is stopped and engaged in receiving or discharging passengers therefrom upon the roads or highways of the State or upon any of the streets of any incorporated cities and towns of the State, shall bring such motor vehicle to a full stop before passing or attempting to pass such bus and shall remain stopped until said passengers are received or discharged at that place and until the "stop signal" of such bus has been withdrawn or until such bus has moved on; except, that the driver of a vehicle upon any highway which has been divided into two roadways, so constructed as to separate vehicular traffic between the two roadways by an intervening space or by a physical barrier, need not stop upon meeting or passing any such bus which has stopped in the roadway across such dividing space or physical barrier. No operator of a school, church or Sunday school bus shall use the mechanical stop signal installed on such bus except for the purpose of indicating that such bus has stopped or is about to stop for the purpose of receiving or discharging passengers.

The provisions of this section are applicable only in the event the school, church, privately-owned bus or Sunday school bus bears upon the front and rear thereof a plainly visible sign containing the words "school bus" or the words "church bus" or "Sunday school bus" in letters not less than five inches in height.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed fifty dollars (\$50.00) or imprisoned not to exceed thirty days. (1925, c. 265; 1943, c. 767; 1947, c. 527; 1955, c. 1365; 1959, c. 909; 1965, c. 370.)

**Editor's Note.—**

The 1955 amendment inserted the words "or privately-owned bus" in line five of the first paragraph and the words "privately-owned bus" in line two of the second paragraph.

The 1959 amendment added the exception clause at the end of the first sentence.

The 1965 amendment added the last sentence in the first paragraph.

Applied in *Reeves v. Campbell*, 264 N. C. 224, 141 S.E.2d 296 (1965).

**§ 20-217.1. Receiving or discharging school bus passengers upon divided highway.**—It shall be unlawful for any principal or superintendent of any school, routing a school bus, to authorize the driver of any such busses to stop and receive or discharge passengers upon any highway which has been divided into two roadways where passengers would be required to cross the highway to reach their destination or to board the bus; provided, that passengers may be discharged or received at points where pedestrians and vehicular traffic is controlled by adequate stop-and-go traffic signals. (1959, c. 909.)

**§ 20-218. Standard qualifications for school bus drivers; speed limit.**—No person shall drive or operate a school bus over the public roads of North Carolina while the same is occupied by children unless said person shall be fully trained in the operation of motor vehicles, and shall furnish to the superintendent of the schools of the county in which said bus shall be operated a certificate from the Highway Patrol of North Carolina, or from any representative duly designated by the Commissioner of Motor Vehicles, and the chief mechanic in charge of school busses in said county showing that he has been examined by a member of the said Highway Patrol, or a representative duly designated by the Commissioner of Motor Vehicles, and said chief mechanic in charge of school busses, in said county and that he is a fit and competent person to operate or drive a school bus over the public roads of the State. Notwithstanding the above, school activity busses may be operated by a person who holds a school bus driver's certificate or a chauffeur's license.

It shall be unlawful for any person to operate or drive a school bus loaded with children over the public roads of North Carolina at a greater rate of speed than thirty-five miles per hour. Provided, however, that as to school activity busses which are painted a different color from regular school busses and which are being used for transportation of students or others to or from places for participation in events other than regular classroom work, it shall be unlawful to operate such a school activity bus at a greater rate of speed than forty-five miles per hour.

Any person violating paragraph two of this section shall, upon conviction, be fined not more than fifty dollars (\$50.00) or imprisoned not more than thirty days. (1937, c. 397, ss. 1-3; 1941, c. 21; 1943, c. 440; 1945, c. 216; 1957, cc. 139, 595.)

**Cross Reference.—**

As to selection and employment of school bus drivers, see § 115-185.

**Editor's Note.—**

The first 1957 amendment added the

proviso to the second paragraph, and the second 1957 amendment added the second sentence of the first paragraph

Cited in *Shue v. Scheidt*, 252 N. C. 561, 114 S. E. (2d) 237 (1960).

## ARTICLE 9.

*Motor Vehicle Safety and Financial Responsibility Act.*

§§ 20-224 to 20-279: Repealed by Session Laws 1953, c. 1300, s. 35.

**Editor's Note.—**

The repealing act is codified as § 20-279.35. For law now effective, see §§ 20-279.1 to 20-279.39. And see §§ 20-309 to 20-319.

Former § 20-232 has been re-enacted and renumbered as § 20-17.1.

For repealed sections amended by 1955 Session Laws, see §§ 20-230 and 20-231.

**§ 20-230. Proof of financial responsibility must be given when driver's license is suspended or revoked.**—Nothing in this article shall affect the authority or duty of the Department of Motor Vehicles to issue, suspend or revoke operator's and chauffeur's license under the Uniform Drivers' License Act, article 2, chapter 20, of the General Statutes, and any amendments thereto; and any person whose operator's or chauffeur's license has been revoked or suspended under the provisions of the Uniform Drivers' License Act, as amended, shall not be entitled to have said license again issued or reinstated until such person shall have given and thereafter maintains proof of his financial responsibility, as provided in this article. Provided, in order to maintain the validity of any such reissuance or reinstatement, such person shall not be required to maintain such proof of financial responsibility, under this article, for more than two years after the reissuance or reinstatement of such license. Provided further, the Commissioner shall not require proof of financial responsibility under this section for any period of time after two years from the end of the period of suspension or revocation when, during the two-year period following the expiration of the period of suspension or revocation, the Commissioner has not received a record of a conviction which would require or permit the suspension or revocation of the license or operating privilege of the person involved. (1947, c. 1006, s. 7; 1949, c. 977; 1955, c. 1152, s. 1.)

**Editor's Note.—**

The 1955 amendment added the last proviso.

**§ 20-231. Revocation of license and registration certificates and plates upon conviction of certain offenses; provisions for reinstatement when proof of financial responsibility given.**—The Commissioner shall immediately revoke the operator's and chauffeur's license issued to any person, resident or nonresident, upon receiving a record of such person's conviction or forfeiture of bail in connection with any of the offenses set forth in General Statutes, § 20-17, and any amendments thereto, and such operator's and chauffeur's licenses shall remain suspended and revoked for at least one year, and shall not be reinstated or renewed thereafter unless and until such person shall have given, and thereafter maintains, proof of financial responsibility as provided in this article. Provided, in order to maintain the validity of any such reissuance or reinstatement, such person shall not be required to maintain such proof of financial responsibility, under this article, for more than two years after the reissuance or reinstatement of such license. Provided further, the Commissioner shall not require proof of financial responsibility under this section for any period of time after two years from the end of the period of revocation when, during the two-year period following the expiration of the period of revocation, the Commissioner has not received a record of a conviction which would require or permit the suspension or revocation of the license or operating privilege of the person involved.

Whenever the motor vehicle operator's or chauffeur's license of any person has been suspended, cancelled or revoked under the provisions of §§ 20-16 or 20-17 and the period of such suspension, cancellation or revocation shall have

expired, and such person shall have met the requirements of this article if required to furnish proof of financial responsibility as a condition precedent to the right to have such license restored or reissued, such license shall be immediately restored or reissued to such person without a re-examination of such person if such person would not have been required to be re-examined at the time of the application for the restoration or reissuance of the license, if the offense for which the license was suspended, cancelled or revoked had not been committed; provided, however, if such person has not been re-examined since July 1, 1947, any license issued to such person shall expire at the same time as licenses issued to persons whose last names begin with the same letter as such person's, as provided in subsection (n) of § 20-7. (1947, c. 1006, s. 8; 1949, c. 977; 1949, c. 1032, s. 1; 1955, c. 1152, s. 2.)

**Editor's Note.** — The 1955 amendment added the last proviso to the first paragraph.

#### ARTICLE 9A.

##### *Motor Vehicle Safety and Financial Responsibility Act of 1953.*

§ 20-279.1. **Definitions.**—The following words and phrases, when used in this article, shall, for the purposes of this article, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1. "Commissioner": The Commissioner of Motor Vehicles of this State.
2. "Judgment": Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.
3. "License": Any license, temporary instruction permit or temporary license issued under the laws of this State pertaining to the licensing of persons to operate motor vehicles.
4. "Motor vehicle": Every self-propelled vehicle which is designed for use upon a highway, including trailers and semi-trailers designed for use with such vehicles (except traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers) and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails.
5. "Nonresident": Every person who is not a bona fide resident of this State.
6. "Nonresident's operating privilege": The privilege conferred upon a nonresident by the laws of this State pertaining to the operation by him of a motor vehicle in this State.
7. "Operator": Every person who is in actual physical control of a motor vehicle.
8. "Owner": A person who holds the legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of this article.
9. "Person": Every natural person, firm, co-partnership, association or corporation.
10. "Proof of financial responsibility": Proof of ability to respond in damages

for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of \$5,000 because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of \$10,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of \$5,000 because of injury to or destruction of property of others in any one accident.

11. "State": Any state, territory or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

12. "Conviction": A conviction upon a plea of guilty, or of *nolo contendere*, or the determination of guilt by a jury or by a court though no sentence has been imposed or, if imposed, has been suspended, and it includes a forfeiture of bail or collateral deposited to secure appearance in court of the defendant, unless the forfeiture has been vacated. (1953, c. 1300, s. 1; 1955, c. 1152, s. 3; c. 1355.)

**Cross Reference.**—As to Vehicle Financial Responsibility Act of 1957, see §§ 20-309 to 20-319.

**Editor's Note.**—The first 1955 amendment added paragraph 12. The second 1955 amendment substituted "\$5,000" for "\$1,000" in the next to the last line of paragraph 10, and in section 5 provides that it shall affect only policies written or renewed after July 1, 1955.

For comment on this article, see 31 N. C. Law Rev. 420. For comment on insurer's liability for intentionally inflicted injuries, see 43 N.C.L. Rev. 436 (1965).

**The object of the Motor Vehicle Safety and Financial Responsibility Act** was to provide protection to the public. *Indiana Lumbermens Mutual Ins. Co. v. Parton*, 147 F. Supp. 887 (1957).

It is the purpose of the Financial Responsibility Act to provide protection for persons injured or damaged by the negligent operator of automobiles. *Hawley v. Indemnity Ins. Co. of North America*, 257 N. C. 381, 126 S. E. (2d) 161 (1962).

**Operators Must Be Financially Responsible.**—The legislatures of 1953 and 1955 required operators of motor vehicles in this State to be "financially responsible," and proof of financial responsibility is defined in this section. *Iowa Mut. Ins. Co. v. Fred M. Simmons, Inc.*, 262 N.C. 691, 138 S.E.2d 512 (1964).

**This Article and Article 13 to Be Construed in Pari Materia.**—The Motor Vehicle Safety and Financial Responsibility Act of 1953 applies to drivers whose licenses have been suspended and relates to the restoration of drivers' licenses. while the Vehicle Financial Responsibility Act of 1957 applies to all motor vehicle owners and relates to the registration of motor vehicles. The two acts are complementary, and the latter does not repeal or modify the former but incorporates portions of the former by

reference, and the two acts are to be construed in *pari materia* so as to harmonize them and give effect to both. *Faizan v. Grain Dealers Mutual Ins. Co.*, 254 N. C. 47 118 S. E. (2d) 303 (1961).

**"Owner."**—This article explicitly defines the owner as the person who holds the legal title of a motor vehicle rather than one who merely has an equitable claim or title thereto. *Indiana Lumbermens Mutual Ins. Co. v. Parton*, 147 F. Supp. 887 (1957).

The provision of this section that the mortgagor for the purposes of this statute shall also be the owner, clearly shows that the legislature intended to fix the responsibility on the holder of the legal title in fact except where the automobile is mortgaged, in which event the responsibility was attached to the mortgagor. *Indiana Lumbermens Mutual Ins. Co. v. Parton*, 147 F. Supp. 887 (1957).

A defendant who advanced money for the purchase of a used car as security took a title-retaining contract on the vehicle and permitted its delivery to the purchasers, one of whom was operating it when an accident occurred, could not be liable to the persons injured, since under subdivision 8 of this section a conditional vendee, lessee, or mortgagor of a motor vehicle is deemed to be the owner and liability on the part of the defendant could arise only by application of the doctrine of respondeat superior. Such facts do not show the necessary relationship. *High Point Savings & Trust Co. v. King*, 253 N. C. 571, 117 S. E. (2d) 421 (1960).

**Section Reduces Importance of Family Purpose Doctrine.**—The importance of the family purpose doctrine in this State has been greatly reduced by this section. *Smith v. Simpson*, 260 N.C. 601, 133 S.E.2d 474 (1963).

**Farm Tractor Is Not "Motor Vehicle."**

—*Brown v. Fidelity & Cas. Co.*, 241 N. C. 666, 86 S. E. (2d) 433 (1955), decided under repealed § 20-226, which covered the same subject matter as this section.

**§ 20-279.2. Commissioner to administer article; appeal to court.**—  
(a) The Commissioner shall administer and enforce the provisions of this article and may make rules and regulations necessary for its administration and shall provide for hearings upon request of persons aggrieved by orders or acts of the Commissioner under the provisions of this article.

(b) Any person aggrieved by an order or act of the Commissioner requiring a suspension or revocation of his license under the provisions of this article, or requiring the posting of security as provided in this article, or requiring the furnishing of proof of financial responsibility, may file a petition in the superior court of the county in which the petitioner resides for a review, and the commencement of such a proceeding shall suspend the order or act of the Commissioner pending the final determination of the review. A copy of such petition shall be served upon the Commissioner, and the Commissioner shall have twenty days after such service in which to file answer. The appeal shall be heard in said county by the judge holding court in said county or by the resident judge. At the hearing upon the petition the judge shall sit without the intervention of a jury and shall receive such evidence as shall be deemed by the judge to be relevant and proper. Except as otherwise provided in this section, upon the filing of the petition herein provided for, the procedure shall be the same as in civil actions.

The matter shall be heard de novo and the judge shall enter his order affirming the act or order of the Commissioner, or modifying same, including the amount of bond or security to be given by the petitioner. If the court is of the opinion that the petitioner was probably not guilty of negligence or that the negligence of the other party was probably the sole proximate cause of the collision, the judge shall reverse the act or order of the Commissioner. Either party may appeal from such order to the Supreme Court in the same manner as in other appeals from the superior court and the appeal shall have the effect of further staying the act or order of the Commissioner requiring a suspension or revocation of the petitioner's license.

No act, or order given or rendered in any proceeding hereunder shall be admitted or used in any other civil or criminal action. (1953, c. 1300, s. 2.)

**This section makes no provision for intervention by persons who might recover damages from petitioner based on his actionable negligence in connection with an accident.** *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

**But Commissioner May Notify Them of Hearing.**—Persons who might recover damages from petitioner based on petitioner's actionable negligence in connection with an accident have no standing in a proceeding under subsection (b) as a matter of right. Even so, it is appropriate that the Commissioner notify such persons of the petition and of the hearing to the end that all competent and relevant evidence may be brought forward. *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

**And Court May Permit Such Persons to File Statements and Participate in Hearing.**—While persons who might recover damages from petitioner based on petitioner's actionable negligence in connection with an accident may not be considered

proper parties to the proceeding in a technical sense, the court, in its discretion, may permit such persons to file a statement relevant to the facts alleged in the petition and may permit them to participate in the hearing. *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

**However, Such Statements Are Not Evidence.**—Statements by persons not considered proper parties to the proceeding in the technical sense, whether denominated an answer, affidavit, or otherwise, may not be considered competent evidence in the hearing. *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

**Commissioner Must Answer Petition.**—Subsection (b) imposes upon the Commissioner (or his representative) the duty to answer all essential allegations of the petition and to be present and participate in the hearing before the judge. *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

**And Produce All Pertinent Evidence.**—While the statute provides that the court



shall make the crucial determinations, the statute contemplates that the Commissioner shall bring forward for the court's consideration all evidence in his possession pertinent to decision. *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

**Filing Petition Is Equivalent to Supersedeas.**—The filing of a petition under subsection (b) of this section to review the Commissioner's order is the equivalent of a supersedeas suspending the order until the question at issue has been determined by the superior court. *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

The burden of proof is on petitioner to

**§ 20-279.3. Commissioner to furnish operating record.** — The Commissioner shall upon request furnish any person a certified abstract of the operating record of any person required to comply with the provisions of this article, which abstract shall also fully designate the motor vehicle, if any, registered in the name of such person, and if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the Commissioner shall so certify. (1953, c. 1300, s. 3.)

**§ 20-279.4. Information required in accident report.**—In case of an accident in which any person is killed or injured or in which damage to the property of any one person in excess of \$100.00 is sustained, the report required by § 20-166 or § 20-166.1 shall contain information to enable the Commissioner to determine whether the requirements for the deposit of security under § 20-279.5 are inapplicable by reason of the existence of insurance or other exceptions specified in this article. The Commissioner may rely upon the accuracy of the information unless and until he has reason to believe that the information is erroneous. The operator or the owner shall furnish such additional relevant information as the Commissioner shall require. (1953, c. 1300, s. 4.)

**Cross Reference.**—See note to § 20-279.5.  
**Information Required from Operator.**—The operator of a motor vehicle is required by this section to inform the Department, when he notifies it of the accident, whether he carried liability insurance or was exempt from the statutory provision. *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

**Right of Injured Party Not Impaired by Insured's Failure to Notify Insurer or**

show he "was probably not guilty of negligence" or "that the negligence of the other party was probably the sole proximate cause of the collision." *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

**Appeal to Supreme Court.** — Where, upon petition for review of order of the Commissioner of Motor Vehicles suspending petitioners' operator's licenses, the owner of the other car involved in the collision is made a party by consent order and files answer, such owner must be served with statement of case on appeal to the Supreme Court. *Johnson v. Scheidt*, 246 N. C. 452, 98 S. E. (2d) 451 (1957).

**§ 20-279.5. Security required unless evidence of insurance; when security determined; exceptions.**—(a) If at the expiration of twenty days after the receipt of a report of a motor vehicle accident within this State which has resulted in bodily injury or death or damage to the property of any one person in excess of \$100.00, the Commissioner does not have on file evidence satisfactory to him that the person who would otherwise be required to file security under subsection (b) of this section has been released from liability, or has been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount, in installments or otherwise, or is for any other reason not required to file security under this article with respect to all claims for injuries or damages resulting from the accident, the Commissioner shall determine the amount of security which shall

be sufficient in his judgment to satisfy any judgment or judgments for damages resulting from such accident as may be recovered against each operator or owner.

(b) The Commissioner shall, within sixty days after the receipt of such report of a motor vehicle accident, suspend the license of each operator and each owner of a motor vehicle in any manner involved in such accident, and if such operator or owner is a nonresident the privilege of operating a motor vehicle within this State, unless such operator or owner, or both, shall deposit security in the sum so determined by the Commissioner; provided, notice of such suspension shall be sent by the Commissioner to such operator and owner not less than ten days prior to the effective date of such suspension and shall state the amount required as security; provided further, the provisions of this article requiring the deposit of security and the suspension of license for failure to deposit security shall not apply to an operator or owner who would otherwise be required to deposit security in an amount not in excess of one hundred dollars (\$100.00). Where erroneous information is given the Commissioner with respect to the matters set forth in subdivisions 1, 2 or 3 of subsection (c) of this section or with respect to the ownership or operation of the vehicle, the extent of damage and injuries, or any other matters which would have affected the Commissioner's action had the information been previously submitted, he shall take appropriate action as hereinbefore provided, within sixty days after receipt by him of correct information with respect to said matters. The Commissioner, upon request and in his discretion, may postpone the effective date of the suspension provided in this section by fifteen days if, in his opinion, such extension would aid in accomplishing settlements of claims by persons involved in accidents.

(c) This section shall not apply under the conditions stated in § 20-279.6 nor:

1. To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

2. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy or bond with respect to his operation of motor vehicles not owned by him;

3. To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the Commissioner, covered by any other form of liability insurance policy or bond or sinking fund or group assumption of liability;

4. To any person qualifying as a self-insurer, nor to any operator for a self-insurer if, in the opinion of the Commissioner from the information furnished him, the operator at the time of the accident was probably operating the vehicle in the course of the operator's employment as an employee or officer of the self-insurer; nor

5. To any employee of the United States government while operating a vehicle in its service and while acting within the scope of his employment, such operations being fully protected by the Federal Tort Claims Act of 1946 which affords ample security to all persons sustaining personal injuries or property damage through the negligence of such federal employee.

No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this State, except that if such motor vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy or bond, or the most recent renewal thereof, or if such operator not an owner was a nonresident of this State, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Commissioner to accept service on its behalf of notice or process in any action upon such policy, or bond arising out of such accident, and unless said insurance company or surety company if not authorized to do business in this

State, is authorized to do business in the state or other jurisdiction where the motor vehicle is registered or, if such policy or bond is filed on behalf of an operator not an owner who was a nonresident of this State, unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction of residence of such operator; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and cost, of not less than five thousand dollars (\$5,000.00) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than ten thousand dollars (\$10,000.00) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than five thousand dollars (\$5,000.00) because of injury to or destruction of property of others in any one accident. (1953, c. 1300, s. 5; 1955, cc. 138, 854; c. 855, s. 1; c. 1152, ss. 4-8; c. 1355.)

**Editor's Note.**—The first 1955 amendment inserted subdivision 5 of subsection (c), and the second 1955 amendment added the second proviso to the first sentence of subsection (b).

The third 1955 amendment, effective July 1, 1955, inserted in the last paragraph of subsection (c) the requirements as to the insurance company or surety company being authorized to do business in the state or other jurisdiction where the motor vehicle is registered and in the state or other jurisdiction of the residence of the operator. Sections 2 and 2½ of the amendatory act made its provisions applicable only to matters arising out of accidents occurring on or after July 1, 1955, and such provisions are not applicable to policies in effect on such date but shall apply upon the renewal or expiration date of such policies.

The fourth 1955 amendment inserted the words "or is for any other reason not required to file security under this article" in lines nine and ten of subsection (a), made changes in the second sentence of subsection (b) and added the third sentence of subsection (b). The amendment also inserted the words "or sinking fund or group assumption of liability" in subdivision 3 of subsection (c) and added all that part of subdivision 4 of subsection (c) that follows the word "self-insurer" in line one.

The fifth 1955 amendment, effective July 1, 1955, substituted "five thousand dollars (\$5,000.00)" for "one thousand dollars (\$1,000.00)" near the end of the last paragraph of subsection (c). Section 5 of the chapter provides that it shall affect only policies written or renewed after said effective date.

**Effect of Section.**—This section makes it the duty of the Commissioner to suspend the driver's license if the owner-operator fails to discharge his liability for the damage resulting from the collision. *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

**Act of Commissioner in suspending an operator's license is quasi-judicial.** *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

**And it cannot be collaterally attacked.** *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

The driver of an automobile may not sue his insurer for damages resulting from the revocation of his driver's license resulting from the false representation of his insurer that the driver did not have insurance in force at the time he was involved in an accident, since such action amounts to a collateral attack upon the order of the Commissioner suspending the license and is based on subornation of perjury. *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

**Plaintiff is entitled to hearing on factual question of whether he was insured.** *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

The second sentence in subsection (b) of this section gives the owner-operator of the motor vehicle full opportunity to present his evidence to the Commissioner to establish the fact that he did carry insurance as required. *Robinson v. United States Cas. Co.*, 260 N.C. 284, 132 S.E.2d 629 (1963).

**Applied in** *Carter v. Scheidt*, 261 N.C. 702, 136 S.E.2d 105 (1964).

§ 20-279.6. **Further exceptions to requirement of security.**—The requirements as to security and suspension in § 20-279.5 shall not apply:

1. To the operator or the owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of any one other than such operator or owner;

2. To the operator or the owner of a motor vehicle legally parked at the time of the accident;

3. To the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such motor vehicle without such permission;

4. If, prior to the date that the Commissioner would otherwise suspend the license or the nonresident's operating privilege under § 20-279.5, there shall be filed with the Commissioner evidence satisfactory to him that the person who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount, in installments or otherwise, with respect to all claims for injuries or damages resulting from the accident;

5. If, prior to the date that the Commissioner would otherwise suspend the license or the nonresident's operating privilege under § 20-279.5, there shall be filed with the Commissioner evidence satisfactory to him that the person who would otherwise be required to file security has in any manner settled the claims of the other persons involved in the accident and if the Commissioner determines that, considering the circumstances of the accident and the settlement, the purposes of this article and of protection of operators and owners of other motor vehicles are best accomplished by not requiring the posting of security or the suspension of the license. For the purpose of administering this paragraph, the Commissioner may consider a settlement made by an insurance company as the equivalent of a settlement made directly by the insured; nor

6. If, prior to the date that the Commissioner would otherwise suspend the license or the nonresident's operating privilege under § 20-279.5, there shall be filed with the Commissioner evidence satisfactory to him that another person involved in the accident has been convicted by a court of competent jurisdiction of a crime involving the operation of a motor vehicle at the time of the accident, and if the Commissioner in his discretion determines, after considering the circumstances of the accident or the nature and the circumstances of the crime, that the purpose of this article and of protection of operators and owners of other motor vehicles are best accomplished by not requiring the posting of security or the suspension of the license. (1953, c. 1300, s. 6; 1955, c. 1152, ss. 9, 10.)

**Editor's Note.**—The 1955 amendment added subdivisions 5 and 6.

§ 20-279.6a. **Minors.**—In determining whether or not any of the exceptions set forth in § 20-279.6 have been satisfied, in the case of accidents involving minors, the Commissioner may accept, for the purpose of this article only, as valid releases on account of claims for injuries to minors or damage to the property of minors releases which have been executed by the parent of the minor having custody of the minor or by the guardian of the minor if there be one. In the case of an emancipated minor, the Commissioner may accept a release signed by or a settlement agreed upon by the minor without the approval of the parents of the minor. If in the opinion of the Commissioner the circumstances of the accident, the nature and extent of the injuries or damage, or any other circumstances make it advisable for the best protection of the interest of the minor, the Commissioner may decline to accept such releases or settlements and may require the approval of the superior court. (1955, c. 1152, s. 11.)

§ 20-279.7. **Duration of suspension.**—The license and nonresident's operating privilege suspended as provided in § 20-279.5 shall remain so suspended and shall not be renewed nor shall any such license be issued to such person until:

1. Such person shall deposit or there shall be deposited on his behalf the security required under § 20-279.5;

2. One year shall have elapsed following the date of such suspension and evidence satisfactory to the Commissioner has been filed with him that during such period no action for damages arising out of the accident has been instituted, or

3. Evidence satisfactory to the Commissioner has been filed with him of a release from liability, or a final adjudication of nonliability, or a duly acknowledged written agreement, in accordance with subdivision 4 of § 20-279.6 or a settlement accepted by the Commissioner as provided in subdivision 5 of § 20-279.6, or a conviction accepted by the Commissioner as provided in subdivision 6 of § 20-279.6; provided, however, in the event there shall be any default in the payment of any installment or sum under any duly acknowledged written agreement, then, upon notice of such default, the Commissioner shall forthwith suspend the license or nonresident's operating privilege of such person defaulting which shall not be restored unless and until:

a. Such person deposits and thereafter maintains security as required under § 20-279.5 in such amount as the Commissioner may then determine; or

b. One year shall have elapsed following the date when such security was required and during such period no action upon such agreement has been instituted in a court in this State. (1953, c. 1300, s. 7; 1955, c. 1152, s. 12.)

**Editor's Note.**—The 1955 amendment provided in subdivision 5 of § 20-279.6 and inserted in the first paragraph of subdivision 6 of § 20-279.6 and a conviction as provided in subdivision 6 of § 20-279.6.

**§ 20-279.8. Application to nonresidents, unlicensed drivers, unregistered motor vehicles and accidents in other states.**—(a) In case the operator or the owner of a motor vehicle involved in an accident within this State has no license, or is a nonresident, he shall not be allowed a license until he has complied with the requirements of this article to the same extent that it would be necessary if, at the time of the accident, he had held a license.

(b) When a nonresident's operating privilege is suspended pursuant to § 20-279.5 or § 20-279.7, the Commissioner shall transmit a certified copy of the record of such action to the official in charge of the issuance of licenses in the state in which such nonresident resides, if the law of such other state provides for action in relation thereto similar to that provided for in subsection (c) of this section.

(c) Upon receipt of such certification that the operating privilege of a resident of this State has been suspended or revoked in any such other state pursuant to a law providing for its suspension or revocation for failure to deposit security for the payment of judgments arising out of a motor vehicle accident, under circumstances which would require the Commissioner to suspend a nonresident's operating privilege had the accident occurred in this State the Commissioner shall suspend the license of such resident. Such suspension shall continue until such resident furnishes evidence of his compliance with the law of such other state relating to the deposit of such security. (1953, c. 1300, s. 8.)

**§ 20-279.9. Form and amount of security.**—The security required under this article shall be in such form and in such amount as the Commissioner may require but in no case in excess of the limits specified in § 20-279.5 in reference to the acceptable limits of a policy or bond. The person depositing security shall specify in writing the person or persons on whose behalf the deposit is made and, at any time while such deposit is in the custody of the Commissioner or State Treasurer, the person depositing it may, in writing, amend the specification of the person or persons on whose behalf the deposit is made to include an additional person or persons; provided, however, that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident.

The Commissioner may reduce the amount of security ordered in any case if,

in his judgment, the amount ordered is excessive. In case the security originally ordered has been deposited the excess deposited over the reduced amount ordered shall be returned to the depositor or his personal representative forthwith, notwithstanding the provisions of § 20-279.10. (1953, c. 1300, s. 9.)

**§ 20-279.10. Custody, disposition and return of security.**—Security deposited in compliance with the requirements of this article shall be placed by the Commissioner in the custody of the State Treasurer and shall be applicable only to the payment of a judgment or judgments rendered against the person or persons on whose behalf the deposit was made, for damages arising out of the accident in question in an action at law, begun not later than one year after the date of such accident, or within one year after the date of deposit of any security under subdivision 3 of § 20-279.7, or to the payment in settlement, agreed to by the depositor, of a claim or claims arising out of such accident. Such deposit or any balance thereof shall be returned to the depositor or his personal representative when evidence satisfactory to the Commissioner has been filed with him that there has been a release from liability, or a final adjudication of nonliability, or a duly acknowledged agreement, in accordance with subdivision 4 of § 20-279.6, or a settlement accepted by the Commissioner as provided in subdivision 5 of § 20-279.6, or a conviction accepted by the Commissioner as provided in subdivision 6 of § 20-279.6, or whenever, after the expiration of one (1) year from the date of the accident, or from the date of deposit of any security under subdivision 3 of § 20-279.7, whichever is later, the Commissioner shall be given reasonable evidence that there is no such action pending and no judgment rendered in such action left unpaid. (1953, c. 1300, s. 10; 1955, c. 1152, s. 13.)

**Editor's Note.**—The 1955 amendment inserted in the second sentence the provisions as to a settlement as provided in subdivision 5 of § 20-279.6 and a conviction as provided in subdivision 6 of § 20-279.6.

**§ 20-279.11. Matters not to be evidence in civil suits.**—Neither the report required by § 20-279.4, the action taken by the Commissioner pursuant to this article, the findings, if any, of the Commissioner upon which such action is based, or the security filed as provided in this article shall be referred to in any way, nor be any evidence of the negligence or due care of either party, at the trial of any action at law to recover damages. (1953, c. 1300, s. 11.)

**§ 20-279.12. Courts to report nonpayment of judgments.**—Whenever any person fails within sixty (60) days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this State, to forward to the Commissioner immediately after the expiration of said sixty (60) days, a certified copy of such judgment.

If the defendant named in any certified copy of a judgment reported to the Commissioner is a nonresident, the Commissioner shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident. (1953, c. 1300, s. 12.)

**§ 20-279.13. Suspension for nonpayment of judgment; exceptions.**—(a) The Commissioner, upon the receipt of a certified copy of a judgment, which has remained unsatisfied for a period of sixty (60) days, shall forthwith suspend the license and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in § 20-279.16.

(b) The Commissioner shall not, however, revoke or suspend the license of an owner, operator or chauffeur if the insurance carried by him was in a company which was authorized to transact business in this State and which subsequent to

an accident involving the owner or operator and prior to settlement of the claim therefor went into liquidation, so that the owner, operator, or chauffeur is thereby unable to satisfy the judgment arising out of the accident.

(c) If the judgment creditor consents in writing, in such form as the Commissioner may prescribe, that the judgment debtor be allowed license or non-resident's operating privilege, the same may be allowed by the Commissioner, in his discretion, for six (6) months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in § 20-279.16, provided the judgment debtor furnishes proof of financial responsibility. (1953, c. 1300, s. 13; 1965, c. 926, s. 1.)

**Editor's Note.** — The 1965 amendment added present subsection (b) and redesignated former subsection (b) as subsection (c).

Section 2, c. 926, Session Laws 1965, provides: "Any license heretofore revoked or suspended by the Commissioner, con-

trary to the provisions of s. 1 of this act, shall be returned to the licensee when said person gives proof of financial responsibility as provided in this article."

Cited in *Hunnicut v. Shelby Mut. Ins. Co.*, 255 N. C. 515, 122 S. E. (2d) 74 (1961).

**§ 20-279.14. Suspension to continue until judgments paid and proof given.**—Such license and nonresident's operating privilege shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in §§ 20-279.13 and 20-279.16 of this article.

A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this article. (1953, c. 1300, s. 14.)

**Effect of § 20-279.36.**—This section shall not apply with respect to any accident or judgment arising therefrom, or violation of the motor vehicle laws of this State, oc-

curing prior to the effective date of this section, under the provisions of § 20-279.36. *Justice v. Scheidt*, 252 N. C. 361, 113 S. E. (2d) 709 (1960).

**§ 20-279.15. Payment sufficient to satisfy requirements.**—In addition to other methods of satisfaction provided by law, judgments herein referred to shall, for the purpose of this article, be deemed satisfied:

- (1) When five thousand dollars (\$5,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or
- (2) When, subject to such limit of five thousand dollars (\$5,000.00) because of bodily injury to or death of one person, the sum of ten thousand dollars (\$10,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or
- (3) When five thousand dollars (\$5,000.00) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

Provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section. (1953, c. 1300, s. 15; 1963, c. 1238.)

**Editor's Note.**—The 1963 amendment substituted "one thousand dollars (\$1,000.- 00)" for "one thousand dollars (\$1,000.- 00)" near the beginning of subdivision (3).

§ 20-279.16. **Installment payment of judgments; default.**—(a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The Commissioner shall not suspend a license or a nonresident's operating privilege, and shall restore any license or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

(c) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the Commissioner shall forthwith suspend the license or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this article. (1953, c. 1300, s. 16.)

§ 20-279.17. **Proof required upon certain convictions.**—(a) Whenever the Commissioner suspends or revokes the license of any person under the provisions of article 2 of this chapter such license shall remain suspended or revoked and shall not at any time thereafter be reinstated nor shall any license be thereafter issued to such person, until permitted under the Motor Vehicle Laws of this State and not then unless and until he shall give and thereafter maintain, for the period provided by law, proof of financial responsibility, except as provided in G. S. 20-16.1; provided, whenever the motor vehicle operator's or chauffeur's license of any person has been suspended, cancelled or revoked under the provisions of article 2 of this chapter and the period of such suspension, cancellation or revocation shall have expired, and such person shall have met the requirements of this article as a condition precedent to the right to have such license restored or reissued such license shall be immediately restored or reissued to such person subject to such a re-examination, if any, as the Commissioner may require.

(b) If a person is not licensed, but by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the suspension or revocation of license, no license shall be thereafter issued to such person until he shall give and thereafter maintain proof of financial responsibility.

(c) Whenever the Commissioner suspends or revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, such privilege shall remain so suspended or revoked unless such person shall have previously given or shall immediately give and thereafter maintain proof of financial responsibility. (1953, c. 1300, s. 17; 1955, c. 1152, s. 14.)

**Editor's Note.**—The 1955 amendment rewrote subsection (a).

§ 20-279.18. **Alternate methods of giving proof.**—Proof of financial responsibility when required under this article with respect to a motor vehicle or with respect to a person who is not the owner of a motor vehicle may be given by filing:

1. A certificate of insurance as provided in § 20-279.19 or § 20-279.20; or
2. A bond as provided in § 20-279.24; or
3. A certificate of deposit of money or securities as provided in § 20-279.25; or
4. A certificate of self-insurance, as provided in § 20-279.33, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, he will pay the same judgments and in the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle



liability policy if it had issued such a policy to said self-insurer. (1953, c. 1300, s. 18.)

**§ 20-279.19. Certificate of insurance as proof.**—Proof of financial responsibility may be furnished by filing with the Commissioner the written certificate of any insurance carrier duly authorized to do business in this State certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall give the effective date of such motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle. The Commissioner may require that certificates filed pursuant to this section be on a form approved by the Commissioner. (1953, c. 1300, s. 19; 1955, c. 1152, s. 16.)

**Editor's Note.**—The 1955 amendment added the last sentence.

**Filing Does Not Estop Insurer from Denying Coverage.**—The filing, as required by this section, does not estop an insurance carrier from thereafter denying coverage

under the policy. *Seaford v. Nationwide Mutual Ins. Co.*, 253 N. C. 719, 117 S. E. (2d) 733 (1961).

**Cited in** *Faizan v. Grain Dealers Mutual Ins. Co.*, 254 N. C. 47, 118 S. E. (2d) 303 (1961).

**§ 20-279.20. Certificate furnished by nonresident as proof.**—(a) The nonresident owner of a motor vehicle not registered in this State may give proof of financial responsibility by filing with the Commissioner a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the motor vehicle or motor vehicles described in such certificate is registered, or if such nonresident does not own a motor vehicle, then in the state in which the insured resides, provided such certificate otherwise conforms to the provisions of this article, and the Commissioner shall accept the same upon condition that said insurance carrier complies with the following provisions with respect to the policies so certified:

1. Said insurance carrier shall execute a power of attorney authorizing the Commissioner to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this State; and

2. Said insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of this State relating to the terms of motor vehicle liability policies issued herein.

(b) If any insurance carrier not authorized to transact business in this State, which has qualified to furnish proof of financial responsibility, defaults in any said undertakings or agreements, the Commissioner shall not thereafter accept as proof any certificate of said carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues.

(c) The Commissioner may require that certificates and powers filed pursuant to this section be on forms approved by the Commissioner. (1953, c. 1300, s. 20; 1955, c. 1152, s. 17.)

**Editor's Note.**—The 1955 amendment added subsection (c).

**Cited in** *Faizan v. Grain Dealers Mutual*

*Ins. Co.*, 254 N. C. 47, 118 S. E. (2d) 303 (1961).

**§ 20-279.21. "Motor vehicle liability policy" defined.**—(a) A "motor vehicle liability policy" as said term is used in this article shall mean an owner's or an operator's policy of liability insurance, certified as provided in § 20-279.19 or § 20-279.20 as proof of financial responsibility, and issued, except as otherwise provided in § 20-279.20, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person named therein as insured.

## (b) Such owner's policy of liability insurance:

- (1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;
- (2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: five thousand dollars (\$5,000.00) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, ten thousand dollars (\$10,000.00) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars (\$5,000.00) because of injury to or destruction of property of others in any one accident; and
- (3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in subsection (c) of § 20-279.5, under provisions filed with and approved by the Insurance Commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; and provided that an insured shall be entitled to secure increased limits coverage of ten thousand dollars (\$10,000.00) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, twenty thousand dollars (\$20,000.00) because of bodily injury to or death of two or more persons in any one accident if the policy of such insured carries liability limits of equal or greater amounts for the protection of third persons. Such provisions shall include coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured, with a limit in the aggregate for all insureds in any one accident of five thousand dollars (\$5,000.00) and subject, for each insured, to an exclusion of the first one hundred dollars (\$100.00) of such damages. Such provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that such other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima facie presumption that the operator of such other motor vehicle was uninsured at the time of the accident with the insured, for the purposes of recovery under this provision of the insured's liability insurance policy. The coverage required under this section shall not be applicable where any insured named in the policy shall reject the coverage.

Provided under this section the term "uninsured motor vehicle" shall include, but not be limited to, an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to ac-

accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is such insurance but the insurance company writing the same denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or G.S. 20-279.25 in lieu of such bodily injury and property damage liability insurance, or the owner of such motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

- a. A motor vehicle owned by the named insured;
- b. A motor vehicle which is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;
- c. A motor vehicle which is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);
- d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or
- e. A farm type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, and within thirty (30) days following the date of its delivery to him of any motor vehicle owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this article as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this article.

(e) Such motor vehicle liability policy need not insure any liability under any workmen's compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance or re-

pair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

- (1) The liability of the insurance carrier with respect to the insurance required by this article shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be cancelled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy;
- (2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;
- (3) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision 2 of subsection (b) of this section;
- (4) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the article shall constitute the entire contract between the parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this article. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this article.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy. (1953, c. 1300, s. 21; 1955, c. 1355; 1961, c. 640; 1965, c. 156; c. 674, s. 1; c. 898.)

**Editor's Note.**—The 1955 amendment, effective July 1, 1955, substituted "five thousand dollars (\$5,000.00)" for "one thousand dollars (\$1,000.00)" near the end of subdivision (2) of subsection (b). Section 5 of the amendatory act provides that it shall affect only policies written or renewed after said effective date.

The 1961 amendment, effective Aug. 1, 1961, changed subsection (b) by adding subdivision (3).

The first 1965 amendment added the present second, third and fourth paragraphs of subdivision (3) of subsection (b). The second 1965 amendment added

the proviso at the end of the first sentence of that subdivision. Section 3 of c. 674, Session Laws 1965, provides that the act shall apply only to new and renewal automobile liability insurance policies issued on and after Sept. 1, 1965.

The third 1965 amendment added the third sentence in the first paragraph of subdivision (3) of subsection (b) and added all of that subdivision following the present fourth paragraph thereof.

For note on automobile liability policies, see 35 N. C. Law Rev. 313. For note on permissive user under the omnibus clause, see 41 N.C. Law Rev. 232. For note on

liability of insurer without notice, see 41 N.C.L. Rev. 853 (1963). For note on insurer's liability for injuries intentionally inflicted by insured by use of automobile, see 43 N.C.L. Rev. 436 (1965).

**The manifest purpose of this article was to provide protection, within the required limits, to persons injured or damaged by the negligent operation of a motor vehicle; and, in respect of a "motor vehicle liability policy," to provide such protection notwithstanding violations of policy provisions by the owner subsequent to accidents on which such injured parties base their claims.** *Nixon v. Liberty Mutual Ins. Co.*, 255 N. C. 106, 120 S. E. (2d) 430 (1961), quoting *Swain v. Nationwide Mutual Ins. Co.*, 253 N. C. 120, 116 S. E. (2d) 482 (1960); *Lane v. Iowa Mut. Ins. Co.*, 258 N. C. 318, 128 S. E. (2d) 398 (1962).

The primary purpose of compulsory motor vehicle liability insurance is to compensate innocent victims who have been injured by financially irresponsible motorists. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

**Obligations Imposed by Article.** — The Motor Vehicle Financial Responsibility Act obliges a motorist either to post security or to carry liability insurance, not accident insurance to indemnify all persons who might be injured by the insured's car. *Moore v. Young*, 263 N.C. 483, 139 S.E.2d 704 (1965).

**Article Provides for Issuance of Owner's Policy and Operator's Policy.**—The provisions of this article provide for motor vehicle insurance carriers to issue two types of motor vehicle liability policies; one is an owner's policy, which insures the holder against legal liability for injuries to others arising out of the ownership, use or operation of a motor vehicle owned by him; and the other is an operator's policy, which insures the holder against legal liability for injuries to others arising out of the use by him of a motor vehicle not owned by him. *Woodruff v. State Farm Mut. Auto. Ins. Co.*, 260 N.C. 723, 133 S.E.2d 704 (1963).

**And whether policy insures owner as an owner or as an operator depends on intent of parties.** That intent must be ascertained from the language used in the written contract. *Lofquist v. Allstate Ins. Co.*, 263 N.C. 615, 140 S.E.2d 12 (1965).

**Policies Are Mandatory.**—In this State, all insurance policies covering loss from liability arising out of the ownership, maintenance, or use of a motor vehicle are, to the extent required by this section, manda-

tory. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

**Except as to Excess over Compulsory Coverage.** — All insurance policies which insure in excess of the compulsory coverage of this section are voluntary policies to the extent of the excess. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

**Coverage of Owner's Policy Limited to Vehicle Described.** — An owner's policy does not protect against liability resulting from the use of a motor vehicle not described in the policy. *Lofquist v. Allstate Ins. Co.*, 263 N.C. 615, 140 S.E.2d 12 (1965).

**As Is Coverage of Owner's Assigned Risk Policy.**—This article does not require an owner's assigned risk policy to cover any liability except that growing out of the operation of the motor vehicle described in the policy. *Woodruff v. State Farm Mut. Auto. Ins. Co.*, 260 N.C. 723, 133 S.E.2d 704 (1963).

An owner's policy issued pursuant to the assigned risk statute of this State obligates the insurer to pay any liability the insured becomes liable to pay by reason of the operation of the automobile described in the policy up to the limit of \$5,000.00. *Woodruff v. State Farm Mut. Auto. Ins. Co.*, 260 N.C. 723, 133 S.E.2d 704 (1963).

**That each driver in a two-car collision would recover from the other's insurance carrier was not in the legislative contemplation when the legislature passed this article.** *Moore v. Young*, 263 N.C. 483, 139 S.E.2d 704 (1965).

**Liability of Insurer after Effective Date of Article 13.**—Under subsection (f) (1) of this section, if insured becomes legally obligated for the payment of damages on account of a collision occurring after the effective date of article 13, insurer's liability becomes absolute as of the date of the collision if the policy is then valid and in force, and subsequent violations of policy provisions by the insured cannot affect the liability of insurer to a person injured in such collision as the result of insured's negligence, although insured may be liable to insurer for damages resulting to insurer as the result of breach of the policy provision. *Swain v. Nationwide Mutual Ins. Co.*, 253 N. C. 120, 116 S. E. (2d) 482 (1960).

**In Absence of Statutory Provision, Liability Measured by Terms of Policy.**—In the absence of any provision in the Financial Responsibility Act broadening the liability of the insurer, such liability must be measured by the terms of its policy as written. *Underwood v. National Grange*

Mut. Liability Co., 258 N. C. 211, 128 S. E. (2d) 577 (1962).

**Policy Violations.**—Under subsection (f) (1) of this section, policy violations do not defeat or avoid the policy in respect of a plaintiff's right to recover from defendant insurer the amount of the judgment establishing insured's legal liability to plaintiff. *Swain v. Nationwide Mutual Ins. Co.*, 253 N. C. 120, 116 S. E. (2d) 482 (1960).

As to the compulsory coverage provided by a motor vehicle liability policy as defined in this section issued as proof of financial responsibility as defined in § 20-279.1, subsection (f) (1) of this section provides explicitly that "no violation of said policy shall defeat or void said policy." *Swain v. Nationwide Mutual Ins. Co.*, 253 N. C. 120, 116 S. E. (2d) 482 (1960).

Under subsection (f)(1) of this section insured's failure to comply with policy provisions as to notice of accident and of suit did not defeat the injured party's right to recover from the insurer the amount of a judgment by which insured's legal obligation to the injured party was finally determined. *Lane v. Iowa Mut. Ins. Co.*, 258 N. C. 318, 128 S. E. (2d) 398 (1962).

No violation of the provisions of an owner's policy as an assigned risk will void the policy where the liability thereunder has been incurred by reason of the insured's operation of the automobile described in the policy. *Woodruff v. State Farm Mut. Auto. Ins. Co.*, 260 N.C. 723, 133 S.E.2d 704 (1963).

The failure of insured under an assigned risk policy to give notice of an accident occurring while he was driving an automobile other than the one named in the policy precludes recovery by the insured or by the injured third person against insurer, even though the policy contains additional coverage, if insured is driving another vehicle, since such additional coverage is not required by this article and therefore the provisions of this article are not applicable thereto. *Woodruff v. State Farm Mut. Auto. Ins. Co.*, 260 N.C. 723, 133 S.E.2d 704 (1963).

**Coverage in a policy with respect to the use of other automobiles** is in addition to the coverage required by this article. *Woodruff v. State Farm Mut. Auto. Ins. Co.*, 260 N.C. 723, 133 S.E.2d 704 (1963).

An assigned risk policy of automobile insurance specifying the vehicle covered by the policy does not cover another vehicle owned by insured in the absence of a provision in the policy for extension of coverage or approval by insurer of a change in the vehicle covered. *Miller v. New*

*Amsterdam Casualty Co.*, 245 N. C. 526, 96 S. E. (2d) 860 (1957), decided under repealed § 20-227, which covered the same subject matter as this section.

Where an assigned risk policy of automobile liability insurance provided for the payment of additional premium for application of the policy to a newly acquired vehicle, and insurer, upon notification that insured had traded in the vehicle covered for another, advised insured that it would issue endorsement covering the second vehicle upon payment of additional premium in a stipulated amount, and there was no evidence that the additional premium was ever paid or the endorsement issued under the Motor Vehicle Safety and Financial Responsibility Act of 1947, the policy did not cover loss inflicted in the operation of the second vehicle, nor was insurer estopped from denying liability by reason of its failure to return the unearned premium on the original policy or its failure to cancel it. *Miller v. New Amsterdam Casualty Co.*, 245 N. C. 526, 96 S. E. (2d) 860 (1957).

**Exclusionary Provisions.**—If an exclusionary provision of an assigned risk policy contravenes this article, it is void. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

There is nothing in this article which authorizes the insurance company to exclude by the terms of its policy liability of the operator of an automobile if it is an automobile owned by a member of his household, and such a clause in the policy being repugnant to and in conflict with the provisions of this article is void and of no effect. *Indiana Lumbermens Mut. Ins. Co. v. Parton*, 147 F. Supp. 887 (1957).

**Effect of Issuance of FS-1.**—By the issuance of an FS-1 an insurer represents that it has issued and there is in effect an owner's motor vehicle liability policy. *Harris v. Nationwide Mut. Ins. Co.*, 261 N.C. 499, 135 S.E.2d 209 (1964).

By the issuance of an FS-1, the insurer represents that everything requisite for a binding insurance policy has been performed, including payment, or satisfactory arrangement for payment, of premium. Once the FS-1 has been issued, nonpayment of premium, nothing else appearing, is no defense in a suit by a third party beneficiary against insurer. *Harris v. Nationwide Mut. Ins. Co.*, 261 N.C. 499, 135 S.E.2d 209 (1964).

As between insurer and insured, the issuance by insurer of Form FS-1 stating thereon that insurance was effective, does not estop insurer from denying that the

policy was in force or that notice of the accident was given as required by the policy. *Harris v. Nationwide Mut. Ins. Co.*, 261 N.C. 499, 135 S.E.2d 209 (1964).

**Construction of Assigned Risk Policy.**—An assigned risk policy providing no coverage in excess of the statutory requirement must be construed in connection with the public policy which the Motor Vehicle Safety and Financial Responsibility Act embodies. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

**Construction of Provision Requiring "Omnibus Clause."**—Statutes requiring the insertion in automobile liability policies of the "omnibus clause," extending the provisions of the policy to persons using the automobile with the express or implied permission of the named insured, reflect a clear cut policy to protect the public. They should be construed and applied so as to carry out this policy. *Chatfield v. Farm Bureau Mut. Auto. Ins. Co.*, 208 F. (2d) 250 (1953), decided under repealed § 20-227, which covered the same subject matter as this section.

In subsection (b)(2) the legislature intended no more radical coverage than is expressed in the moderate rule of construction, i.e., coverage shall include use with permission, express or implied. *Hawley v. Indemnity Ins. Co. of North America*, 257 N. C. 381, 126 S. E. (2d) 161 (1962).

**The statutory requirement for automatic insurance for thirty days for a motor vehicle acquired by an "operator" is as much a part of the policy as if expressly written therein.** *Lofquist v. Allstate Ins. Co.*, 263 N.C. 615, 140 S.E.2d 12 (1965).

If the policy was an owner's policy, defendant was not required to provide automatic insurance for a newly acquired motor vehicle. *Lofquist v. Allstate Ins. Co.*, 263 N.C. 615, 140 S.E.2d 12 (1965).

**Injuries Intentionally Inflicted Are Covered.**—Injuries intentionally inflicted by the use of an automobile are within the coverage of a motor vehicle liability policy as defined by this section. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

**As Victim's Rights Are Not Derived through Insured.**—The victim's rights against the insurer are not derived through the insured as in the case of voluntary insurance, but are statutory and become absolute, under subsection (f) (1), of this section on the occurrence of an injury covered by the policy. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

The purpose of compulsory liability insurance is not, like that of ordinary insurance, to save harmless the tort-feasor himself; therefore, there is no reason why the victim's right to recover from the insurance carrier should depend upon whether the conduct of its insured was intentional or negligent. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

**"Accident."**—The word "accident" as used in this section with reference to compulsory insurance is used in the popular sense and means any unfortunate occurrence causing injury for which the insured is liable. *Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 134 S.E.2d 654 (1964).

**"Permission" is something apart from a general state of mind.** *Underwood v. National Grange Mut. Liability Co.*, 258 N. C. 211, 128 S. E. (2d) 577 (1962).

**Express Permission.**—Where express permission to use the insured vehicle is relied upon it must be on an affirmative character, directly and distinctly stated, clear and outspoken, and not merely implied or left to inference. *Hawley v. Indemnity Ins. Co. of North America*, 257 N. C. 381, 126 S. E. (2d) 161 (1962).

**Implied permission to use the insured vehicle involves an inference arising from a course of conduct or relationship between the parties, in which there is mutual acquiescence or lack of objection under circumstances signifying assent.** *Hawley v. Indemnity Ins. Co. of North America*, 257 N. C. 381, 126 S. E. (2d) 161 (1962).

**A general or comprehensive permission is much more readily to be assumed where the use of the insured motor vehicle is for social or nonbusiness purposes than where the relationship of master and servant exists and the usage of the vehicle is for business purposes.** *Hawley v. Indemnity Ins. Co. of North America*, 257 N. C. 381, 126 S. E. (2d) 161 (1962).

It does not seem reasonable to assume that parties to an insurance contract covering a vehicle used in business contemplate an indiscriminate use for the social and separate business purpose of employees of named insured unless permission, express or implied, is given for such additional uses. *Hawley v. Indemnity Ins. Co. of North America*, 257 N. C. 381, 126 S. E. (2d) 161 (1962).

**Who May Grant Permission.**—In order to grant permission, as the word "permission" is used in the omnibus clause of a policy, there must be such ownership or control of the automobile as to confer the

legal right to give or withhold assent. *Underwood v. National Grange Mut. Liability Co.*, 258 N. C. 211, 128 S. E. (2d) 577 (1962).

Compliance with the requirements of this section necessitates coverage of all who use the insured vehicle with the permission, express or implied, of the named insured. Whether the permission be expressly granted or impliedly conferred, it must originate in the language or the conduct of the name insured or of someone having authority to bind him or it in that respect. *Hawley v. Indemnity Ins. Co. of North America*, 257 N. C. 381, 126 S. E. (2d) 161 (1962).

**Plaintiff Has Burden of Showing Permission.** — Plaintiff has the burden of showing that there was permission to use the vehicle. *Hawley v. Indemnity Ins. Co. of North America*, 257 N. C. 381, 126 S. E. (2d) 161 (1962).

**Violation of Permission by Carrying Guests in Vehicle.**—Where the violation of permission consists merely of carrying guests in the vehicle, and the employee's use of the vehicle is otherwise permitted, the fact alone that the employee permitted riders on the vehicle will not serve to annul the permission of the employer so as to take the employee out of the protection of the omnibus clause. *Hawley v. Indemnity Ins. Co. of North America*, 257 N. C. 381, 126 S. E. (2d) 161 (1962).

**Use Held without Permission.**—Where a prospective purchaser was permitted to drive a dealer's vehicle seven miles to the purchaser's home to show it to his wife and was to return the vehicle within two and one-half hours, but he actually drove seventy miles to another municipality and had an accident resulting in plaintiff's injury more than twenty hours after he should have returned the vehicle, the court held the purchaser's use at time of accident was without permission of owner. *Fehl v. Aetna Cas. & Sur. Co.*, 260 N.C. 440, 133 S.E.2d 68 (1963).

**Policy Covering Only One of Two Vehicles Owned by Insured.**—For a case applying the Motor Vehicle Safety and Financial Responsibility Act of 1947, where an insurance company issued an owner's policy of liability insurance upon an assigned risk covering only one of the two vehicles owned by insured, and the insurer was held not liable for damages caused during insured's operation of the other vehicle owned by him, see *Graham v. Iowa Nat. Mut. Ins. Co.*, 240 N. C. 458, 82 S. E. (2d) 381 (1954).

**Transfer of Title to Vehicle.**—The Re-

sponsibility Act makes no requirement that insurance, in case of transfer of title, follow the vehicle. *Underwood v. National Grange Mut. Liability Co.*, 258 N. C. 211, 128 S. E. (2d) 577 (1962).

If the named insured has sold the vehicle, its subsequent use by the buyer is by virtue of the latter's ownership and his right to control it and not by virtue of the permission of the named insured seller. *Underwood v. National Grange Mut. Liability Co.*, 258 N. C. 211, 128 S. E. (2d) 577 (1962).

**Settlement of Claims by Insurer.**—This section, which contains a provision expressly authorizing insurance companies to make settlement with claimants, is not any indication that prior to that date liability insurers were prohibited from settling with some of several claimants for the protection of their insured. *Alford v. Textile Ins. Co.*, 248 N. C. 224, 103 S. E. (2d) 8 (1958).

A provision in a liability policy that insurer might negotiate and settle any claim or suit was not proscribed or rendered void under repealed § 20-227 as it stood in 1947. *Alford v. Textile Ins. Co.*, 248 N. C. 224, 103 S. E. (2d) 8 (1958).

A liability insurance carrier may settle part of multiple claims arising from the negligence of its insured, even though such settlements result in preference by exhausting the fund to which an injured party whose claim has not been settled might otherwise look for payment, provided the insurer acts in good faith and not arbitrarily, and the burden is upon a claimant whose claim is not paid in full because of prior payment made by insurer in settlements of other claims, to allege and prove bad faith on the part of the insurer. *Alford v. Textile Ins. Co.*, 248 N. C. 224, 103 S. E. (2d) 8 (1958), decided under repealed § 20-227.

Where an insurance carrier makes a settlement in good faith, such settlement is binding on the insured as between him and the insurer, but such settlement is not binding as between the insured and a third party where the settlement was made without the knowledge or consent of the insured or over his protest, unless the insured in the meantime has ratified such settlement. *Bradford v. Kelly*, 260 N.C. 382, 132 S.E.2d 886 (1963).

A payment by insurer in settlement of the claim of one motorist against insured motorist, solely for the purpose of terminating the liability of insurer and reserving the insured motorist's rights, does not preclude the insured motorist from there-



after maintaining an action against the other. *Gamble v. Stutts*, 262 N.C. 276, 136 S.E.2d 688 (1964).

**Action by Insured against Other Motorist after Settlement.** — See *Bradford v. Kelly*, 260 N.C. 382, 132 S.E.2d 886 (1963).

**Where a liability insurer denies liability** for a claim asserted against the insured and unjustifiably refuses to defend an action therefor, the insured is released from a provision of the policy against settlement of claims without the insurer's consent, and from a provision making the liability of the insurer dependent on the obtaining of a judgment against the insured; and that under such circumstances, the insured may make a reasonable compromise or settlement in good faith without losing his right to recover on the policy. *Nixon v. Liberty Mutual Ins. Co.*, 255 N. C. 106, 120 S. E. (2d) 430 (1961).

If insured in a liability policy gives timely notice of a suit against him within the coverage of the liability policy, and insurer refuses to defend such suit, insured is entitled to recover of insurer the amount he is reasonably required to spend by virtue of the failure of insurer to defend the suit. *Harris v. Nationwide Mut. Ins. Co.*, 261 N.C. 499, 135 S.E.2d 209 (1964).

**Cause of Action Arises at Time of Collision.**—The provisions of subsection (f) (1) of this section support the statement of law that any cause of action which a plaintiff may acquire against defendant as a result of a collision arises at the time of the collision, and any right which he may claim against defendant under the laws of this State and under the uninsured motorists insurance coverage of the policy must be determined by the facts existing at the time of the collision. *Hardin v. American Mut. Fire Ins. Co.*, 261 N.C. 67, 134 S.E.2d 142 (1964).

**When Liability of Insurer Becomes Ab-**

**§ 20-279.22. Notice of cancellation or termination of certified policy.**—When an insurance carrier has certified a motor vehicle liability policy under § 20-279.19 or a policy under § 20-279.20, the insurance so certified shall not be cancelled or terminated until at least twenty (20) days after a notice of cancellation or termination of the insurance so certified shall be filed in the office of the Commissioner, except that such a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates. (1953, c. 1300, s. 22.)

This section has no application to policies issued under the Vehicle Financial Responsibility Act of 1957. *Faizan v. Grain*

**solute.**—Under this section insurer's liability (within the limits of the compulsory coverage) for the payment of the damages for which insured was "legally obligated" became absolute when the injured party's car was damaged, at which time the policy issued by insurer to insured was in full force and effect. *Lane v. Iowa Mut. Ins. Co.*, 258 N. C. 318, 128 S. E. (2d) 398 (1962).

**Counterclaim against Insured under Subsection (k).**—In insured's action against insurer to recover for sums expended in defending a suit against insured within the coverage of the policy, insured's allegations of the payment of a sum to insurer's agent under agreement for the issuance of a binder do not relate to liability imposed by the Financial Responsibility Act, and therefore furnish no basis for a counterclaim against insured under subsection (k) of this section. *Harris v. Nationwide Mut. Ins. Co.*, 261 N.C. 499, 135 S.E.2d 209 (1964).

**For other decisions under former statute,** see *Howell v. Travelers Indemnity Co.*, 237 N. C. 227, 74 S. E. (2d) 610 (1953); *Russell v. Lumbermen's Mut. Cas. Co.*, 237 N. C. 220, 74 S. E. (2d) 615 (1953); *Sanders v. Chavis*, 243 N. C. 380, 90 S. E. (2d) 749 (1956); *Sanders v. Travelers Indemnity Co.*, 144 F. Supp. 742 (1956); *Lynn v. Farm Bureau Mutual Auto. Ins. Co.*, 264 F. (2d) 921 (1959)

**Applied in** *Daniels v. Nationwide Mut. Ins. Co.*, 258 N. C. 660, 129 S. E. (2d) 314 (1963).

**Quoted in** *Fidelity & Cas. Co. of New York v. Jackson*, 297 F. (2d) 230 (1961).

**Cited in** *Taylor v. Green*, 242 N. C. 156, 87 S. E. (2d) 11 (1955); *Muncie v. Travelers Ins. Co.*, 253 N. C. 74 116 S. E. (2d) 474 (1960); *Faizan v. Grain Dealers Mut. Ins. Co.*, 254 N. C. 47, 118 S. E. (2d) 303 (1961).

*Dealers Mutual Ins. Co.*, 254 N. C. 47, 118 S. E. (2d) 303 (1961).

**§ 20-279.23. Article not to affect other policies.** — (a) This article shall not be held to apply to or affect policies of automobile insurance against lia-

bility which may now or hereafter be required by any other law of this State, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this article, may be certified as proof of financial responsibility under this article.

(b) This article shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on his behalf of motor vehicles not owned by the insured. (1953, c. 1300, s. 23.)

§ 20-279.24. **Bond as proof.**—(a) Proof of financial responsibility may be furnished by filing with the Commissioner the bond of a surety company duly authorized to transact business in the State or a bond with at least two individual sureties each owning real estate within this State, and together having equities in such real estate over and above any encumbrances thereon equal in value to at least twice the amount of such bond, which real estate shall be scheduled in the bond which shall be approved by the clerk of the superior court of the county wherein the real estate is situated. Such bond shall be conditioned for payments in amounts and under the same circumstances as would be required in a motor vehicle liability policy, and shall not be cancellable except after twenty (20) days' written notice to the Commissioner. A certificate of the county tax supervisor or person performing the duties of the tax supervisor, showing the assessed valuation of each tract or parcel of real estate for tax purposes shall accompany a bond with individual sureties and, upon acceptance and approval by the Commissioner, the execution of such bond shall be proved before the clerk of the superior court of the county or counties wherein the land or any part thereof lies, and such bond shall be recorded in the office of the register of deeds of such county or counties. Such bond shall constitute a lien upon the real estate therein described from and after filing for recordation to the same extent as in the case of ordinary mortgages and shall be regarded as the equivalent of a mortgage or deed of trust. In the event of default in the terms of the bond the Commissioner may foreclose the lien thereof by making public sale upon publishing notice thereof as provided by subsection (b) of § 45-21.17 of the General Statutes: provided, that any such sale shall be subject to the provisions for upset or increased bids and resales and the procedure therefor as set out in Part 2 of Article 2A of Chapter 45 of the General Statutes. The proceeds of such sale shall be applied by the Commissioner toward the discharge of liability upon the bond, any excess to be paid over to the surety whose property was sold. The Commissioner shall have power to so sell as much of the property of either or both sureties described in the bond as shall be deemed necessary to discharge the liability under the bond, and shall not be required to apportion or prorate the liability as between sureties.

If any surety is a married person, his or her spouse shall be required to execute the bond, but only for the purpose of releasing any dower or curtesy interest in the property described in the bond, and the signing of such bond shall constitute a conveyance of dower or curtesy interest, as well as the homestead exemption of the surety, for the purpose of the bond, and the execution of the bond shall be duly acknowledged as in the case of deeds of conveyance. The Commissioner may require a certificate of title of a duly licensed attorney which shall show all liens and encumbrances with respect to each parcel of real estate described in the bond and, if any parcel of such real estate has buildings or other improvements thereon, the Commissioner may, in his discretion, require the filing with him of a policy or policies of fire and other hazard insurance, with loss clauses payable to the Commissioner as his interest may appear. All costs and expenses in connection with furnishing such bond and the registration thereof, and the certificate of title, insurance and other necessary items of expense shall be borne by the principal obligor under the bond, except that the costs of foreclosure may be paid from the proceeds of sale.

(b) If such a judgment, rendered against the principal on such bond shall not be satisfied within sixty (60) days after it has become final, the judgment creditor may, for his own use and benefit and at his sole expense, bring an action or actions in the name of the State against the company or persons executing such bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed such bond. (1953, c. 1300, s. 24.)

**§ 20-279.25. Money or securities as proof.**—(a) Proof of financial responsibility may be evidenced by the certificate of the State Treasurer that the person named therein has deposited with him fifteen thousand dollars (\$15,000.00) in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of fifteen thousand dollars (\$15,000.00). The State Treasurer shall not accept any such deposit and issue a certificate therefor and the Commissioner shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(b) Such deposit shall be held by the State Treasurer to satisfy, in accordance with the provisions of this article, any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use or operation of a motor vehicle after such deposit was made. Money or securities so deposited shall not be subject to attachment, garnishment, or execution unless such attachment, garnishment, or execution shall arise out of a suit for damages as aforesaid. (1953, c. 1300, s. 25; 1965, c. 358, s. 1.)

**Editor's Note.** — The 1965 amendment, effective July 1, 1965, increased the amount in the first sentence of subsection (a) from \$11,000 to \$15,000. Section 3 of the

act provides that it shall apply only to policies written or renewed after its effective date.

**§ 20-279.26. Owner may give proof for others.**—Whenever any person required to give proof of financial responsibility hereunder is or later becomes an operator in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the Commissioner shall accept proof given by such owner in lieu of proof by such other person to permit such other person to operate a motor vehicle for which the owner has given proof as herein provided. The Commissioner shall designate the restrictions imposed by this section on the face of such person's license. (1953, c. 1300, s. 26.)

**§ 20-279.27. Substitution of proof.**—The Commissioner shall consent to the cancellation of any bond or certificate of insurance or the Commissioner shall direct and the State Treasurer shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this article. (1953, c. 1300, s. 27.)

**§ 20-279.28. Other proof may be required.**—Whenever any proof of financial responsibility filed under the provisions of this article no longer fulfills the purposes for which required the Commissioner shall for the purpose of this article, require other proof as required by this article, or whenever it appears that proof filed to cover any motor vehicle owned by a person does not cover all motor vehicles registered in the name of such person, the Commissioner shall require proof covering all such motor vehicles. The Commissioner shall suspend the license or the nonresident's operating privilege pending the filing of such other proof. (1953, c. 1300, s. 28.)

**§ 20-279.29. Duration of proof; when proof may be cancelled or returned.**—The Commissioner shall upon request consent to the immediate can-

cellation of any bond or certificate of insurance, or the Commissioner shall direct and the State Treasurer shall return to the person entitled thereto any money or securities deposited pursuant to this article as proof of financial responsibility, or the Commissioner shall waive the requirement of filing proof, in any of the following events:

1. At any time after two (2) years from the date such proof was required when, during the two-year period preceding the request, the Commissioner has not received record of a conviction or a forfeiture of bail which would require or permit the suspension or revocation of the license, registration or nonresident's operating privilege of the person by or for whom such proof was furnished, or

2. In the event of the death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle; or

3. In the event the person who has given proof surrenders his license to the Commissioner.

Provided, however, that the Commissioner shall not consent to the cancellation of any bond or the return of any money or securities in the event any action for damages upon a liability covered by such proof is then pending or any judgment upon any such liability is then unsatisfied or in the event the person who has filed such bond or deposited such money or securities, has, within one year immediately preceding such request, been involved as an operator or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that he has been released from all of his liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the Commissioner.

Whenever any person whose proof has been cancelled or returned under subdivision 3 of this section applies for a license within a period of two years from the date proof was originally required, any such application shall be refused unless the applicant shall re-establish such proof for the remainder of such two-year period. (1953, c. 1300 s. 29.)

**§ 20-279.30. Surrender of license.** — Any person whose license shall have been suspended as herein provided, or whose policy of insurance or bond, when required under this article, shall have been cancelled or terminated, or who shall neglect to furnish other proof upon request of the Commissioner shall immediately return his license to the Commissioner. If any person shall fail to return to the Commissioner the license as provided herein, the Commissioner shall forthwith direct any peace officer to secure possession thereof and to return the same to the Commissioner. (1953, c. 1300, s. 30.)

**§ 20-279.31. Other violations; penalties.** — (a) Failure to report an accident as required in § 20-279.4 shall be punished by a fine not in excess of twenty-five dollars (\$25.00), and in the event of injury or damage to the person or property of another in such accident, the Commissioner shall suspend the license of the person failing to make such report, or the nonresident's operating privilege of such person, until such report has been filed and for such further period not to exceed thirty (30) days as the Commissioner may fix.

(b) Any person who gives information required in a report or otherwise as provided for in § 20-279.4. knowing or having reason to believe that such information is false, or who shall forge or, without authority, sign any evidence of proof of financial responsibility, or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than one year, or both.

(c) Any person wilfully failing to return license as required in § 20-279.30

shall be fined not more than five hundred dollars (\$500.00) or imprisoned not to exceed thirty (30) days, or both.

(d) Any person who shall violate any provision of this article for which no penalty is otherwise provided shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than ninety (90) days, or both. (1953, c. 1300, s. 31.)

Cited in *Lane v. Iowa Mut. Ins. Co.*,  
258 N. C. 318, 128 S. E. (2d) 398 (1962).

**§ 20-279.32. Exceptions.**—This article, except its provisions as to the filing of proof of financial responsibility by a common carrier and its drivers and chauffeurs, does not apply to any vehicle operated under a permit or certificate of convenience or necessity issued by the North Carolina Utilities Commission, or by the Interstate Commerce Commission, if public liability and property damage insurance for the protection of the public is required to be carried upon it. This article does not apply to any motor vehicle owned by the State of North Carolina, nor does it apply to the operator of a vehicle owned by the State of North Carolina who becomes involved in an accident while operating the State-owned vehicle if the Commissioner determines that the vehicle at the time of the accident was probably being operated in the course of the operator's employment as an employee or officer of the State. This article does not apply to the operator of a vehicle owned by a political subdivision of the State of North Carolina who becomes involved in an accident while operating such vehicle if the Commissioner determines that the vehicle at the time of the accident was probably being operated in the course of the operator's employment as an employee or officer of the subdivision providing that the Commissioner finds that the political subdivision has waived any immunity it has with respect to such accidents and has in force an insurance policy or other method of satisfying claims which may arise out of the accident. This article does not apply to any motor vehicle owned by the federal government, nor does it apply to the operator of a motor vehicle owned by the federal government who becomes involved in an accident while operating the government-owned vehicle if the Commissioner determines that the vehicle at the time of the accident was probably being operated in the course of the operator's employment as an employee or officer of the federal government. (1953, c. 1300, s. 32; 1955, c. 1152, s. 19.)

**Editor's Note.**—The 1955 amendment rewrote this section.

**§ 20-279.32a. Exception of school bus drivers.**—The provisions of this article shall not apply to school bus drivers with respect to accidents or collisions in which they are involved while operating school busses in the course of their employment. (1955, c. 1282.)

**§ 20-279.33. Self-insurers.**—(a) Any person in whose name more than twenty-five (25) motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the Commissioner as provided in subsection (b) of this section. For the purpose of this article, the State of North Carolina shall be considered a self-insurer.

(b) The Commissioner may, in his discretion, upon the application of such a person, issue a certificate of self-insurance when he is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

(c) Upon not less than five (5) days' notice and a hearing pursuant to such notice, the Commissioner may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within thirty days after such judgment shall have become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance. (1953, c. 1300, s. 33.)

§ 20-279.34. **Assigned risk plans.**—The Commissioner of Insurance, after consultation with representatives of the insurance carriers licensed to write motor vehicle liability insurance in this State, shall consider such reasonable plans and procedures as such insurance carriers may submit to him for the equitable apportionment among such insurance carriers of those applicants for motor vehicle liability policies who are required to file proof of financial responsibility under this article but who are unable to secure such insurance through ordinary methods.

Upon the approval by the Commissioner of Insurance of any such plans and procedures thus submitted, all insurance carriers licensed to write motor vehicle liability insurance in this State, as a prerequisite to further engaging in writing such insurance in this State, shall formally subscribe to, and participate in, such plans and procedures so submitted.

In the event the Commissioner of Insurance, in the exercise of his discretion, does not approve any plan so submitted, or should no such plan be submitted, then the Commissioner of Insurance shall formulate and put into effect reasonable plans and procedures for the apportionment among such insurance carriers of all such applications for motor vehicle liability insurance submitted to him in accordance with the provisions of this article by persons entitled to coverage under this article but unable to obtain such coverage through ordinary methods.

Should no such plan be submitted by the insurance carriers and approved by the Commissioner of Insurance, then as a prerequisite to further engaging in the selling of motor vehicle liability insurance in this State, every insurance carrier licensed to write motor vehicle liability in this State shall formally subscribe to and participate in the plans and procedures formulated by the Commissioner of Insurance as provided in this section, and every such insurance carrier shall accept any and all risks assigned to it by the Commissioner of Insurance under such plan and shall upon payment of a proper premium issue a policy covering the same, such policy to meet at least the minimum requirements for establishing financial responsibility as provided in this article.

Every person required to file proof of financial responsibility under the provisions of this article who has been unable to obtain a motor vehicle liability insurance policy through ordinary methods shall have the right to apply to the Commissioner of Insurance to have his risk assigned to an insurance carrier licensed to write, and writing motor vehicle liability insurance in this State, and the insurance carrier shall issue a motor vehicle liability policy which will meet at least the minimum requirements for establishing financial responsibility, as provided for in this article. In each instance where application is made to the Commissioner of Insurance to have a risk assigned to an insurance carrier, it shall be deemed that the applicant has been denied the issuance of a liability insurance policy, and the Commissioner of Insurance shall, upon receipt of such application, which shall have attached thereto a statement from the Motor Vehicle Department that the suspension of the applicant's license will be no longer in effect after the date noted therein, immediately assign the risk to an insurance carrier, which carrier shall be required, as a prerequisite to the further engaging in selling motor vehicle liability insurance in this State, to issue a motor vehicle liability policy which will meet at least the minimum requirements for establishing financial responsibility, as provided for in this article. Provided, the applicant may request in his application to the Commissioner of Insurance that he desires to obtain a motor vehicle liability policy in excess of the minimum requirements for establishing financial responsibility. Upon receipt of such application, from a person entitled to coverage under this Article, the Commissioner of Insurance shall assign the applicant to an insurance carrier as provided in this article, and such carrier shall be required to issue the policy in an amount not to exceed ten thousand dollars (\$10,000.00) because of bodily injury or death of one person in any one accident, and, subject to said limit for one per-

son, in an amount not to exceed twenty thousand dollars (\$20,000.00) because of bodily injury to or death of two or more persons in any one accident and in an amount not to exceed five thousand dollars (\$5,000.00) because of injury to or destruction of property of others in any one accident.

The Commissioner of Insurance shall have the authority to make reasonable rules and regulations for the assignment of risks to insurance carriers.

The Commissioner of Insurance shall establish, or cause to be established, such rate classifications, rating schedules, rates, rules and regulations to be used by insurance carriers issuing assigned risk motor vehicle liability policies in accordance with this article as appear to him to be proper; provided the Commissioner of Insurance is authorized but not required to establish rates for assigned risk liability policies which are higher than approved manual rates; and in the case of assigned risk policies issued in excess of the minimum limits the Commissioner may establish higher rates or a surcharge adequate to cover the costs of underwriting such excess limits.

In the establishment of rate classification, rating schedules, rates, rules and regulations, the Commissioner of Insurance shall be guided by such principles and practices as have been established under his statutory authority to regulate motor vehicle liability insurance rates, and he may act in conformity with his statutory discretionary authority in such matters, and may in his discretion assign to the North Carolina automobile rate administrative office, or other state bureau or agency any of the administrative duties imposed upon him by this article.

The Commissioner of Insurance is empowered, if in his judgment he deems such action to be justified after reviewing all information pertaining to the applicant or policyholder available from his records, the records of the Department of Motor Vehicles, or from other sources:

- (1) To refuse to assign an application.
- (2) To approve the rejection of an application by an insurance carrier.
- (3) To approve the cancellation of a motor vehicle liability policy by an insurance carrier; or
- (4) To refuse to approve the renewal or the reassignment of an expiring policy.

The power granted the Commissioner of Insurance under the provisions of this article to deny, directly or indirectly, insurance to any person applying for insurance hereunder, shall be restricted to persons whose licenses have been suspended and continue to be suspended by the Department of Motor Vehicles under authority of § 20-16 of the General Statutes or otherwise and the power of the Commissioner of Insurance to approve the revocation or cancellation of insurance under the provisions of this article shall be exercised only in the event of nonpayment of premium or when the Department of Motor Vehicles suspends the license of the insured under the authority granted to it under the Motor Vehicles Act.

The Commissioner of Insurance shall not be held liable for any act, or omission, in connection with the administration of the duties imposed upon him by the provisions of this article, except upon proof of actual malfeasance.

The provisions of this article relevant to assignment of risks shall be available to nonresidents who are unable to obtain a motor vehicle liability insurance policy with respect only to motor vehicles registered and used in this State. (1953. c. 1300, s. 34; 1963, c. 1208, ss. 1, 2.)

**Editor's Note.**—The 1963 amendment, effective Jan. 1, 1964, added the proviso and the last sentence of the fifth paragraph. It also added the proviso to the seventh paragraph.

right of an insurer to cancel policies issued under the assigned risk plan is restricted by this section. *Griffin v. Hartford Acc. & Indem. Co.*, 264 N.C. 212, 141 S.E.2d 300 (1965).

**Section Restricts Right to Cancel.**—The

Cited in *Swain v. Nationwide Mut. Ins.*

Co., 253 N. C. 120, 116 S. E. (2d) 482 (1960); Faizan v. Grain Dealers Mut. Ins. Co., 254 N. C. 47, 118 S. E. (2d) 303 (1961); Nixon v. Liberty Mut. Ins. Co., 258 N. C. 41, 127 S. E. (2d) 892 (1962); Underwood v. National Grange Mut. Lia-

bility Co., 258 N. C. 211, 128 S. E. (2d) 577 (1962); Lane v. Iowa Mut. Ins. Co., 258 N. C. 318, 128 S. E. (2d) 398 (1962); Daniels v. Nationwide Mut. Ins. Co., 258 N. C. 660, 129 S. E. (2d) 314 (1963).

**§ 20-279.35. Supplemental to motor vehicle laws; repeal of laws in conflict.**—This article shall in no respect be considered as a repeal of any of the motor vehicle laws of this State but shall be construed as supplemental thereto.

The “Motor Vehicle Safety and Responsibility Act” enacted by the 1947 Session of the General Assembly, being Chapter 1006 of the Session Laws of 1947 (G. S. 20-224 to 20 279), is hereby repealed except with respect to any accident or violation of the motor vehicle laws of this State occurring prior to January 1, 1954, or with respect to any judgment arising from such accident or violation, and as to such accidents, violations or judgments Chapter 1006 of the Session Laws of 1947 shall remain in full force and effect. Except as herein stated, all laws and clauses of laws in conflict with this article are hereby repealed. (1953, c. 1300, s. 35.)

Applied in Miller v. New Amsterdam Casualty Co., 245 N. C. 526, 96 S. E. (2d) 860 (1957).

Cited in Graham v. Iowa Nat. Mut. Ins. Co., 240 N. C. 458, 82 S. E. (2d) 381 (1954).

Quoted in Swain v. Nationwide Mutual Ins. Co., 253 N. C. 120, 116 S. E. (2d) 482 (1960).

**§ 20-279.36. Past application of article.**—This article shall not apply with respect to any accident, or judgment arising therefrom, or violation of the motor vehicle laws of this State, occurring prior to January 1, 1954. (1953, c. 1300, s. 37.)

Applied in Justice v. Scheidt, 252 N. C. 361, 113 S. E. (2d) 709 (1960).

Ins. Co., 253 N. C. 120, 116 S. E. (2d) 482 (1960).

Quoted in Swain v. Nationwide Mutual

**§ 20-279.37. Article not to prevent other process.**—Nothing in this article shall be construed as preventing the plaintiff in any action at law from relying for relief upon the other processes provided by law. (1953, c. 1300, s. 38.)

**§ 20-279.38. Uniformity of interpretation.**—This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it. (1953, c. 1300, s. 39.)

**§ 20-279.39. Title of article.**—This article may be cited as the “Motor Vehicle Safety-Responsibility Act of 1953”. (1953, c. 1300, s. 41.)

ARTICLE 10.

*Financial Responsibility of Taxicab Operators.*

**§ 20-280. Filing proof of financial responsibility with governing board of municipality or county.**—(a) Within 30 days after March 27, 1951, every person, firm or corporation engaging in the business of operating a taxicab or taxicabs within a municipality shall file with the governing board of the municipality in which such business is operated proof of financial responsibility as hereinafter defined.

No governing board of a municipality shall hereafter issue any certificate of convenience and necessity, franchise, license, permit or other privilege or authority to any person, firm or corporation authorizing such person, firm or corporation to engage in the business of operating a taxicab or taxicabs within the



municipality unless such person, firm or corporation first files with said governing board proof of financial responsibility as hereinafter defined.

Within thirty days after the ratification of this section, every person, firm or corporation engaging in the business of operating a taxicab or taxicabs without the corporate limits of a municipality or municipalities, shall file with the board of county commissioners of the county in which such business is operated proof of financial responsibility as hereinafter defined.

No person, firm or corporation shall hereafter engage in the business of operating a taxicab or taxicabs without the corporate limits of a municipality or municipalities in any county unless such person, firm or corporation first files with the board of county commissioners of the county in which such business is operated proof of financial responsibility as hereinafter defined.

(b) As used in this section proof of financial responsibility shall mean a certificate of any insurance carrier duly authorized to do business in the State of North Carolina certifying that there is in effect a policy of liability insurance insuring the owner and operator of the taxicab business, his agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident and arising out of the ownership, use or operation of such taxicab or taxicabs, subject to limits (exclusive of interests and costs) with respect to each such motor vehicle as follows: Five thousand dollars (\$5,000.00) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, ten thousand dollars (\$10,000.00) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars (\$5,000.00) because of injury to or destruction of property of others in any one accident.

(c) Every person, firm or corporation who engages in the taxicab business and who is a member of or participates in any trust fund or sinking fund, which said trust fund or sinking fund is for the sole purpose of paying claims, damages or judgments against persons, firms or corporations engaging in the taxicab business and which trust fund or sinking fund is approved by the governing body of any city or municipality with a population of over 50,000, shall be deemed a compliance with the financial responsibility provisions of this section.

Provided, however, that in the case of operators of 15 or more taxicabs, the limits (exclusive of interests and costs), with respect to each such motor vehicle shall be as follows: Ten thousand dollars (\$10,000.00) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, twenty thousand dollars (\$20,000.00) because of bodily injury to or death of two or more persons in any one accident, and one thousand dollars (\$1,000.00) because of injury to or destruction of property of others in any one accident. (1951, c. 406; 1965, c. 350, s. 1.)

**Local Modification.**—Durham: 1953, c. 597.

**Editor's Note.**—The 1965 amendment, effective July 1, 1965, increased the last amount mentioned in subsection (b) from \$1,000 to \$5,000. Section 3 of the act pro-

vides that it shall apply only to policies written or renewed after its effective date.

For brief comment on this section, see 29 N. C. Law Rev. 402.

Cited in *Perrell v. Beaty Service Co.*, 248 N. C. 153, 102 S. E. (2d) 785 (1958).

## ARTICLE 11.

### *Liability Insurance Required of Persons Engaged in Renting Motor Vehicles.*

§ 20-281. **Liability insurance prerequisite to engaging in business; coverage of policy.**—From and after July 1, 1953, it shall be unlawful for any person, firm or corporation to engage in the business of renting or leasing motor vehicles to the public for operation by the rentee or lessee unless such person, firm or corporation has secured insurance for his own liability and that of

his rentee or lessee, in such an amount as is hereinafter provided, from an insurance company duly licensed to sell motor vehicle liability insurance in this State. Each such motor vehicle leased or rented must be covered by a policy of liability insurance insuring the owner and rentee or lessee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such motor vehicle, subject to the following minimum limits: Five thousand dollars (\$5,000.00) because of bodily injury to or death of one person in any one accident, and ten thousand dollars (\$10,000.00) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars (\$5,000.00) because of injury to or destruction of property of others in any one accident. Provided, however, that nothing in this article shall prevent such operators from qualifying as self-insurers under terms and conditions to be prepared and prescribed by the Commissioner of Motor Vehicles or by giving bond with personal or corporate surety, as now provided by G.S. 20-279.24, in lieu of securing the insurance policy hereinbefore provided for. (1953, c. 1017, s. 1; 1955, c. 1296; 1965, c. 349, s. 1.)

**Cross Reference.** — As to registration fees for U-Drive-It passenger vehicles, see § 20-87(b).

**Editor's Note.** — The 1955 amendment added the proviso at the end of this section.

The 1965 amendment, effective July 1, 1965, increased the last amount mentioned in the section from \$1,000 to \$5,000. Section 3 of the act provides that it shall apply only to policies written or renewed after its effective date.

§ 20-282. **Co-operation in enforcement of article.**—The provisions of this article shall be enforced by the Commissioner of Motor Vehicles in co-operation with the Commissioner of Insurance, the North Carolina Automobile Rate Administrative Office and with all law enforcement officers and agents and other agencies of the State and the political subdivisions thereof. (1953, c. 1017, s. 2.)

§ 20-283. **Compliance with article prerequisite to issuance of license plates.**—No license plates shall be issued by the Department of Motor Vehicles to operate a motor vehicle, for lease or rent for operation by the rentee or lessee, until the applicant for such license plates demonstrates to the Commissioner of Motor Vehicles that he has complied with the provisions of this article. (1953, c. 1017 s. 3.)

§ 20-284. **Violation a misdemeanor.**—Any person, firm or corporation violating the provisions of this article shall be guilty of a misdemeanor and shall be punished by fine or imprisonment, or both, in the discretion of the court. (1953, c. 1017, s. 4.)

## ARTICLE 12.

### *Motor Vehicle Dealers and Manufacturers Licensing Law.*

§ 20-285. **Distribution of motor vehicles affected with a public interest.**—The General Assembly finds and declares that the distribution of motor vehicles in the State of North Carolina vitally affects the general economy of the State and the public interest and public welfare, and in the exercise of its police power, it is necessary to regulate and license motor vehicle manufacturers, distributors, dealers, salesmen, and their representatives doing business in North Carolina, in order to prevent frauds, impositions and other abuses upon its citizens. (1955, c. 1243, s. 1.)

§ 20-286. **Definitions.** — Unless the context otherwise requires, the following words and terms for the purpose of this article, shall have the following meanings:

(a) "Motor vehicle" means any motor propelled vehicle, trailer or semitrailer, required to be registered under the laws of this State.

(1) "New motor vehicle" means a motor vehicle which has never been the subject of a sale other than between new motor vehicle dealers, or between manufacture and dealer of the same franchise.

(2) "Used motor vehicle" means a motor vehicle other than described in paragraph (a) (1) above.

(b) "Motor vehicle dealer" and "dealer" mean any person, firm, association, or corporation engaged in the business of selling, soliciting, or advertising the sale of motor vehicles.

The term "motor vehicle dealer" or "dealer" does not include:

(1) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court; or

(2) Public officers while performing their official duties; or

(3) Persons disposing of motor vehicles acquired for their own use and actually so used, when the same shall have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this article; or

(4) Persons, firms or corporations who shall sell motor vehicles as an incident to their principal business but who are not engaged primarily in the selling of motor vehicles. This category includes finance companies who shall sell repossessed motor vehicles and insurance companies who sell motor vehicles to which they have taken title as an incident of payments made under policies of insurance and who do not maintain a used car lot or building with one or more employed motor vehicle salesmen.

(c) "New motor vehicle dealer" means a motor vehicle dealer who buys, sells or exchanges, or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged, wholly or in part, in the business of selling, new or new and used motor vehicles.

(d) "Used motor vehicle dealer" means a motor vehicle dealer who buys, sells or exchanges, or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged, wholly or in part, in the business of selling, used motor vehicles only.

(e) "Motor vehicle salesman" or "salesman" means any person who is employed as a salesman by, or has an agreement with, a motor vehicle dealer, to sell or exchange motor vehicles.

(f) "Manufacturer" means any person, firm or corporation, resident or non-resident in this State, who manufactures or assembles motor vehicles.

(g) "Distributor" and "wholesaler" mean a person, resident or nonresident of this State, who sells or distributes motor vehicles to motor vehicle dealers in this State, or who maintains a distributor representative in this State.

(h) "Factory branch" means a branch office, maintained for the sale of motor vehicles to motor vehicle dealers, or for directing or supervising its representatives in this State.

(i) "Distributor branch" means a branch office maintained by a distributor or wholesaler, for the sale of motor vehicles to motor vehicle dealers, or for directing or supervising its representatives in this State.

(j) "Factory representative" means a person employed by a person who manufactures or assembles motor vehicles, or by a factory branch, for the purpose of making or promoting the sale of its motor vehicles, or for supervising or contacting its dealers, prospective dealers or representatives in this State.

(k) "Distributor representative" means a person employed by a distributor or wholesaler, or by a distributor branch, for the purpose of making or promoting the sale of motor vehicles dealt in by it, or for supervising or contacting its dealers, prospective dealers, or representatives in this State.

(l) "Established place of business" means a salesroom in a permanent enclosed building or structure, at which a permanent business of bartering, trading

and selling of motor vehicles will be carried on as such in good faith and at which place of business shall be kept and maintained the books, records and files necessary to conduct the business at such place, and shall not mean tents, temporary stands, or other temporary quarters, nor permanent quarters occupied pursuant to any temporary arrangement, devoted principally to the business of a motor vehicle dealer, as herein defined.

(m) "Retail installment sale" means and includes every sale of one or more motor vehicles to a buyer for his use and not for resale, in which the price thereof is payable in one or more installments over a period of time and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under form of contract designated either as a conditional sale, bailment lease, chattel mortgage or otherwise.

(n) "Department" means Department of Motor Vehicles.

(o) "Commissioner" means Commissioner of Motor Vehicles.

(p) "Person" means any individual, co-partnership, firm, association, corporation, or combination of individuals of whatsoever form or character. (1955, c. 1243, s. 2.)

§ 20-287. **Licenses required.**—It shall be unlawful for any new motor vehicle dealer, used motor vehicle dealer, motor vehicle salesman, manufacturer, factory branch, distributor branch, factory or distributor representative, to engage in business as such in this State without first obtaining a license as provided in this article. If any motor vehicle dealer acts as a motor vehicle salesman, he shall obtain a motor vehicle salesman's license in addition to a motor vehicle dealer's license. A salesman may have only one license, and such license shall show the name of the dealer or dealers employing him. A manufacturer or a factory branch or distributor or distributor branch, licensed as such, may also operate as a motor vehicle dealer without additional license. (1955, c. 1243, s. 3.)

§ 20-288. **Application for license; information required and considered; expiration of license; supplemental license.**—(a) Application for license shall be made to the Department at such time, in such form, and contain such information as the Department shall require, and shall be accompanied by the required fee.

(b) The Department shall require in such application, or otherwise, information relating to matters set forth in § 20-294 as grounds for the refusing of licenses, and to other pertinent matter commensurate with the safeguarding of the public interest, all of which shall be considered by the Department in determining the fitness of the applicant to engage in the business for which he seeks a license.

(c) All licenses that are granted shall expire unless sooner revoked or suspended, on June 30th of the year following date of issue.

(d) Supplemental licenses shall be issued for each place of business, operated or proposed to be operated by the licensee, that is not contiguous to other premises for which a license is issued. (1955, c. 1243, s. 4.)

§ 20-289. **License fees.**—(a) The license fee for each fiscal year, or part thereof, shall be as follows:

(1) For motor vehicle dealers, distributors, and wholesalers, fifteen dollars (\$15.00) for each principal place of business, plus five dollars (\$5.00) for a supplementary license for each car lot not immediately adjacent thereto.

(2) For manufacturers, fifty dollars (\$50.00), and for each factory branch in this State, twenty dollars (\$20.00).

(3) For motor vehicle salesmen, two dollars (\$2.00).

(4) For factory representatives, or distributor branch representatives, two dollars (\$2.00).

(5) Manufacturers, wholesalers, and distributors may operate as a motor vehicle dealer, without any additional fee or license.

(b) The fees and licenses collected under this section shall be placed in a special fund to be designated the "Dealers'-Manufacturers' License Fund" and shall be used under the direction and supervision of the assistant director of the budget for the administration of this article. Provided, that nothing contained in this section or in any other section of this article shall be construed as exempting any person of any license, tax or fee imposed by any other provision of the law. (1955, c. 1243, s. 5.)

**§ 20-290. Licenses to specify places of business; display of license and list of salesmen; advertising.**—(a) The licenses of new motor vehicle dealers, used motor vehicle dealers, manufacturers, factory branches, distributors, and distributor branches shall specify the location of each place of business or branch or other location occupied or to be occupied by the licensee in conducting his business as such, and the license or supplementary license issued therefor shall be conspicuously displayed on each of such premises. In the event any such location is changed, the Department shall endorse the change of location on the license, without charge.

(b) Each dealer shall keep a current list of his licensed salesmen, showing names, addresses, and serial numbers of their licenses, posted in a conspicuous place in each place of business.

(c) Whenever any licensee places an advertisement in any newspaper or publication, the type and serial number of license shall appear therein. (1955, c. 1243, s. 6.)

**§ 20-291. Salesman, etc., to carry license and display on request; license to name employer.**—Every salesman, factory representative and distributor representative shall carry his license when engaged in his business, and shall display the same upon request. The licensee shall name his employer, and in the event of a change of employer, he shall immediately mail his license to the Department, which shall endorse such change on the license without charge. (1955, c. 1243, s. 7.)

**§ 20-292. Use of unimproved lots and premises.**—A licensed motor vehicle dealer may use vacant lots and premises for the sale and display of motor vehicles: Provided, that if such lots and premises are not immediately adjacent to the dealer's established place of business, a supplementary license shall be obtained for each lot or premises. (1955, c. 1243, s. 8.)

**§ 20-293. Only licensed dealer entitled to dealer's registration plates.**—No motor vehicle dealer, unless licensed under this article shall be entitled to receive or use any dealer's registration plates under the provisions of the Motor Vehicle Laws of this State providing for the issuance of such plates. (1955, c. 1243, s. 9.)

**§ 20-294. Grounds for denying, suspending or revoking licenses.**—A license may be denied, suspended or revoked on any one or more of the following grounds:

- (1) Material misstatement in application for license.
- (2) Willful and intentional failure to comply with any provision of this article or any lawful rule or regulation promulgated by the Department under this article.
- (3) Being a motor vehicle dealer, failure to have an established place of business as defined in this article.
- (4) Willfully defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's business.
- (5) Employment of fraudulent devices, methods or practices in connection with compliance with the requirements under the laws of this State

with respect to the retaking of motor vehicles under retail installment contracts and the redemption and resale of such motor vehicles.

- (6) Having used unfair methods of competition or unfair deceptive acts or practices.
- (7) Knowingly advertising by any means, any assertion, representation or statement of fact which is untrue, misleading or deceptive in any particular relating to the conduct of the business licensed or for which a license is sought.
- (8) Knowingly advertising a used motor vehicle for sale as a new motor vehicle.
- (9) Conviction of an offense set forth under G. S. 20-105, 20-106, 20-106.1 or 20-112 while holding such a license or within five (5) years next preceding the date of filing the application. (1955, c. 1243, s. 10; 1963, c. 1102.)

**Editor's Note.**—The 1963 amendment added subdivision (9).

**§ 20-295. Time to act upon applications; refusal of license; notice; hearing.**—The Department shall act upon all applications for a license within thirty (30) days after receipt thereof, by either granting or refusing the same. Any applicant denied a license shall, upon his written request filed within thirty (30) days, be given a hearing at such time and place as determined by the Commissioner, or person designated by him. All such hearings shall be public and shall be held with reasonable promptness. Any applicant denied a license for failure to comply with the definition of an established place of business, as defined in this article, may not, nor shall any one else apply for a license for such premises, for which a license was denied, until the expiration of sixty (60) days from the date of the rejection of such application. (1955, c. 1243, s. 11.)

**§ 20-296. Notice and hearing upon denial, suspension, revocation or refusal to renew license.**—No license shall be suspended or revoked or denied, or renewal thereof refused, until a written notice of the complaint made has been furnished to the licensee against whom the same is directed, and a hearing thereon has been had before the Commissioner, or a person designated by him. At least ten (10) days' written notice of the time and place of such hearing shall be given to the licensee by registered mail to his last known address as shown on his license or other record of information in possession of the Department. At any such hearing, the licensee shall have the right to be heard personally or by counsel. After hearing, the Department shall have power to suspend, revoke or refuse to renew the license in question. Immediate notice of any such action shall be given to the licensee in the manner herein provided in the case of notices of hearing. (1955, c. 1243, s. 12.)

**§ 20-297. Inspection of records, etc.**—The Department may inspect the pertinent books, records, letters and contracts of a licensee relating to any written complaint made to him against such licensee. (1955, c. 1243, s. 13.)

**§ 20-298. Insurance.**—It shall be unlawful for any dealer or salesman or any employee of any dealer, to coerce or offer anything of value to any purchaser of a motor vehicle to provide any type of insurance coverage on said motor vehicle. No dealer, salesman or representative of either shall accept any policy as collateral on any vehicle sold by him to secure an interest in such vehicle in any company not qualified under the insurance laws of this State: Provided, nothing in this article shall prevent a dealer or his representative from requiring adequate insurance coverage on a motor vehicle which is the subject of an installment sale. (1955, c. 1243, s. 14.)

§ 20-299. **Acts of officers, directors, partners, salesmen and other representatives.**—(a) If a licensee is a co-partnership or a corporation, it shall be sufficient cause for the denial, suspension or revocation of a license that any officer, director or partner of the co-partnership or corporation has committed any act or omitted any duty which would be cause for refusing, suspending or revoking a license to such party as an individual. Each licensee shall be responsible for the acts of any or all of his salesmen while acting as his agent, if such licensee approved of or had knowledge of said acts or other similar acts and after such approval or knowledge retained the benefit, proceeds, profits, or advantages accruing from said acts or otherwise ratified said acts.

(b) Every licensee who is a manufacturer or a factory branch shall be responsible for the acts of any or all of its agents and representatives while acting in the conduct of said licensee's business whether or not such licensee approved, authorized, or had knowledge of such acts. (1955, c. 1243, s. 15.)

§ 20-300. **Appeals from actions of Commissioner.**—Appeals from actions of the Commissioner shall be governed by the provisions of article 33 of chapter 143 of the General Statutes. (1955, c. 1243, s. 16.)

Cited in *State ex rel. North Carolina Util. Comm'n v. Old Fort Finishing Plant*, 264 N.C. 416, 142 S.E.2d 8 (1965).

§ 20-301. **Powers of Commissioner.**—(a) The Commissioner shall promote the interests of the retail buyer of motor vehicles.

(b) The Commissioner shall have power to prevent unfair methods of competition and unfair or deceptive acts or practices.

(c) The Commissioner shall have the power in hearings arising under this article to determine the place where they shall be held; to subpoena witnesses; to take depositions of witnesses; and to administer oaths.

(d) The Commissioner may, whenever he shall believe from evidence submitted to him that any person has been or is violating any provision of this article, in addition to any other remedy, bring an action in the name of the State against such person and any other persons concerned or in any way participating in, or about to participate in practices or acts so in violation, to enjoin such persons and such other persons from continuing the same. (1955, c. 1243, s. 17.)

§ 20-302. **Rules and regulations.**—The Commissioner may make such rules and regulations, not inconsistent with the provisions of this article, as he shall deem necessary or proper for the effective administration and enforcement of this article, provided that a copy of such rules and regulations shall be mailed to each motor vehicle dealer licensee thirty (30) days prior to the effective date of such rules and regulations. (1955, c. 1243, s. 18.)

§ 20-303. **Installment sales to be evidenced by written instrument; statement to be delivered to buyer.**—(a) Every retail installment sale shall be evidenced by an instrument in writing, which shall contain all the agreements of the parties and shall be signed by the buyer.

(b) Prior to or about the time of the delivery of the motor vehicle, the seller shall deliver to the buyer a written statement describing clearly the motor vehicle sold to the buyer, the cash sale price thereof, the cash paid down by the buyer, the amount credited the buyer for any trade-in and a description of the motor vehicle traded, the amount of the finance charge, the amount of any other charge specifying its purpose, the net balance due from the buyer, the terms of the payment of such net balance and a summary of any insurance protection to be effected. (1955, c. 1243, s. 19.)

§ 20-304. **Coercion of retail dealer by manufacturer or distributor in connection with installment sales contract prohibited.**—(a) It shall be

unlawful for any manufacturer, wholesaler or distributor, or any officer, agent or representative of either, to coerce, or attempt to coerce, any retail motor vehicle dealer or prospective retail motor vehicle dealer in this State to sell, assign or transfer any retail installment sales contract, obtained by such dealer in connection with the sale by him in this State of motor vehicles manufactured or sold by such manufacturer, wholesaler, or distributor, to a specified finance company or class of such companies, or to any other specified persons, by any of the acts or means hereinafter set forth, namely:

(1) By any statement, suggestion, promise or threat that such manufacturer, wholesaler, or distributor will in any manner benefit or injure such dealer, whether such statement, suggestion, threat or promise is expressed or implied, or made directly or indirectly,

(2) By any act that will benefit or injure such dealer,

(3) By any contract, or any expressed or implied offer of contract, made directly or indirectly to such dealer, for handling motor vehicles, on the condition that such dealer sell, assign or transfer his retail installment sales contract thereon, in this State, to a specified finance company or class of such companies, or to any other specified person,

(4) By any expressed or implied statement or representation, made directly or indirectly, that such dealer is under any obligation whatsoever to sell, assign or transfer any of his retail sales contracts, in this State, on motor vehicles manufactured or sold by such manufacturer, wholesaler, or distributor to such finance company, or class of companies, or other specified person, because of any relationship or affiliation between such manufacturer, wholesaler, or distributor and such finance company or companies or such other specified person or persons.

(b) Any such statements, threats, promises, acts, contracts, or offers of contracts, when the effect thereof may be to lessen or eliminate competition, or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and against the public policy of this State, are unlawful and are hereby prohibited. (1955, c. 1243, s. 20.)

**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; cancellation of franchise.**—It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

(1) To coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by such dealer,

(2) To coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer,

(3) Unfairly, without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer. (1955, c. 1243, s. 21.)

**§ 20-306. Unlawful for salesman to sell except for his employer; multiple employment.**—It shall be unlawful for any motor vehicle salesman licensed under this article to sell or exchange or offer or attempt to sell or exchange any motor vehicle other than his own except for the licensed motor vehicle dealer or dealers by whom he is employed, or to offer, transfer or assign, any sale or exchange, that he may have negotiated, to any other dealer or salesman. Salesmen may be employed by more than one dealer provided such multiple employment is clearly indicated on his license. (1955, c. 1243, s. 22.)



§ 20-307. **Article applicable to existing and future franchises and contracts.**—The provisions of this article shall be applicable to all franchises and contracts existing between dealers and manufacturers, factory branches, and distributors at the time of its ratification, and to all such future franchises and contracts. (1955, c. 1243, s. 23.)

§ 20-308. **Penalties.**—Any person violating any of the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court. (1955, c. 1243, s. 24.)

### ARTICLE 13.

#### *The Vehicle Financial Responsibility Act of 1957.*

§ 20-309. **Financial responsibility prerequisite to registration; must be maintained throughout registration period.**—(a) No self-propelled motor vehicle shall be registered in this State unless the owner at the time of registration has financial responsibility for the operation of such motor vehicle, as provided in this article, and certifies that he has such financial responsibility. The owner of each motor vehicle registered in this State shall maintain financial responsibility continuously throughout the period of registration.

(b) Financial responsibility shall be a liability insurance policy or a financial security bond or a financial security deposit or by qualification as a self-insurer, as these terms are defined and described in article 9A, chapter 20 of the General Statutes of North Carolina, as amended.

(c) When it is certified that financial responsibility is a liability insurance policy, the Commissioner of Motor Vehicles may require that the owner produce records to prove the fact of such insurance, and failure to produce such records shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and the Department of Motor Vehicles shall revoke the owner's registration plate and suspend his operator's license for 30 days. In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of the registered owner, his spouse, or any child of the spouse or any child of such owner, within less than 30 days after the date of receipt of the registration plate and operator's license by the Department. As a condition precedent to the reregistration of the vehicle, the owner shall pay the appropriate fee for a new registration plate. It shall be the duty of insurance companies, upon request of the Department, to verify the accuracy of any owner's certification. Failure by an insurance company to deny coverage within twenty (20) days may be considered by the Commissioner as acknowledgment that the information as submitted is correct.

(d) When liability insurance with regard to any motor vehicle is terminated by cancellation or failure to renew, or the owner's financial responsibility for the operation of any motor vehicle is otherwise terminated, the owner shall forthwith surrender the registration certificate and plates of the vehicle to the Department of Motor Vehicles unless financial responsibility is maintained in some other manner in compliance with this article.

(e) No insurance policy provided in subsection (d) may be terminated by cancellation or otherwise by the insurer without having given the North Carolina Motor Vehicles Department notice of such cancellation fifteen (15) days prior to effective date of cancellation. Where the insurance policy is terminated by the insured the insurer shall immediately notify the Department of Motor Vehicles that such insurance policy has been terminated. The Department of Motor Vehicles upon receiving notice of cancellation or termination of an owner's financial responsibility as required by this article, shall notify such owner of such cancellation or termination, and such owner shall, to retain the registration plate for the vehicle registered or required to be registered, within 15 days from date of notice

given by the Department, certify to the Department that he has financial responsibility effective on or prior to the date of such cancellation or termination. Failure by the owner to certify that he has financial responsibility as herein required shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and, unless the owner's registration plate has been forwarded to the Department of Motor Vehicles, the Department of Motor Vehicles shall revoke the owner's registration plate and suspend his operator's license for 30 days. In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of the registered owner, his spouse, or any child of the spouse or any child of such owner, within less than 30 days after the date of receipt of the registration plate and operator's license by the Department. As a condition precedent to the reregistration of the vehicle, the owner shall pay the appropriate fee for a new registration plate. (1957, c. 1393, s. 1; 1959, c. 1277, s. 1; 1963, c. 964, s. 1; 1965, c. 272; c. 1136, ss. 1, 2.)

**Cross References.**—As to Motor Vehicle Safety and Financial Responsibility Act of 1953, see §§ 20-279.1 to 20-279.39.

As to notice of termination of policy required to be given to Commissioner of Motor Vehicles under § 20-310 before its amendment in 1963, see note to § 20-310.

**Editor's Note.** — The 1959 amendment added a paragraph authorizing the Commissioner of Motor Vehicles to require, during any registration year designated in advance, actual presentation of a certificate of insurance at the time of registration.

The 1963 amendment, effective Oct. 1, 1963, rewrote this section.

The first 1965 amendment added the second sentence in subsection (e).

The second 1965 amendment added the language following "concerned" at the end of the first sentence in subsection (c), added the present second and third sentences in that subsection and added the last four sentences in subsection (e). Section 5 of the second amendatory act provides that it shall be in full force and effect 60 days from and after ratification. It was ratified June 17, 1965.

For case law survey on insurance, see 41 N. C. Law Rev. 484.

**The manifest purpose of this article is to provide protection, within the required limits, to persons injured or damaged by the negligent operation of a motor vehicle; and, in respect of a motor vehicle liability policy, to provide such protection notwithstanding violations of policy provisions by the owner subsequent to accidents on which such injured parties base their claims. To bar recovery from the insurer on account of such policy violations would practically nullify the statute by making the enforcement of the rights of the person intended to be protected dependent upon the acts of the very person who caused the injury.** *Swain v. Nationwide Mutual Ins*

*Co.*, 253 N. C. 120, 116 S. E. (2d) 482 (1960).

**This Article and Article 9A Are to Be Construed in Pari Materia.**—The Motor Vehicle Safety and Financial Responsibility Act of 1953 applies to drivers whose licenses have been suspended and relates to the restoration of drivers' licenses, while the Vehicle Financial Responsibility Act of 1957 applies to all motor vehicle owners and relates to the registration of motor vehicles. The two acts are complementary and the latter does not repeal or modify the former, but incorporates portions of the former by reference, and the two acts are to be construed in *pari materia* so as to harmonize them and give effect to both. there is in effect an owner's motor vehicle liability policy. *Crisp v. State Farm Mut. Faizan v. Grain Dealers Mutual Ins. Co.*, 254 N. C. 47, 118 S. E. (2d) 303 (1961).

This article requires every owner of a motor vehicle, as a prerequisite to the registration thereof to show proof of financial responsibility in the manner prescribed by article 9A of this chapter. *Swain v. Nationwide Mutual Ins. Co.*, 253 N. C. 120, 116 S. E. (2d) 482 (1960).

**Effect of Issuance of Certificate by Insurer.**—By the issuance of the certificate an insurer represents that it has issued and *Auto. Ins. Co.*, 256 N. C. 408, 124 S. E. (2d) 149 (1962).

By the issuance of the certificate the insurer represents that everything requisite for a binding insurance policy has been performed, including payment, or satisfactory arrangement for payment, of premium. Once the certificate has been issued, nonpayment of premium, nothing else appearing, is no defense in a suit by a third party beneficiary against insurer. To avoid liability insurer must allege and prove cancellation and termination of the insurance policy in accordance with the applicable statute, unless it is established by plain-

tiff's evidence or admissions. *Crisp v. State Farm Mut. Auto. Ins. Co.*, 256 N. C. 408, 124 S. E. (2d) 149 (1962).

**Policy Violations a Defense Prior to January 1, 1958.**—As to accidents occurring prior to the effective date (January 1, 1958) of this article, policy violations constitute a valid and complete defense as to the insurer. *Swain v. Nationwide Mutual Ins. Co.*, 253 N. C. 120, 116 S. E. (2d) 482 (1960).

Applied in *Underwood v. National Grange Mut. Liability Co.*, 258 N. C. 211,

128 S. E. (2d) 577 (1962); *Lofquist v. Allstate Ins. Co.*, 263 N.C. 615, 140 S.E.2d 12 (1965).

Stated in *Griffin v. Hartford Acc. & Indem. Co.*, 264 N.C. 212, 141 S.E.2d 300 (1965).

Cited in *High Point Savings & Trust Co. v. King*, 253 N. C. 571, 117 S. E. (2d) 421 (1960); *Smart Finance Co. v. Dick*, 256 N. C. 669, 124 S. E. (2d) 862 (1962); *Fidelity & Cas. Co. of New York v. Jackson*, 297 F. (2d) 230 (1961).

**§ 20-310. Termination of insurance.**—(a) No contract of insurance or renewal thereof shall be terminated by cancellation or failure to renew by the insurer until at least fifteen (15) days after mailing a notice of termination by certificate of mailing to the named insured at the latest address filed with the insurer by or on behalf of the policyholder. The fact of the envelope containing such notice shall be prominently marked with the words "Important Insurance Notice." Time of the effective date and hour of termination stated in the notice shall become the end of the policy period. Every such notice of termination for any cause whatsoever sent to the insured shall include on the face of the notice a statement that financial responsibility is required to be maintained continuously throughout the registration period and that operation of a motor vehicle without maintaining such financial responsibility is a misdemeanor, the penalties for which are loss of license plate and suspension of driver's license for thirty (30) days; and a fine or imprisonment in the discretion of the court.

(b) In addition, no contract of insurance which has been in effect for sixty (60) days may be terminated by cancellation by the insurer unless:

- (1) The named insured fails to discharge when due any of his obligations in connection with the payment of premium for the policy or any installment thereof;
- (2) The insured violates any of the terms and conditions of the policy not in conflict with the provisions of this subsection;
- (3) The named insured or any other operator who customarily operates an automobile insured under the policy:
  - a. Has had his driver's license suspended or revoked during the policy period, for more than thirty (30) days, or
  - b. Is convicted of or forfeits bail, during the policy period, for
    1. Any felony;
    2. Theft of a motor vehicle;
    3. A third violation, for any one operator, within a period of eighteen (18) months, of any moving traffic offense.

After the aforesaid sixty-day period, a notice of cancellation from the insurer to the insured shall give the statutory reason for which such cancellation is made. Compliance with this paragraph shall be privileged and shall not constitute grounds for any cause of action against the insurer or its representatives.

The provisions of this subsection shall not apply to policies of insurance issued under the assigned risk plan, and shall apply only to policies of insurance issued on vehicles rated as private passenger automobiles.

(c) No contract of insurance which has been in effect for sixty days shall be terminated by failure to renew by the insurer unless:

- (1) The insurer gives the named insured notice in writing, accompanying the written notice of failure to renew provided for in subsection (a) of G.S. 20-310, at least fifteen days prior to the proposed date of termination or failure to renew:

- a. That it proposes to terminate or fail to renew the insurance contract upon such date; and
  - b. That, upon receipt of a written request from the named insured, it will forthwith mail to the named insured a written explanation of its actual reason or reasons for terminating or failing to renew; and
  - c. That the named insured, within five days after receipt of such notice, may at his option, request the insurer to furnish such written explanation; and
- (2) That, if the named insured exercises his option, the insurer shall forthwith, but, in any event, prior to the proposed termination or failure to renew, mail to the named insured a written explanation, giving the actual reason or reasons for its failure to renew the contract.

Such explanation shall be privileged, and shall not constitute grounds for any cause of action against the insurer or its representatives or any firm, person or corporation who in good faith furnishes to the insurer the information upon which the reasons are based.

The provisions of this subsection shall not apply to policies of liability insurance issued under the Assigned Risk Plan. (1957, c. 1393, s. 2; 1963, c. 842, ss. 1-3; c. 964, s. 2; 1965, c. 1135.)

**Cross Reference.**—As to notice of termination of policy required to be given by insurer to Motor Vehicles Department, see § 20-309 (e).

**Editor's Note.**—The first 1963 amendment, effective Sept. 1, 1963, added subsection (b). The second 1963 amendment, effective Oct. 1, 1963, rewrote subsection (a).

The 1965 amendment, effective July 1, 1965, added subsection (c).

It was the intent of this article that motor vehicle owners maintain financial responsibility continuously and that the law enforce this purpose. *Crisp v. State Farm Mut. Auto. Ins. Co.*, 256 N. C. 408, 124 S. E. (2d) 149 (1962).

**Operation without Such Maintenance Is Crime.** — Operation of a motor vehicle without insurance or deposit for the protection of those injured as a result of its use is a crime. *Levinson v. Travelers Indemnity Co.*, 258 N. C. 672, 129 S. E. (2d) 297 (1963).

**But Insured May Cancel Policy.**—There is nothing in the Vehicle Financial Responsibility Act which expressly or impliedly forbids the cancellation of a policy by insured through a duly authorized agent. *Daniels v. Nationwide Mut. Ins. Co.*, 258 N. C. 660, 129 S. E. (2d) 314 (1963).

**By Agent.**—Cancellation of the policy by the insured is not an act so personal in its nature that it cannot be delegated to an agent. *Daniels v. Nationwide Mut. Ins. Co.*, 258 N. C. 660, 129 S. E. (2d) 314 (1963).

This section was intended to protect insured from the acts of the insurer, not from his own intentional acts. *Levinson v.*

*Travelers Indemnity Co.*, 258 N. C. 672, 129 S. E. (2d) 297 (1963).

**Substantial Compliance with Section Required.**—In order to effectively cancel a policy an insurer must substantially comply with the requirements of this section. *Crisp v. State Farm Mut. Auto. Ins. Co.*, 256 N. C. 408, 124 S. E. (2d) 149 (1962).

**Notice of Termination of Policy.**—This article has separate, distinct and specific provisions for notice of termination of a policy issued thereunder. Thus § 20-279-22, relating to notice of termination of policies issued under article 9A of this chapter, has no application to insurance policies issued pursuant to this article. *Faizan v. Grain Dealers Mutual Ins. Co.*, 254 N. C. 47, 118 S. E. (2d) 303 (1961).

The notice gives insured reasonable opportunity to procure other insurance. *Levinson v. Travelers Indemnity Co.*, 258 N. C. 672, 129 S. E. (2d) 297 (1963).

**Statement to Be Placed on Face of Notice to Insured.** — The statement required by this section to be placed on the face of the notice of termination is not merely formal and directory. It is intended as a firm reminder to vehicle owners of the requirements of the law, and as a notice that failure to comply constitutes a criminal offense. It is to be given at the very time when insurance protection and financial responsibility is being withdrawn. *Crisp v. State Farm Mut. Auto. Ins. Co.*, 256 N. C. 408, 124 S. E. (2d) 149 (1962).

**Is Essential to Valid Cancellation or Termination.** — In the absence of circumstances in a civil action which might constitute a waiver or an estoppel, or render harmless the failure to include a statement

that proof of financial responsibility must be maintained, it is essential to a valid cancellation or termination, especially when the suit is by a member of the class the act is designed to protect. *Crisp v. State Farm Mut. Auto. Ins. Co.*, 256 N. C. 408, 124 S. E. (2d) 149 (1962).

**If the notice fails to conform to the statute, the contract remains in force.** *Levinson v. Travelers Indemnity Co.*, 258 N. C. 672, 129 S. E. (2d) 297 (1963).

**Insurer Not Required to Give Notice of Cancellation by Insured.**—Where there is a cancellation by insured, insurer is not required to give notice of such cancellation to the insured. *Underwood v. National Grange Mut. Liability Co.*, 258 N. C. 211, 128 S. E. (2d) 577 (1962); *Daniels v. Nationwide Mut. Ins. Co.*, 258 N. C. 660, 129 S. E. (2d) 312 (1963).

**Notice Held Sufficient.**—Pursuant to the rules and regulations of the assigned risk plan, insurer by mail advised insured in January, 1959, that his policy would expire 22 February 1959, and that in order to renew it he must pay the premium in advance by 5 February 1959, gave the amount of premium, and stated that if premium had not been paid by 5 February, it would be assumed he did not desire coverage. It also advised that if premium was not paid by 5 February 1959, insured would have to apply through the assigned risk plan if he desired further insurance coverage. Insured did not pay the renewal premium on the date specified and did not tender the pre-

mium at any later date, but applied through the assigned risk plan for further insurance. Under these conditions, it was held that there was no failure to renew on the part of insurer, and it was under no obligation to give insured further notice of termination under the provisions of this section. Therefore, the coverage period of the policy ended at 12:01 A. M., 22 February 1959. *Faizan v. Grain Dealers Mutual Ins. Co.*, 254 N. C. 47, 118 S. E. (2d) 303 (1961).

**Notice to Commissioner of Motor Vehicles—Former Law.** — As to notice of termination of policy required to be given to the Commissioner of Motor Vehicles before the 1963 amendment to this section, see *Nixon v. Liberty Mut. Ins. Co.*, 258 N. C. 41, 127 S. E. (2d) 892 (1962); *Levinson v. Travelers Indemnity Co.*, 258 N. C. 672, 129 S. E. (2d) 297 (1963). See now § 20-309 (e).

**Substitution of Vehicle at Insured's Request.**—Where insured requests insurer to substitute another vehicle for the vehicle insured, and insurer in compliance with the request endorses the policy and issues form FS-1, there is no cancellation of the policy but the policy does not thereafter cover the original vehicle, and no liability can attach to insurer for any injuries inflicted in the negligent operation of the original vehicle by insured or by another with insured's permission. *Levinson v. Travelers Indemnity Co.*, 258 N. C. 672, 129 S. E. (2d) 297 (1963).

§ 20-310.1: Repealed by Session Laws 1963, c. 964, s. 3, effective Oct. 1, 1963.

§ 20-311. **Revocation of registration and driver's license when financial responsibility not in effect.**—The Department of Motor Vehicles, upon receipt of evidence that financial responsibility for the operation of any motor vehicle registered or required to be registered in this State is not or was not in effect at the time of operation or certification that insurance was in effect, shall revoke the registration of such vehicle and suspend the operator's and chauffeur's licenses of the owner thereof for a period of thirty (30) days. In no case shall the operator's or chauffeur's license of such owner be reinstated nor shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of such owner, his spouse or any child or spouse of any child of the owner within less than thirty (30) days after the registration plates and operator's or chauffeur's license have been surrendered to the Department. As a condition precedent to the reregistration of the vehicle the owner shall pay the appropriate fee for a new registration plate. (1957, c. 1393, s. 3; 1959, c. 1277, s. 2; 1963, c. 964, s. 4; 1965, c. 205; c. 1136, s. 3.)

**Editor's Note.** — The 1959 amendment rewrote this section.

The 1963 amendment, effective Oct. 1, 1963, again rewrote the section.

The first 1965 amendment inserted in

the second sentence the provisions as to operator's or chauffeur's license.

The second 1965 amendment rewrote the last sentence. Section 5 of the amendatory act provides that it shall be in full

force and effect 60 days from and after ratification. It was ratified June 17, 1965.

Cited in *Griffin v. Hartford Acc. &*

*Indem. Co.*, 264 N.C. 212, 141 S.E.2d 300 (1965).

§ 20-312. **Failure of owner to deliver certificate of registration and plates after revocation.**—Failure of an owner to deliver the certificate of registration and registration plates issued by the Department of Motor Vehicles, after revocation thereof as provided in this article, shall constitute a misdemeanor. (1957, c. 1393, s. 4.)

§ 20-313. **Operation of motor vehicle without financial responsibility as misdemeanor.**—(a) On or after July 1, 1963, any owner of a motor vehicle registered or required to be registered in this State who shall operate or permit such motor vehicle to be operated in this State without having in full force and effect the financial responsibility required by this article shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court.

(b) Evidence that the owner of a motor vehicle registered or required to be registered in this State has operated or permitted such motor vehicle to be operated in this State, coupled with proof of records of the Department of Motor Vehicles indicating that the owner did not have financial responsibility applicable to the operation of the motor vehicle in the manner certified by him for purposes of G. S. 20-309, shall be prima facie evidence that such owner did at the time and place alleged operate or permit such motor vehicle to be operated without having in full force and effect the financial responsibility required by the provisions of this article. (1957, c. 1393, s. 5; 1959, c. 1277, s. 3; 1963, c. 964, s. 5.)

**Editor's Note.**—The 1959 amendment made this section applicable to vehicles required to be registered in this State.

*Grange Mut. Liability Co.*, 258 N. C. 211, 128 S. E. (2d) 577 (1962).

The 1963 amendment, effective Oct. 1, 1963, rewrote this section.

Cited in *Griffin v. Hartford Acc. & Indem. Co.*, 264 N.C. 212, 141 S.E.2d 300 (1965).

Applied in *Underwood v. National*

§ 20-313.1. **Making false certification or giving false information a misdemeanor.**—(a) Any owner of a motor vehicle registered or required to be registered in this State who shall make a false certification concerning his financial responsibility for the operation of such motor vehicle shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court.

(b) Any person, firm, or corporation giving false information to the Department concerning another's financial responsibility for the operation of a motor vehicle registered or required to be registered in this State, knowing or having reason to believe that such information is false, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court. (1963, c. 964, s. 6.)

**Editor's Note.**—The act inserting this section is effective as of Oct. 1, 1963.

§ 20-314. **Applicability of article 9A; its provisions continued.**—The provisions of article 9A, chapter 20 of the General Statutes, as amended, which pertain to the method of giving and maintaining proof of financial responsibility and which govern and define "motor vehicle liability policy" and assigned risk plans shall apply to filing and maintaining proof of financial responsibility required by this article. It is intended that the provisions of article 9A, chapter 20 of the General Statutes, as amended, relating to proof of financial responsibility required of each operator and each owner of a motor vehicle involved in an accident, and

relating to nonpayment of a judgment as defined in G. S. 20-279.1, shall continue in full force and effect. (1957, c. 1393, s. 6; 1963, c. 964, s. 7.)

**Editor's Note.** — The 1963 amendment, effective Oct. 1, 1963, inserted "as amended" at two places in this section.

This section does not incorporate § 20-279.22 in this article. *Faizan v. Grain Dealers Mutual Ins. Co.*, 254 N. C. 47, 118 S. E. (2d) 303 (1961).

Insurance policies and insurers' certificates required by both article 9A of this chapter and this article, are defined by arti-

cle 9A. *Faizan v. Grain Dealers Mutual Ins. Co.*, 254 N. C. 47, 118 S. E. (2d) 303 (1961).

Quoted in *Swain v. Nationwide Mutual Ins. Co.*, 253 N. C. 120, 116 S. E. (2d) 482 (1960).

Cited in *Nixon v. Liberty Mut. Ins. Co.*, 258 N. C. 41, 127 S. E. (2d) 892 (1962); *Daniels v. Nationwide Mut. Ins. Co.*, 258 N. C. 660, 129 S. E. (2d) 314 (1963).

**§ 20-315. Commissioner to administer article; rules and regulations.**—The Commissioner of Motor Vehicles shall administer and enforce the provisions of this article relating to registration of motor vehicles and may make necessary rules and regulations for its administration. (1957, c. 1393, s. 7.)

Quoted in *Levinson v. Travelers Indemnity Co.*, 258 N. C. 672, 129 S. E. (2d) 297 (1963).

**§ 20-316:** Repealed by Session Laws 1963, c. 964, s. 8, effective Oct. 1, 1963.

**§ 20-317. Insurance required by any other law; certain operators not affected.**—This article shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this State, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this article, may be certified as proof of financial responsibility under this article; provided, however, that nothing contained in this article shall affect operators of motor vehicles that are now or hereafter required to furnish evidence of insurance or financial responsibility to the North Carolina Utilities Commission or the Interstate Commerce Commission or both, but to the extent that any insurance policy, bond or other agreement filed with or certified to the North Carolina Utilities Commission or Interstate Commerce Commission as evidence of financial responsibility affords less protection to the public than the financial responsibility required to be certified to the Department of Motor Vehicles under this article as a condition precedent to registration of motor vehicles, the amounts, provisions and terms of such policy, bond or other agreement so certified shall be deemed to be modified to conform to the financial responsibility required to be proved under this article as a condition precedent to registration of motor vehicles in this State. It is the intention of this section to require owners of self-propelled motor vehicles registered in this State and operated under permits from the North Carolina Utilities Commission or the Interstate Commerce Commission to show and maintain proof of financial responsibility which is at least equal to the proof of financial responsibility required of other owners of self-propelled motor vehicles registered in this State. (1957, c. 1393, s. 9; 1959, c. 1252, s. 1.)

**Editor's Note.** — The 1959 amendment, effective Aug. 1, 1959, added the part of this section appearing after the word "both" in line nine. Section 2 of the amendatory act provides that the act shall

not affect any insurance policies or contracts now in force, but the same shall be effective with respect to all policies or contracts issued, made or renewed on or after August 1, 1959.

**§ 20-318. Federal, State and political subdivision vehicles excepted.**—This article does not apply to any motor vehicle owned by the State of North Carolina or by a political subdivision of the State nor to any motor vehicle owned by the federal government. (1957, c. 1393, s. 10.)

§ 20-319. **Effective date.**—This article shall be effective from and after January 1, 1958. (1957, c. 1393, s. 12; 1961, c. 276.)

**Editor's Note.**—The 1961 amendment extended the duration of this article by deleting the words which made it null and void from and after May 15, 1961.

**Cited in** *Faizan v. Grain Dealers Mutual Ins. Co.*, 254 N. C. 47, 118 S. E. (2d) 303 (1961).

ARTICLE 14.

*Driver Training School Licensing Law.*

§ 20-320. **Definitions.**—As used in this article:

- (1) "Commercial driver training school" or "school" means a business enterprise conducted by an individual, association, partnership or corporation which educates or trains persons to operate or drive motor vehicles or which furnishes educational materials to prepare an applicant for an examination given by the State for an operator's or chauffeur's license or learner's permit, and charges a consideration or tuition for such service or materials.
- (2) "Commissioner" means the Commissioner of Motor Vehicles.
- (3) "Instructor" means any person who operates a commercial driver training school or who teaches, conducts classes, gives demonstrations, or supervises practical training of persons learning to operate or drive motor vehicles in connection with operation of a commercial driver training school. (1965, c. 873.)

**Editor's Note.**—In Session Laws 1965, c. 873, adding this article, effective July 1, 1965, the sections thereof were numbered 20-330 to 20-338. For the sake of uniform-

ity in the numbering system of the General Statutes, they have been renumbered 20-320 to 20-328.

§ 20-321. **Enforcement of article by Commissioner.**—(a) The Commissioner shall, subject to the provisions of article 18 of chapter 143 of the General Statutes of North Carolina, adopt and prescribe such regulations concerning the administration and enforcement of this article as are necessary to protect the public. The Commissioner or his authorized representative shall have the duty of examining applicants for commercial driver training school and instructor's licenses, licensing successful applicants, and inspecting school facilities and equipment.

(b) The Commissioner shall administer and enforce the provisions of this article, and may call upon the State Superintendent of Public Instruction for assistance in developing and formulating appropriate regulations. (1965, c. 873.)

§ 20-322. **Licenses for schools necessary; regulations as to requirements.**—(a) No commercial driver training school shall be established nor any such existing school be continued on or after July 1, 1965, unless such school applies for and obtains from the Commissioner a license in the manner and form prescribed by the Commissioner.

(b) Regulations adopted by the Commissioner shall state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, financial statements, schedule of fees and charges, character and reputation of the operators, insurance, bond or other security in such sum and with such provisions as the Commissioner deems necessary to protect adequately the interests of the public, and such other matters as the Commissioner may prescribe. (1965, c. 873.)

§ 20-323. **Licenses for instructors necessary; regulations as to requirements.**—(a) No person shall act as an instructor on or after July 1, 1965, unless such person applies for and obtains from the Commissioner a license in the manner and form prescribed by the Commissioner.



(b) Regulations adopted by the Commissioner shall state the requirements for an instructor's license, including requirements concerning moral character, physical condition, knowledge of the courses of instruction, knowledge of the motor vehicle laws and safety principles, previous personal and employment records, and such other matters as the Commissioner may prescribe, for the protection of the public. (1965, c. 873.)

§ 20-324. **Expiration and renewal of licenses; fees.** — All licenses issued under the provisions of this article shall expire on the last day of June in the year following their issuance and may be renewed upon application to the Commissioner as prescribed by his regulations. Each application for a new or renewal school license shall be accompanied by a fee of twenty-five dollars (\$25.00), and each application for a new or a renewal instructor's license shall be accompanied by a fee of five dollars (\$5.00). The license fees collected under this section shall be placed in a special fund to be designated the "Commercial Driver Training Law Fund" and shall be used under the supervision and direction of the Director of the Budget for the administration of this article. No license fee shall be refunded in the event that the license is rejected, suspended, or revoked. (1965, c. 873.)

§ 20-325. **Cancellation, suspension, revocation, and refusal to issue or renew licenses.**—The Commissioner may cancel, suspend, revoke, or refuse to issue or renew a school or instructor's license in any case where he finds the licensee or applicant has not complied with, or has violated any of the provisions of this article or any regulation adopted by the Commissioner hereunder. A suspended or revoked license shall be returned to the Commissioner by the licensee, and its holder shall not be eligible to apply for a license under this article until twelve months have elapsed since the date of such suspension or revocation. (1965, c. 873.)

§ 20-326. **Exemptions from article.**—The provisions of this article shall not apply to any person giving driver training lessons without charge, to employers maintaining driver training schools without charge for their employees only, or to schools or classes conducted by colleges, universities and high schools. (1965, c. 873.)

§ 20-327. **Penalties for violating article or regulations.**—Violation of any provision of this article or any regulation promulgated pursuant hereto, shall constitute a misdemeanor, and any person, firm, or corporation upon conviction thereof shall be punished by a fine of not more than one hundred dollars (\$100.00) or by imprisonment for not more than thirty days, or by both such fine and imprisonment. (1965, c. 873.)

§ 20-328. **Administration of article.**—This article shall be administered by the Driver Education and Accident Records Division of the Department of Motor Vehicles with no additional appropriation. (1965, c. 873.)

## Chapter 21.

### Bills of Lading.

#### ARTICLE 1.

#### *Definitions.*

#### § 21-1. General definitions.

**Cross Reference.**—For provisions of the Uniform Commercial Code as to documents of title, see §§ 25-7-101 to 25-7-603.

#### **Editor's Note.**—

Section 2, c. 700, Session Laws 1965, repeals ss. 21-1 to 21-41, effective at midnight June 30, 1967.

## Chapter 22.

### Contracts Requiring Writing.

§ 22-1. Contracts charging representative personally; promise to answer for debt of another.

#### Contracts Not within the Statute.—

In accord with 2nd paragraph in original. See *Warren v. White*, 251 N. C. 729, 112 S. E. (2d) 522 (1960).

A contract for the construction of a house for a man to live in is not required to be in writing. *Rankin v. Helms*, 244 N. C. 532, 94 S. E. (2d) 651 (1956).

A cause of action based upon an original contract of a corporation, made for it in its name by its president, to pay for labor and materials furnished on airplanes, was not within the provisions of this section. *Piedmont Aviation, Inc. v. S & W Motor Lines, Inc.*, 262 N.C. 135, 136 S.E.2d 658 (1964).

#### Or to Promise, etc.—

This section does not apply to representations by the president and principal stockholder of a corporation that he, personally, in addition to the corporation, would be obligated for the payment of the contract price for certain construction work, which representations were the agreement upon which plaintiffs accepted and performed the contract, since such agreement involves an original promise or undertaking on the part of the president at the time credit was extended. *May v. Charles C. Haynes Jr. Constr. Co.*, 252 N. C. 583, 114 S. E. (2d) 271 (1960).

#### What Determines Nature of Promise.—

Whenever the main purpose and object of

the promisor is not to answer for another, but to subserve some pecuniary or business purpose of his own, involving either a benefit to himself or damage to the other contracting party, his promise is not within the statute, although it may be in form a promise to pay the debt of another, and although the performance of it may incidentally have the effect of extinguishing that liability. *Warren v. White*, 251 N. C. 729, 112 S. E. (2d) 522 (1960).

#### Original Undertakings—New Consideration.—

In accord with 5th paragraph in original. See *Warren v. White*, 251 N. C. 729, 112 S. E. (2d) 522 (1960).

#### Paper Writing Not Supporting Action.

—A paper writing signed by defendant stated that he owed a certain sum to a named person and contained the words "I agree to Ed Peaton [plaintiff] \$1000 of this amount when I pay off". It was held that the paper writing was incomplete and uncertain in meaning and was not a written special promise to answer the debt of another so as to enable plaintiff to maintain an action on it. *Peaton v. Coble*, 245 N. C. 190, 95 S. E. (2d) 569 (1956).

Cited in *General Tire & Rubber Co. v. Distributors, Inc.*, 253 N. C. 459, 117 S. E. (2d) 479 (1960); *Baker v. Malan Constr. Corp.*, 255 N. C. 302, 121 S. E. (2d) 731 (1961).

§ 22-2. Contract for sale of land; leases.

#### I. IN GENERAL.

**Editor's Note.**—For note on recovery of payments by vendee under contract void under statute of frauds, see 30 N. C. Law Rev. 292. For note on rights of lessees under oral leases, see 31 N. C. Law Rev. 498. For comment on parol boundary settlements, see 40 N. C. Law Rev. 304. For note on recovery by third party beneficiary on quantum meruit, see 41 N.C.L. Rev. 890 (1963).

**Construction of Section.**—This section has not been given a literal or narrow construction. The decisions of the Supreme Court have consistently given that interpretation which would accomplish the purpose declared in the English statute. Even though the statute declares leases and conveyances void, that word has been regularly interpreted to mean voidable.

*Herring v. Volume Merchandise, Inc.*, 249 N. C. 221, 106 S. E. (2d) 197 (1958).

This section goes to the substance as well as the remedy. *Pickelsimer v. Pickelsimer*, 257 N. C. 696, 127 S. E. (2d) 557 (1962).

**Section Supplemented by § 47-18.**—This section and the Connor Act, § 47-18, requiring registration of deeds and leases, were designed to accomplish the same purpose. The latter act supplements the earlier act. *Herring v. Volume Merchandise, Inc.*, 249 N. C. 221, 106 S. E. (2d) 197 (1958).

#### Executory Contracts.—

See *Sprinkle v. Ponder*, 233 N. C. 312, 64 S. E. (2d) 171 (1951); *Dobias v. White*, 240 N. C. 680, 83 S. E. (2d) 785 (1954).

In accord with 2nd paragraph in original. See *Willis v. Willis*, 242 N. C. 597, 89

S. E. (2d) 152 (1955); *Herring v. Volume Merchandise, Inc.*, 249 N. C. 221, 106 S. E. (2d) 197 (1958).

A wholly unexecuted contract to sell land is void. *Riggs v. Anderson*, 260 N.C. 221, 132 S.E.2d 312 (1963).

**Statute Not Applicable to Abrogation of Contracts.**—The statute of frauds applies to the making of enforceable contracts to sell or convey land, not to their abrogation. As a consequence, an executory written contract to sell or convey real property may be abandoned or canceled by mutual agreement orally expressed. *Scott v. Jordan*, 235 N. C. 244, 69 S. E. (2d) 557 (1952).

**Nor to Lease for One Year.**—A lease for one year need not be in writing. *Carolina Helicopter Corp. v. Cutter Realty Co.*, 263 N.C. 139, 139 S.E.2d 362 (1964).

**Oral Statement of Lessor's Son-in-Law as Modifying Lease.**—Where a lease for a term of five years was in writing as required by this statute, an oral statement of the lessor's son-in-law forbidding lessee to have anything to do with the furnace, an appurtenance of the demised premises, could not have the effect of modifying the written lease, certainly in the absence of evidence that the son-in-law had legal authority and was an agent of the lessor to agree or assent to a change in the written lease. *Rickman Mfg. Co. v. Gable*, 246 N. C. 1, 97 S. E. (2d) 672 (1957).

**Parol Trusts Are Valid Generally.**—The seventh section of the English statute of frauds, forbidding the creation of parol trusts unless manifested and proved by some writing, is not in force in North Carolina and no statute of equivalent import has been enacted. Hence, parol trusts have a recognized place in this State's jurisprudence and have been sanctioned and upheld. *Gaylord v. Gaylord*, 150 N. C. 222, 63 S. E. 1028 (1909), citing *Shelton v. Shelton*, 58 N. C. 292 (1859); *Jones v. Jones*, 164 N. C. 320, 80 S. E. 430 (1913); *Wilson v. Jones*, 176 N. C. 205, 97 S. E. 18 (1918); *Kelly Springfield Tire Co. v. Lester*, 192 N. C. 642, 135 S. E. 778 (1926); *Winner v. Winner*, 222 N. C. 414, 23 S. E. (2d) 251 (1942). See also, *Pittman v. Pittman*, 107 N. C. 159, 12 S. E. 61 (1890); *Cobb v. Edwards*, 117 N. C. 244, 23 S. E. 241 (1895); *Anderson v. Harrington*, 163 N. C. 140, 79 S. E. 426 (1913); *Lutz v. Hoyle*, 167 N. C. 632, 83 S. E. 749 (1914); *Newby v. Atlantic Coast Realty Co.*, 182 N. C. 34, 108 S. E. 323 (1921); *Blue v. Wilmington*, 186 N. C. 321, 119 S. E. 741 (1923); *Cunningham v. Long*, 186 N. C. 526, 120 S. E. 81 (1923); *Peele v. LeRoy*, 222 N. C. 123, 22 S. E. (2d)

244 (1942); *Taylor v. Addington*, 222 N. C. 393, 23 S. E. (2d) 318 (1942); *Thompson v. Davis*, 223 N. C. 792, 28 S. E. (2d) 556 (1944); *Embler v. Embler*, 224 N. C. 811, 32 S. E. (2d) 619 (1945); *Atkinson v. Atkinson*, 225 N. C. 120, 33 S. E. (2d) 666 (1945); *Carlisle v. Carlisle*, 225 N. C. 462, 35 S. E. (2d) 418 (1945); *Robertson v. Bemis*, 226 F. 828 (1915).

This section has no application to parol trusts. *Hargrave v. King*, 40 N. C. 430 (1848); *Cloninger v. Summit*, 55 N. C. 513 (1856); *Cousins v. Wall*, 56 N. C. 43 (1856); *Hanff v. Howard*, 56 N. C. 440 (1857); *Riggs v. Swann*, 59 N. C. 118 (1860); *Russell v. Wade*, 146 N. C. 116, 59 S. E. 345 (1907); *Cobb v. Edwards*, 117 N. C. 244, 23 S. E. 241 (1895); *Owens v. Williams*, 130 N. C. 165, 41 S. E. 93 (1902); *Sykes v. Boone*, 132 N. C. 199, 43 S. E. 645 (1903); *Avery v. Stewart*, 136 N. C. 426, 48 S. E. 775 (1904); *Anderson v. Harrington*, 163 N. C. 140, 79 S. E. 426 (1913); *Jones v. Jones*, 164 N. C. 320, 80 S. E. 430 (1913); *Brogden v. Gibson*, 165 N. C. 16, 80 S. E. 966 (1914); *Lutz v. Hoyle*, 167 N. C. 632, 83 S. E. 749 (1914); *Boone v. Lee*, 175 N. C. 383, 95 S. E. 659 (1918); *Newby v. Atlantic Coast Realty Co.*, 182 N. C. 34, 108 S. E. 323 (1921); *Peele v. LeRoy*, 222 N. C. 123, 22 S. E. (2d) 244 (1942); *Thompson v. Davis*, 223 N. C. 792, 28 S. E. (2d) 556 (1944); *Embler v. Embler*, 224 N. C. 811, 32 S. E. (2d) 619 (1945). See, for example, the language of *Pearson, C. J.*, in *Shelton v. Shelton*, 58 N. C. 292 (1859), quoted with approval in *Jones v. Jones*, 164 N. C. 320, 80 S. E. 430 (1913), and *Thompson v. Davis*, 223 N. C. 792, 28 S. E. (2d) 556 (1944): "A bare perusal of the statute [Acts 1819, Rev. Code, c. 50, § 11] will suffice to show that it cannot, by any rule of construction, be made to include a declaration of trusts, so as to supply the place of the section of the English statute of frauds in regard to a parol declaration of trusts, which our legislature has omitted to re-enact."

Nor does this section prohibit their establishment by parol evidence. *Shelton v. Shelton*, 58 N. C. 292 (1859); *Riggs v. Swann*, 59 N. C. 118 (1860); *Jones v. Jones*, 164 N. C. 320, 80 S. E. 430 (1913); *Thompson v. Davis*, 223 N. C. 792, 28 S. E. (2d) 556 (1944). And in *Thompson v. Davis* it is further stated (223 N. C. at p. 794): "Parol evidence introduced to establish such a trust does not violate the rule of evidence prohibiting the admission of parol evidence to contradict, alter or explain a written instrument, since such is

not its purpose or effect." But the evidence must be clear, strong and convincing. *Jefferson Standard Life Ins. Co. v. Morehead*, 209 N. C. 174, 183 S. E. 606 (1936).

Thus, parol trusts remain as at common law. *Shelton v. Shelton*, 58 N. C. 292 (1859); *Pittman v. Pittman*, 107 N. C. 159, 12 S. E. 61 (1890); *Anderson v. Harrington*, 163 N. C. 140, 79 S. E. 426 (1913); *Lutz v. Hoyle*, 167 N. C. 632, 83 S. E. 749 (1914); *Cunningham v. Long*, 186 N. C. 526, 120 S. E. 81 (1923); *Peele v. LeRoy*, 222 N. C. 123, 22 S. E. (2d) 244 (1942).

Parol trusts have been held valid in the following cases involving, generally, trusts in land for the benefit of others than the grantor: *Hargrave v. King*, 40 N. C. 430 (1848) (dictum); *Cloninger v. Summit*, 55 N. C. 513 (1856); *Cousins v. Wall*, 56 N. C. 43 (1856); *Hanff v. Howard*, 56 N. C. 440 (1857); *Shelton v. Shelton*, 58 N. C. 292 (1859); *Riggs v. Swann*, 59 N. C. 118 (1860) (as to slaves); *Cohn v. Chapman*, 62 N. C. 92 (1867); *Cobb v. Edwards*, 117 N. C. 245, 23 S. E. 241 (1895); *Owens v. Williams*, 130 N. C. 165, 41 S. E. 93 (1902); *Sykes v. Boone*, 132 N. C. 199, 43 S. E. 645 (1903); *Avery v. Stewart*, 136 N. C. 426, 48 S. E. 775 (1904); *Anderson v. Harrington*, 163 N. C. 140, 79 S. E. 426 (1913); *Jones v. Jones*, 164 N. C. 320, 80 S. E. 430 (1913); *Lutz v. Hoyle*, 167 N. C. 632, 83 S. E. 749 (1914); *Rush v. McPherson*, 176 N. C. 562, 97 S. E. 613 (1918); *Cunningham v. Long*, 186 N. C. 526, 120 S. E. 81 (1923); *Thompson v. Davis*, 223 N. C. 792, 28 S. E. (2d) 556 (1944); *Embler v. Embler*, 224 N. C. 811, 32 S. E. (2d) 619 (1945); *Carlisle v. Carlisle*, 225 N. C. 462, 35 S. E. (2d) 418 (1945); and these cases involving, generally, division of profits arising from the disposition of land: *Michael v. Foil*, 100 N. C. 178, 6 S. E. 264 (1888); *Sprague v. Bond*, 108 N. C. 382, 13 S. E. 143 (1891); *Bourne v. Sherrill*, 143 N. C. 381, 55 S. E. 799 (1906); *Brown v. Hobbs*, 147 N. C. 73, 60 S. E. 716 (1908); *Brogden v. Gibson*, 165 N. C. 16, 80 S. E. 966 (1914); *Newby v. Atlantic Coast Realty Co.*, 182 N. C. 34, 108 S. E. 323 (1921); *Peele v. LeRoy*, 222 N. C. 123, 22 S. E. (2d) 244 (1942).

**But Must Be Declared Prior to or Contemporaneously with Transfer of Legal Title.**—Parol trusts must be declared prior to or contemporaneously with the transfer of legal title. *Owens v. Williams*, 130 N. C. 165, 41 S. E. 93 (1902) (prior parol declaration and land conveyed pursuant

thereto); *Sykes v. Boone*, 132 N. C. 199, 43 S. E. 645 (1903); *Jones v. Jones*, 164 N. C. 320, 80 S. E. 430 (1913); *Lutz v. Hoyle*, 167 N. C. 632, 83 S. E. 749 (1914). A declaration is said to be contemporaneous, in the sense that it is a part of the same transaction in which the sale is accomplished. *Kelly v. McNeill*, 118 N. C. 349, 24 S. E. 738 (1896). For cases stating only that the declaration must be contemporaneous, see *Riggs v. Swann*, 59 N. C. 118 (1860) ("at the time the legal title passes"); *Pittman v. Pittman*, 107 N. C. 159, 12 S. E. 61 (1890); *Blackburn v. Blackburn*, 109 N. C. 488, 13 S. E. 937 (1891); *Hamilton v. Buchanan*, 112 N. C. 463, 17 S. E. 159 (1893) ("at the time of the sale"); *Peele v. LeRoy*, 222 N. C. 123, 22 S. E. (2d) 244 (1942). But see *Cobb v. Edwards*, 117 N. C. 245, 23 S. E. 241 (1895), wherein it is said at page 247: "... where the grantor by a mere declaration engrafts upon his own deed a trust, the declaration must be neither prior nor subsequent to but contemporaneous with its execution," citing *Smiley v. Pearce*, 98 N. C. 185, 3 S. E. 631 (1887), and *Blount v. Washington*, 108 N. C. 230, 12 S. E. 1008 (1891), and quoted in *Embler v. Embler*, 224 N. C. 811, 32 S. E. (2d) 619 (1945).

And if declared subsequent to the transmission of title parol trusts will not be upheld. *Smiley v. Pearce*, 98 N. C. 185, 3 S. E. 631 (1887); *Pittman v. Pittman*, 107 N. C. 159, 12 S. E. 61 (1890); *Blount v. Washington*, 108 N. C. 230, 12 S. E. 1008 (1891); *Hamilton v. Buchanan*, 112 N. C. 463, 17 S. E. 159 (1893) (invalid under statute of frauds); *Cobb v. Edwards*, 117 N. C. 245, 23 S. E. 241 (1895); *Embler v. Embler*, 224 N. C. 811, 32 S. E. (2d) 619 (1945); *Loftin v. Kornegay*, 225 N. C. 490, 35 S. E. (2d) 607 (1945) (void under statute of frauds). It was said in *Kelly v. McNeill*, 118 N. C. 349, 354, 24 S. E. 738 (1896): "Subsequent agreements by parol are void, under the statute of frauds, whether made the next moment or the next year."

After title to real property has passed, any oral agreement to engraft a trust thereon falls within the statute of frauds, and no action for a breach thereof can be maintained. *Humphrey v. Faison*, 247 N. C. 127, 100 S. E. (2d) 524 (1957).

**And Parol Trust in Favor of Grantor Is Invalid.**—Upon the creation of parol trusts, however, our authorities seem to have declared or established the limitation that except in cases of fraud, mistake or undue influence, a parol trust, to arise by reason of the contract or agreement of the parties thereto, will not be set up or

engrafted in favor of the grantor upon a written deed conveying to the grantee the absolute title, and giving clear indication on the face of the instrument that such a title was intended to pass. *Gaylord v. Gaylord*, 150 N. C. 222, 63 S. E. 1028 (1909); *Jones v. Jones*, 164 N. C. 320, 80 S. E. 430 (1913); *Colonial Trust Co. v. Sterchie Bros.*, 169 N. C. 21, 85 S. E. 40 (1915); *Campbell v. Sigmon*, 170 N. C. 348, 87 S. E. 116 (1915); *Walters v. Walters*, 171 N. C. 312, 88 S. E. 438 (1916); *Walters v. Walters*, 172 N. C. 328, 90 S. E. 304 (1916); *Chilton v. Smith*, 180 N. C. 472, 105 S. E. 1 (1920); *Swain v. Goodman*, 183 N. C. 531, 112 S. E. 36 (1922); *Blue v. Wilmington*, 186 N. C. 321, 119 S. E. 741 (1923); *Williams v. McRackan*, 186 N. C. 381, 119 S. E. 746 (1923) (concurring opinion by Clark, C. J., referring to *Gaylord v. Gaylord*, supra, as "well reasoned and clearly enunciated, and . . . recognized as a leading case . . ."); *Kelly Springfield Tire Co. v. Lester*, 192 N. C. 642, 135 S. E. 778 (1926); *Waddell v. Aycock*, 195 N. C. 268, 142 S. E. 10 (1928); *Taylor v. Addington*, 222 N. C. 393, 23 S. E. (2d) 318 (1942); *Winner v. Winner*, 222 N. C. 414, 23 S. E. (2d) 251 (1942); *Carlisle v. Carlisle*, 225 N. C. 462, 35 S. E. (2d) 418 (1945); *Loftin v. Kornegay*, 225 N. C. 490, 35 S. E. (2d) 607 (1945); *McCullen v. Durham*, 229 N. C. 418, 50 S. E. (2d) 511 (1948); *Walker v. Walker*, 231 N. C. 54, 55 S. E. (2d) 801 (1949); *Jones v. Brinson*, 231 N. C. 63, 55 S. E. (2d) 808 (1949); *Vincent v. Corbett*, 244 N. C. 469, 94 S. E. (2d) 329 (1956); *Conner v. Ridley*, 248 N. C. 714, 104 S. E. (2d) 845 (1958).

Parol trusts will not be permitted or established here by reason of contemporaneous parol contracts and agreements between the parties when the same are in direct conflict with the expressed stipulations of the written deed and the entire purport of the instrument. In such case and to that extent the doctrine of parol trusts is subordinated to another well-recognized principle of law, that when parties have formally and explicitly expressed their entire contract in writing, the same shall not be contradicted or changed by contemporaneous stipulations and agreements resting in parol. *Gaylord v. Gaylord*, 150 N. C. 222, 63 S. E. 1028 (1909). See, also, brief references to this in 35 A. L. R. 285 and 33 N. C. Law Rev. 227.

It was no doubt in deference to this principle [that a parol trust will not be set up in favor of the grantor upon a written deed conveying to the grantee the ab-

solute title] that a verdict was rendered in favor of defendant grantee in the instant case, where the issue was addressed to the interest alleged in favor of the grantor in the deed; but as to those who were not directly parties to the instrument it is well established that a parol trust of this kind may be established by parol declarations contemporary with the making of the deed or prior thereto and existent at the time the same was executed and title passed. *Jones v. Jones*, 164 N. C. 320, 80 S. E. 430 (1913).

The qualification that a parol trust cannot be established in favor of the grantor without an allegation of fraud or mistake stands upon a different footing and has no application to the facts in the instant case in which the trust was not sought to be established and enforced by the grantor, but by others not parties to the deed. *Thompson v. Davis*, 223 N. C. 792, 28 S. E. (2d) 556 (1944).

If, notwithstanding the solemn recitals and covenants in a deed, the grantor could show a parol trust in himself it would virtually do away with the statute of frauds and would be a most prolific source of fraud and litigation. *Campbell v. Sigmon*, 170 N. C. 348, 87 S. E. 116 (1915), involving a parol agreement to reconvey.

A parol trust cannot be established between the parties in favor of the grantor in a deed, when the effect will be to contradict or change by a contemporaneous oral agreement the written contract clearly and fully expressed. To permit the terms of a solemn conveyance, absolute on its face, to be contradicted by a contemporaneous parol agreement would be in the teeth of the letter and the intent of the statute of frauds. *Chilton v. Smith*, 180 N. C. 472, 105 S. E. 1 (1920).

Parol trusts were not raised in favor of the grantor in the following cases involving, generally, parol agreements between grantor and grantee by which the grantee was to reconvey: *Campbell v. Campbell*, 55 N. C. 364 (1856) (agreement void under the statute of frauds); *Bonham v. Craig*, 80 N. C. 224 (1879); *Campbell v. Sigmon*, 170 N. C. 348, 87 S. E. 116 (1915); *Newton v. Clark*, 174 N. C. 393, 93 S. E. 951 (1917); *Chilton v. Smith*, 180 N. C. 472, 105 S. E. 1 (1920); *Swain v. Goodman*, 183 N. C. 531, 112 S. E. 36 (1922) (parol promise in contravention of statute of frauds); *Wolfe v. North Carolina Joint Stock Land Bank*, 219 N. C. 313, 13 S. E. (2d) 533 (1941); *Winner v. Winner*, 222 N. C. 444, 23 S. E. (2d) 251 (1942); *Loftin v. Kornegay*, 225 N. C. 490, 35 S. E. (2d) 607 (1945); *Poston v. Bowen*, 228 N. C. 202, 44

S. E. (2d) 881 (1947); *Walker v. Walker*, 231 N. C. 54, 55 S. E. (2d) 801 (1949); *Jones v. Brinson*, 231 N. C. 63, 55 S. E. (2d) 808 (1949); *Vincent v. Corbett*, 244 N. C. 469, 94 S. E. (2d) 329 (1956); *Conner v. Ridley*, 248 N. C. 714, 104 S. E. (2d) 845 (1958).

**Resulting Trusts.** — The statute of frauds has no application to a resulting trust, arising while plaintiffs furnished the full purchase price for certain lots, defendants took title thereto in their own names and built a dwelling on one of the lots for plaintiffs, for which plaintiffs paid them in full, and thereafter conveyed only part of the lots to plaintiffs. *Hoffman v. Mozeley*, 247 N. C. 121, 100 S. E. (2d) 243 (1957).

Applied in *Rochlin v. P. S. West Constr. Co.*, 234 N. C. 443, 67 S. E. (2d) 464 (1951), commented on in 30 N. C. Law Rev. 292.

Cited in *Perkins v. Langdon*, 237 N. C. 159, 74 S. E. (2d) 634 (1953); *Clark v. Butts*, 240 N. C. 709, 83 S. E. (2d) 885 (1954); *Douglass v. Brooks*, 242 N. C. 178, 87 S. E. (2d) 258 (1955); *Dunn v. Dunn*, 242 N. C. 234, 87 S. E. (2d) 308 (1955).

## II. WHAT CONSTITUTES AN INTEREST IN OR CONCERNING LAND.

The authority of a duly authorized agent to contract to convey lands need not be in writing under the statute of frauds. *Wellman v. Horn*, 157 N. C. 170, 72 S. E. 1010 (1911); *Lewis v. Allred*, 249 N. C. 486, 106 S. E. (2d) 689 (1959).

A mere contract between a broker and the owner of land to negotiate a sale of the latter's land is not required to be in writing. *Carver v. Britt*, 241 N. C. 538, 85 S. E. (2d) 888 (1955).

A restrictive covenant creates a negative easement within the statute of frauds, and cannot be proved by parol. *Hege v. Sellers*, 241 N. C. 240, 84 S. E. (2d) 892 (1954).

Covenants limiting the use of real property are within the scope of the statute of frauds and the registration act. *Herring v. Volume Merchandise, Inc.*, 249 N. C. 221, 106 S. E. (2d) 197 (1958).

An easement is an interest in land and must be in writing. *Shepherd v. Duke Power Co.*, 140 F. Supp. 27 (1956).

### A Dower Interest, etc.—

An oral contract which undertakes to bind the plaintiff to release her dower interest in the lands of the defendant runs afoul of this section, which renders parol promises to surrender dower unenforce-

able. *Luther v. Luther*, 234 N. C. 429, 67 S. E. (2d) 345 (1951).

### Partition.—

A parol partition of land is a contract within the purview of this section, and is not binding. And in order for tenants in common to perfect title to the respective shares of land allotted to them by parol, it is necessary for them to go into possession of their respective shares in accordance with the agreement and to hold possession thereof under known and visible boundaries, consisting of lines plainly marked on the ground at the time of the partition, and to continue in possession openly, notoriously and adversely for twenty years. *Williams v. Robertson*, 235 N. C. 478, 70 S. E. (2d) 692 (1952).

An oral contract to give or devise real estate is void by reason of the statute of frauds. *Clapp v. Clapp*, 241 N. C. 281, 85 S. E. (2d) 153 (1954); *Pickelsimer v. Pickelsimer*, 257 N. C. 696, 127 S. E. (2d) 557 (1962).

An oral agreement to devise realty is within the statute of frauds and therefore unenforceable. *Gales v. Smith*, 249 N. C. 263, 106 S. E. (2d) 164 (1958).

An agreement to devise real property is within the statute of frauds. *Humphrey v. Faison*, 247 N. C. 127, 100 S. E. (2d) 524 (1957).

**May Not Be Enforced.**—Upon a plea of the statute, an oral contract to convey or to devise real property may not be specifically enforced and no recovery of damages for the loss of the bargain can be predicated upon its breach. *Pickelsimer v. Pickelsimer*, 257 N. C. 696, 127 S. E. (2d) 557 (1962).

**Contract to Bequeath or Devise Must Be Established by Same Proof Required for Other Contracts.**—An aggrieved party may recover for the breach of a contract, made upon sufficient consideration, that the promisor will make him the beneficiary of a bequest or devise in his will, but such a contract must be established by the mode of proof legally permissible in establishing other contracts. *McCraw v. Llewellyn*, 256 N. C. 213, 123 S. E. (2d) 575 (1962).

**An indivisible contract to devise real and personal property, etc.—**

In accord with original. See *Humphrey v. Faison*, 247 N. C. 127, 100 S. E. (2d) 524 (1957); *Pickelsimer v. Pickelsimer*, 257 N. C. 696, 127 S. E. (2d) 557 (1962).

**A parol crop-sharing agreement by which certain tobacco land was to be leased and equipment, labor and supplies to be furnished by the parties did not involve an interest in land under this sec-**

tion and was valid. *Martin v. Stiers*, 165 F. Supp. 163 (1958).

**Parol Agreement as to Division of Profits from Sale of Land.**—Where the grantor alleges that the grantee entered into a contemporaneous parol agreement to reconvey or to sell the land and divide the profits realized from the sale, and that the grantee had sold the property, the parol agreement as to the division of profits does not involve an interest in land and does not come within the statute of frauds, and, the part of the agreement coming within the statute having been executed, the original grantor may maintain an action for an accounting to determine whether or not any profit was realized from the sale for a division under the agreement. *Schmidt v. Bryant*, 251 N. C. 838, 112 S. E. (2d) 262 (1960).

**Standing Timber.**—

Standing trees on land are real property and contracts and conveyances in respect thereto are governed by the same rules applicable to other forms of real property. The statute of frauds defeats a parol conveyance or reservation of timber trees. *Westmoreland v. Lowe*, 225 N. C. 553, 35 S. E. (2d) 613 (1945).

**Assignment or Surrender of Lease.** — The English statute of frauds declares void parol assignments or surrenders of leases, but the English statute was not adopted as a part of the common law of North Carolina. The North Carolina statute, embodied in this section, makes no declaration with respect to the assignment or surrender of leases when an unexpired term exceeds three years. Nevertheless, though not mentioned in either this section or § 47-18, an assignment of a lease for more than three years must, to be enforceable, be in writing, and to protect against creditors or subsequent purchasers, must be recorded. *Herring v. Volume Merchandise, Inc.*, 249 N. C. 221, 106 S. E. (2d) 197 (1958).

And a parol offer to surrender a leasehold estate having more than three years to run is within the statute of frauds and cannot be specifically enforced. *Herring v. Volume Merchandise, Inc.*, 249 N. C. 221, 106 S. E. (2d) 197 (1958).

Because performance of a parol offer to surrender a leasehold estate having more than three years to run cannot be enforced so long as the contract is executory, that does not mean that a consummated surrender is invalid or that lessee may not by his conduct be estopped to deny the termination of his lease. *Herring v. Volume Merchandise, Inc.*, 249 N. C. 221, 106 S. E. (2d) 197 (1958).

**Creation of Mill Dam.**—

In accord with original. See *Ebert v. Disher*, 216 N. C. 36, 3 S. E. (2d) 301 (1939).

**III. SUFFICIENCY OF COMPLIANCE WITH SECTION.**

**A. In General.**

**But Memorandum Must Show Essential Elements of Valid Contract.**—

In accord with original. See *Elliott v. Owen*, 244 N. C. 684, 94 S. E. (2d) 833 (1956).

A memorandum or note must contain expressly or by necessary implication the essential features of an agreement to sell. *Lane v. Coe*, 262 N.C. 8, 136 S.E.2d 269 (1964).

The memorandum of a contract to convey realty is insufficient if no buyer therein is identified in the slightest degree. *Elliott v. Owen*, 244 N. C. 684, 94 S. E. (2d) 833 (1956).

The agreement must adequately express the intent and obligation of the parties. Parol evidence cannot be received to supply anything which is wanting in the writing to make it the agreement on which the parties rely. *McCraw v. Llewellyn*, 256 N. C. 213, 123 S. E. (2d) 575 (1962).

The writing must show the promise or obligation which the complaining party seeks to enforce. *McCraw v. Llewellyn*, 256 N. C. 213, 123 S. E. (2d) 575 (1962).

The memorandum need not be contained, etc.—

In accord with original. See *Millikan v. Simmons*, 244 N. C. 195, 93 S. E. (2d) 59 (1956); *Elliott v. Owen*, 244 N. C. 684, 94 S. E. (2d) 833 (1956).

This section does not require all of the provisions of the contract to be set out in a single instrument. The memorandum required by this section is sufficient if the contract provisions can be determined from separate but related writings. *Hines v. Tripp*, 263 N.C. 470, 139 S.E.2d 545 (1965).

**Writing Must Describe, etc.**—

A memorandum or note must contain a description of the land, the subject matter of the contract, either certain in itself or capable of being reduced to certainty by reference to something extrinsic to which the contract refers. *Lane v. Coe*, 262 N.C. 8, 136 S.E.2d 269 (1964).

**There Must Be No Patent Ambiguity.**—

The only requisite in evaluating the written contract, as to the certainty of the thing described, is that there be no patent ambiguity in the description. *Lane v. Coe*, 262 N.C. 8, 136 S.E.2d 269 (1964).

**When Patent Ambiguity Exists.**—There is a patent ambiguity when the terms of the writing leaves the subject of the contract, the land, in a state of absolute uncertainty, and refer to nothing extrinsic by which it might possibly be identified with certainty. *Lane v. Coe*, 262 N.C. 8, 136 S.E.2d 269 (1964).

**Patent Ambiguity Precludes Use of Parol Evidence.**—When the language of the writing is patently ambiguous, parol evidence is not admissible to aid the description. *Lane v. Coe*, 262 N.C. 8, 136 S.E.2d 269 (1964).

**Burden of Showing Proper Memorandum.**—In a suit to enforce specific performance of a written memorandum allegedly given for the sale of a house and lot, the burden was on the plaintiff to show that the memorandum was executed in compliance with the statute of frauds. *Elliott v. Owen*, 244 N. C. 684, 94 S. E. (2d) 833 (1956).

**Time of Making Memorandum.**—

In accord with original. See *Millikan v. Simmons*, 244 N. C. 195, 93 S. E. (2d) 59 (1956).

An agreement to extend an option to purchase land, made on the 13th of the month and reduced to writing and signed on the 15th, is enforceable between the parties as of the 13th. *Millikan v. Simmons*, 244 N. C. 195, 93 S. E. (2d) 59 (1956).

**Sufficiency of Description.**—

This court has uniformly recognized the principle that a deed conveying land, or a contract to sell and convey land, or a memorandum thereof, within the meaning of the statute of frauds must contain a description of the land, the subject matter thereof, either certain in itself or capable of being reduced to certainty by reference to something extrinsic to which the deed, contract or memorandum refers. *Kelly v. Kelly*, 246 N. C. 174, 97 S. E. (2d) 872 (1957).

If the description is sufficiently definite for the court, with the aid of extrinsic evidence, to apply the description to the exact property intended to be sold, it is enough. *Lane v. Coe*, 262 N.C. 8, 136 S.E.2d 269 (1964).

**Requisites of Deeds.**—A deed conveying land within the meaning of the statute of frauds must contain a description of the land, the subject matter of the deed, either certain in itself or capable of being reduced to certainty by reference to something extrinsic to which the deed refers. The office of description is to furnish, and is sufficient when it does furnish, means of

identifying the land intended to be conveyed. The deed itself must point to the source from which evidence aliunde to make the description complete is to be sought. *Plemmons v. Cutshall*, 234 N. C. 506, 67 S. E. (2d) 501 (1951); *Powell v. Mills*, 237 N. C. 582, 75 S. E. (2d) 759 (1953).

**Letters Held Sufficiently Definite and Certain.**—Letters from testatrix to plaintiff held sufficiently definite and certain to constitute a memorandum of a contract to convey property to plaintiff in return for certain services. *Heiland v. Lee*, 207 F. (2d) 939 (1953).

Letters from the agent for plaintiffs to defendants, and the reply of the agent for defendants, were a sufficient memorandum to meet the requirements of this section. *Hines v. Tripp*, 263 N.C. 470, 139 S.E.2d 545 (1965).

**Parol Acceptance of Option.**—A written option offering to sell, at the election of the optionee, can become binding on the owner by verbal notice to the owner, but a parol acceptance by the optionee is not sufficient to repel the statute of frauds and bind the optionee. *Warner v. W & O, Inc.*, 263 N.C. 37, 138 S.E.2d 782 (1964).

**A parol agreement of the conditional delivery of a written contract** for the conveyance of land is valid; it does not contradict the written instrument, but only postpones its effectiveness until after the condition has been performed or the event has happened. *Lane v. Coe*, 262 N.C. 8, 136 S.E.2d 269 (1964).

**A receipt for the cash payment on an identified tract of land** belonging to an estate, signed by the executor, who is also an heir and authorized to act in the matter by the other heirs, is a sufficient memorandum of the contract to convey, signed by the party to be charged within the requirement of the statute of frauds. *Lewis v. Allred*, 249 N. C. 486, 106 S. E. (2d) 689 (1959).

**Will Not Be Sufficient As Memorandum or Note of Contract.**—See *McCraw v. Llewellyn*, 256 N. C. 213, 123 S. E. (2d) 575 (1962).

The mere exercise of the statutory right to dispose of one's property at death is not of itself evidence that the disposition directed is compelled by a contractual obligation. *McCraw v. Llewellyn*, 256 N. C. 213, 123 S. E. (2d) 575 (1962).

**B. The Signature.**

**Signature of Agent.**—

The name of the party to be charged may be signed by some other person under the



express terms of this section. In re Williams' Will, 234 N. C. 228, 66 S. E. (2d) 902 (1951).

This section permits an agent to bind his principal, and the agent may do so by signing his name. Hines v. Tripp, 263 N.C. 470, 139 S.E.2d 545 (1965).

#### C. Statement of Consideration.

##### Contract Must Fix the Price.—

In accord with original. See Shepherd v. Duke Power Co., 140 F. Supp. 27 (1956).

#### IV. PART PERFORMANCE.

##### In General.—

In accord with original. See Ebert v. Disher, 216 N. C. 36, 3 S. E. (2d) 301 (1939).

North Carolina has repudiated and consistently declined to follow the doctrine of part performance. Pickelsimer v. Pickelsimer, 257 N. C. 696, 127 S. E. (2d) 557 (1962).

The remedy of the promisee who has rendered personal services in consideration of an oral contract to devise real estate void under the statute of frauds is an action on implied assumpsit or quantum meruit for the value of the services rendered. Pickelsimer v. Pickelsimer, 257 N. C. 696, 127 S. E. (2d) 557 (1962).

Where the promisor in an oral contract to convey or devise real property has received the purchase price in money or other valuable consideration and has failed to transfer title, the promisee may recover the consideration in an action of quasi-contract for money had and received or under the doctrine of unjust enrichment. Pickelsimer v. Pickelsimer, 257 N. C. 696, 127 S. E. (2d) 557 (1962).

Permanent improvements made by the purchaser in possession under an unenforceable contract to convey is sufficient claim of title to support a claim for betterments, and the statute of frauds may not be asserted to defeat such claim. Pamlico County v. Davis, 249 N. C. 648, 107 S. E. (2d) 306 (1959).

#### V. PLEADING AND PRACTICE.

**Three Modes of Taking Advantage of Statute.**—The party to be charged may take advantage of the statute by pleading the statute specifically, by denying the contract, or by alleging another and different contract. Pickelsimer v. Pickelsimer, 257 N. C. 696, 127 S. E. (2d) 557 (1962).

**Defendant's failure to object to parol evidence, etc.**—

Where the pleadings raise the question of the statute of frauds, that defense is not

waived by a failure to object to the parol evidence on the trial. Pickelsimer v. Pickelsimer, 257 N. C. 696, 127 S. E. (2d) 557 (1962).

##### General Issue or General Denial.—

In accord with 1st paragraph in original. See Ebert v. Disher, 216 N. C. 36, 3 S. E. (2d) 301 (1939).

In accord with 4th paragraph in original. See Shepherd v. Duke Power Co., 140 F. Supp. 27 (1956).

In accord with 5th paragraph in original. See Ebert v. Disher, 216 N. C. 36, 3 S. E. (2d) 301 (1939); Humphrey v. Faison, 247 N. C. 127, 100 S. E. (2d) 524 (1957); Hunt v. Hunt, 261 N.C. 437, 135 S.E.2d 195 (1964); Hines v. Tripp, 263 N.C. 470, 139 S.E.2d 545 (1965).

It is settled law that a party may rely on the statute of frauds under a general denial. Clapp v. Clapp, 241 N. C. 281, 85 S. E. (2d) 153 (1954); Riggs v. Anderson, 260 N.C. 221, 132 S.E.2d 212 (1963).

Denial that an alleged oral agreement to devise real property was ever made invokes the statute of frauds as effectively as if it had been expressly pleaded. Humphrey v. Faison, 247 N. C. 127, 100 S. E. (2d) 524 (1957); Hunt v. Hunt, 261 N.C. 437, 135 S.E.2d 195 (1964).

A denial of the alleged contract suffices to require compliance with this section if plaintiff is to recover on the contract alleged. McCraw v. Llewellyn, 256 N. C. 213, 123 S. E. (2d) 575 (1962).

A defense of the statute of frauds may be taken advantage of by general denial. Riggs v. Anderson, 260 N.C. 221, 132 S.E.2d 312 (1963).

**A parol contract to sell or convey land may be enforced, unless the party to be charged takes advantage of the statute of frauds by pleading it, or by denial of the contract, as alleged, which is equivalent to a plea of the statute.** Weant v. McCanness, 235 N. C. 384, 70 S. E. (2d) 196 (1952).

**Defense Can Only Be Raised by Answer or Reply.**—The provisions of the statute of frauds cannot be taken advantage of by motion to strike. Such defense can only be raised by answer or reply. The statute of frauds may be taken advantage of in any one of three ways: (1) The contract may be admitted and the statute pleaded as a bar to its enforcement; (2) the contract, as alleged, may be denied and the statute pleaded, and in such case if it "develops on the trial that the contract is in parol. it must be declared invalid," or, (3) the party to be charged may enter a general denial without pleading the statute, and on the

trial object to the admission of parol testimony to prove the contract. *Weant v. McCanless*, 235 N. C. 384, 70 S. E. (2d) 196 (1952).

The statute of frauds is an affirmative defense and must be pleaded. *Yeager v. Dobbins*, 252 N. C. 824, 114 S. E. (2d) 820 (1960).

An oral contract to convey or devise real property may be enforced unless the party to be charged takes advantage of the statute of frauds by pleading it. *Pickelsimer v. Pickelsimer*, 257 N. C. 696, 127 S. E. (2d) 557 (1962).

#### Demurrer.—

In accord with 1st paragraph in original. See *Weant v. McCanless*, 235 N. C. 384, 70 S. E. (2d) 196 (1952).

In accord with 2nd paragraph in original. See *Yeager v. Dobbins*, 252 N. C. 824, 114 S. E. (2d) 820 (1960).

A party who claims protection from the statute must take affirmative action. He cannot avail himself of its provisions by demurrer. *Herring v. Volume Mer-*

*chandise, Inc.*, 249 N. C. 221, 106 S. E. (2d) 197 (1958).

The defense of the statute of frauds to an oral agreement to secure a note by a mortgage on real estate cannot be raised by demurrer. *McKinley v. Hinnant*, 242 N. C. 245, 87 S. E. (2d) 568 (1955).

**Where Complaint Alleges Consummated Agreement or Estoppel.**—Where, in lessor's action for possession of the premises, the allegations of the complaint are sufficient, liberally construed, to allege a consummated parol agreement by lessee to surrender the premises or equitable matters in pais sufficient to raise the question of estoppel of lessee and those claiming under him from denying the termination of the lease, lessor is entitled to show facts establishing such allegations, and judgment dismissing the action on the ground that the parol agreement to surrender the lease came within the statute of frauds and was void as a matter of law is error. *Herring v. Volume Merchandise, Inc.*, 249 N. C. 221, 106 S. E. (2d) 197 (1958).

## Chapter 23.

### Debtor and Creditor.

#### ARTICLE 4.

#### *Discharge of Insolvent Debtors.*

#### § 23-23. Insolvent debtor's oath.

##### Debtor Must Follow Provisions.—

When a person is taken by authority of an execution against his person by virtue of the provisions of § 1-311, he can be discharged from imprisonment only by pay-

ment or giving notice and surrender of all his property in excess of fifty dollars as provided in this section and §§ 23-30 through 23-38. *Allred v. Graves*, 261 N.C. 31, 134 S.E.2d 186 (1964).

#### § 23-24. Persons imprisoned for nonpayment of costs in criminal cases.

Quoted in *State v. Bryant*, 251 N. C. 423, 111 S. E. (2d) 591 (1959).

#### § 23-29. Persons taken in arrest and bail proceedings, or in execution.

##### Broad Terms.—

The provisions of subsection (2) of this section, are broad and strong, and plainly extend to and embrace every person who may be arrested by virtue of an order of arrest issued pursuant to the provisions of

§ 1-410, and also extend to and embrace every person who has been seized by virtue of an execution against his person by authority of the provisions of § 1-311. *Allred v. Graves*, 261 N.C. 31, 134 S.E.2d 186 (1964).

#### § 23-30. When petition may be filed.

Cross Reference.—See note to § 23-23.

**Chapter 24.**

**Interest.**

Sec.  
24-8. Loans of thirty thousand dollars or more to corporations.

Sec.  
24-9. Certain loans to corporations organized for profit not subject to claim or defense of usury.

**§ 24-1. Legal rate is six per cent.**

**Cross Reference.**—As to effect of secured transaction provisions of Uniform Commercial Code, see § 25-9-201.

**Premium for Privilege of Prepaying Notes.**—A provision in a deed of trust that the borrower should pay a premium, in addition to accrued interest at the legal rate, upon the exercise of its privilege of prepaying the notes before maturity, is valid.

*Bell Bakeries, Inc. v. Jefferson Standard Life Ins. Co.*, 245 N. C. 408, 96 S. E. (2d) 408 (1957).

Applied in *DeBruhl v. State Highway & Public Works Comm.*, 247 N. C. 671, 102 S. E. (2d) 229 (1958); *H. F. Mitchell Constr. Co. v. Orange County Bd. of Educ.*, 262 N.C. 295, 136 S.E.2d 635 (1964).

**§ 24-2. Penalty for usury; corporate bonds may be sold below par.**

—The taking, receiving, reserving or charging a greater rate of interest than six per centum per annum, either before or after the interest may accrue, when knowingly done, shall be a forfeiture of the entire interest which the note or other evidence of debt carries with it, or which has been agreed to be paid thereon. And in case a greater rate of interest has been paid, the person or his legal representatives or corporation by whom it has been paid, may recover back twice the amount of interest paid in an action in the nature of action for debt. In any action brought in any court of competent jurisdiction to recover upon any such note or other evidence of debt, it is lawful for the party against whom the action is brought to plead as a counterclaim the penalty above provided for, to wit, twice the amount of interest paid as aforesaid, and also the forfeiture of the entire interest. If security has been given for an usurious loan and the debtor or other person having an interest in the security seeks relief against the enforcement of the security or seeks any other affirmative relief, the debtor or other person having an interest in the security shall not be required to pay or to offer to pay the principal plus legal interest as a condition to obtaining the relief sought but shall be entitled to the advantages provided in this section. Nothing contained in this section or in § 24-1, however, shall be held or construed to prohibit private corporations from paying a commission on or for the sale of their coupon bonds, nor from selling such bonds for less than the par value thereof; nor shall anything contained in this section or in §§ 24-1 and 24-3 be held or construed to prohibit private corporations from making contracts, incurring liabilities, borrowing money and paying a charge therefor not exceeding six per centum (6%) of the original amount of the loan for each twelve (12) months of the duration of the same, notwithstanding that such loan is payable in installments. (1876-7, c. 91; Code, s. 3836; 1895, c. 69; 1903, c. 154; Rev., s. 1951; C. S., s. 2306; 1955, c. 1196; 1959, c. 110.)

*Motors, Inc.*, 243 N. C. 326, 90 S. E. (2d) 886 (1956).

**Four Requisites of Usurious Transaction.**—

In accord with original. See *Preyer v. Parker*, 257 N. C. 440, 125 S. E. (2d) 916 (1962); *Associated Stores, Inc. v. Industrial Loan & Investment Co.*, 202 F. Supp. 251 (1962).

**Intent to Charge Usurious Interest.** —  
The statutory penalty for charging usuri-

**I. GENERAL CONSIDERATION.**  
**Editor's Note.**—The 1955 amendment added that part of the last sentence appearing after the semicolon.

The 1959 amendment inserted the fourth sentence.

For brief comment on the 1955 amendment, see 33 N. C. Law Rev. 537.

**History.** — For history of this section, see *Commercial Credit Corp. v. Robeson*

ous interest is imposed only when a corrupt intent exists to take more than the legal rate. *Perry v. Doub*, 249 N. C. 322, 106 S. E. (2d) 582 (1959).

The "corrupt intent" required to constitute usury is simply the intentional charging of more for money lent than the law allows. *Associated Stores, Inc. v. Industrial Loan & Investment Co.*, 202 F. Supp. 251 (1962).

#### Four Requisites, etc.—

To maintain an action for the usury penalty the claimant must show: (1) That there was a loan, express or implied, or a forbearance of money. (2) That there was an understanding between the parties that the money lent would be returned. (3) That for such loan or forbearance a greater rate of interest than is allowed by law was paid. (4) That there was a corrupt intent to take more than the legal rate for the use of the money. *Carolina Industrial Bank v. Merrimon*, 260 N.C. 335, 132 S.E.2d 692 (1963).

#### Forbearance, etc.—

Usury can only attach to a loan of money or to forbearance of a debt. *Carolina Industrial Bank v. Merrimon*, 260 N.C. 335, 132 S.E.2d 692 (1963).

Under this section, usury does not invalidate a contract. It simply works a forfeiture of the entire interest, and subjects the lender to liability to the borrower for twice the amount of interest paid. *Wilkins v. Commercial Finance Co.*, 237 N. C. 396, 75 S. E. (2d) 118 (1953).

Two remedies are provided for the enforcement of the penalties authorized by this section: First. Where a greater rate of interest than six per centum per annum has been paid, the person or his legal representatives or the corporation by whom it has been paid, may recover back twice the amount of interest paid, in an action at law in the nature of an action for debt. Second. In any action brought by the creditor to recover upon any usurious note or other evidence of debt affected with usury, it is lawful for the party against whom the action is brought to plead as a counterclaim or setoff, the penalties provided by the statute, to-wit, twice the amount of interest paid, and also the forfeiture of the entire interest charged. *Waters v. Garris*, 188 N. C. 305, 124 S. E. 334 (1924); *Overton v. Tarkington*, 249 N. C. 340, 106 S. E. (2d) 717 (1959).

**Creditor May Not Evade Statute by Assigning His Debt.**—Where defendants had a right to plead usurious payments as a setoff or defense to any action brought

by the original creditor, the creditor could not evade the express language of this section by assigning his debt to a third person. *Overton v. Tarkington*, 249 N. C. 340, 106 S. E. (2d) 717 (1959).

Applied in *Perry v. Doub*, 238 N. C. 233, 77 S. E. (2d) 711 (1953); *Auto Finance Co. v. Simmons*, 247 N. C. 724, 102 S. E. (2d) 119 (1958); *Harrington v. Tucker*, 261 N.C. 372, 134 S.E.2d 625 (1964).

## II. SUBSTANCE CONTROLS NATURE OF TRANSACTION.

### B. Specific Instances.

A bona fide credit sale upon an installment payment basis does not involve a loan of money or a forbearance of a debt within the meaning and application of the usury laws. *Carolina Industrial Bank v. Merrimon*, 260 N.C. 335, 132 S.E.2d 692 (1963).

If there is a real and bona fide purchase, not made as the occasion or pretext for a loan, the transaction will not be usurious even though the sale be for an exorbitant price, and a note is taken, at legal rates, for the unpaid purchase money. *Carolina Industrial Bank v. Merrimon*, 260 N.C. 335, 132 S.E.2d 692 (1963).

## VI. PLEADING AND PRACTICE.

### When Counterclaim Available.—

While this section provides that a counterclaim for usury may be set up in an action to recover upon the note or other evidence of debt, on which the alleged usurious interest has been charged, such a counterclaim may not be pleaded in an action based on other cause of action. *Commercial Finance Co. v. Holder*, 235 N. C. 96, 68 S. E. (2d) 794 (1952).

There is no conflict between this section and subsection (2) of § 1-137 in reference to pleading of counterclaim for usury. *Commercial Credit Corp. v. Robeson Motors, Inc.*, 243 N. C. 326, 90 S. E. (2d) 886 (1956).

Construing this section and § 1-137 (2) in pari materia, where a lender brings an action to recover on a note or other evidence of debt, the borrower, by counterclaim in such action, can recover the penalty for usurious interest paid by the borrower to the lender in connection with separate and independent transactions between them. *Commercial Credit Corp. v. Robeson Motors, Inc.*, 243 N. C. 326, 90 S. E. (2d) 886 (1956).

The purpose and intent of the counterclaim provision was not to restrict the right of recovery by way of counterclaim,

but rather to make it clear that the right granted by the statute to recover the penalty for usurious interest paid "in the action in the nature of action for debt," could be pleaded as a counterclaim in an action between the parties. *Commercial Credit Corp. v. Robeson Motors, Inc.*, 243 N. C. 326, 90 S. E. (2d) 886 (1956).

### § 24-5. Contracts, except penal bonds, and judgments to bear interest; jury to distinguish principal.

**Trend Is Toward Allowance of Interest.**—There has been a definite trend in North Carolina toward allowance of interest in almost all types of cases involving breach of contract. *Harris & Harris Constr. Co., Inc. v. Crain & Denbo, Inc.*, 256 N. C. 110, 123 S. E. (2d) 590 (1962).

**When Interest Added to Damages for Breach of Contract.**—Whenever a recovery is had for breach of contract and the amount of damages is ascertained from the terms of the contract itself or from evidence relevant to the inquiry, interest should be added. *Harris & Harris Constr. Co., Inc. v. Crain & Denbo, Inc.*, 256 N. C. 110, 123 S. E. (2d) 590 (1962).

**Interest Allowed from Date of Breach.**—When the amount of damages in a breach of contract action is ascertained from the contract itself, or from relevant evidence, or from both, interest should be allowed from the date of the breach. *General Metals, Inc. v. Truitt Mfg. Co.*, 259 N. C. 709, 131 S. E. (2d) 360 (1963).

### § 24-7. Interest from verdict to judgment added as costs.

Applied in *Glacé v. Town of Pilot Mountain*, 265 N.C. 181, 143 S.E.2d 78 (1965).

**§ 24-8. Loans of thirty thousand dollars or more to corporations.**—Notwithstanding any other provisions of this chapter or any other provisions of law, any foreign or domestic corporation organized for pecuniary gain may agree to pay, and any lender may charge and collect from such corporation, interest at any rate agreed upon not in excess of eight per cent (8%) per annum where the original principal amount of the loan shall equal or exceed the sum of thirty thousand dollars (\$30,000.00), or where the total principal amount to be repaid under a loan agreement or other undertaking calling for a series of advances of money shall equal or exceed the sum of thirty thousand dollars (\$30,000.00), and as to any such transaction the penalty and forfeiture of interest imposed under G. S. 24-2 shall not be available in any manner whatsoever to such corporation or its successor in interest, nor shall the principal or any part thereof be impaired or forfeited; provided, that should any individual endorser, surety or guarantor be called upon to pay all or any part of said loan, then the total amount due by such individual shall not exceed the principal balance outstanding plus six per cent (6%) interest per annum thereon; and provided, that this section shall not be applicable to any loan which matures less than five (5) years from the date thereof or which provides for repayments of principal to be made by the borrower in an amount in excess of one fifth of the total principal indebtedness

### When Question for Jury.—

If a transaction is of doubtful character it should be submitted to the jury for determination. *Carolina Industrial Bank v. Merrimon*, 260 N.C. 335, 132 S.E.2d 692 (1963).

Interest on the amount of damages starts running from the date of demand by the injured party. *Harris & Harris Constr. Co., Inc. v. Crain & Denbo, Inc.*, 256 N. C. 110, 123 S. E. (2d) 590 (1962).

### Judgment against State Agency.—

In accord with original. See *North Carolina State Highway and Public Works Comm. v. Privett*, 246 N. C. 501, 99 S. E. (2d) 61 (1957).

**Where the case was erroneously nonsuited and the nonsuit reversed on appeal,** plaintiffs were entitled to interest from the first day of the term at which the nonsuit was erroneously entered. *Jackson v. Gastonia*, 247 N. C. 88, 100 S. E. (2d) 241 (1957).

Applied in *Red Springs City Board of Education v. McMillan*, 250 N. C. 485, 108 S. E. (2d) 895 (1959); *H. F. Mitchell Constr. Co. v. Orange County Bd. of Educ.*, 262 N.C. 295, 136 S.E.2d 635 (1964); *Glacé v. Town of Pilot Mountain*, 265 N.C. 181, 143 S.E.2d 78 (1965).

during any year of the first five (5) years of the term of such loan; nothing contained in this section shall be held or construed to prohibit corporations from doing any act or from incurring any obligation now permitted under G. S. 24-2 or any other provision of law. (1961, c. 1142.)

**§ 24-9. Certain loans to corporations organized for profit not subject to claim or defense of usury.**—Notwithstanding any other provision of this chapter or any other provision of law, any foreign or domestic corporation substantially engaged in commercial, manufacturing or industrial pursuits for pecuniary gain may agree to pay, and any commercial factor may charge and collect from such corporation, interest at any rate which such corporation may agree to pay in writing, provided such interest is charged upon loans, advances or forbearances which are secured by liens upon or security interests in accounts receivable, materials, goods in process, inventory, machinery, equipment and other similar personal property, whether tangible or intangible, and as to any such transaction the claim or defense of usury by such corporation and its successors or anyone else in its behalf is prohibited. For purpose of this section the term "commercial factor" shall be defined to mean any corporation, foreign or domestic, or any partnership which in the regular course of its business engages in the purchase of accounts receivable, without recourse to the account creditor, and with notification of such purchase to the account debtor. (1963, c. 753, s. 1; 1965, c. 335.)

Local Modification. — Ashe, Columbus, New Hanover and Pender: 1963, c. 753, s. 1½.

Editor's Note. — The 1965 amendment inserted "or any partnership" in the last sentence.

## Chapter 25.

### Negotiable Instruments.

#### ARTICLE 1.

##### *General Provisions.*

#### § 25-1. Definitions.

**Cross Reference.**—For provisions of the Uniform Commercial Code as to commercial paper, see §§ 25-3-101 to 25-3-805.

**Editor's Note.**—

Section 2, c. 700, Session Laws 1965, re-

peals ss. 25-1 to 25-199, effective at midnight June 30, 1967.

For case law survey on negotiable instruments, see 41 N. C. Law Rev. 496.

#### ARTICLE 2.

##### *Form and Interpretation.*

#### § 25-9. When promise is unconditional.

The language "as per our agreement" appearing in a note is merely "a statement of the transaction which gives rise to the

instrument" and in no wise affects the validity of the note. *Royster v. Hancock*, 235 N. C. 110, 69 S. E. (2d) 29 (1952).

#### § 25-14. When payable to order.

Cited in *State v. Phillips*, 256 N. C. 445, 124 S. E. (2d) 146 (1962).

#### § 25-23. Construction, where instrument is ambiguous.

Applied in *Shoenterprise Corp. v. Willingham*, 258 N. C. 36, 127 S. E. (2d) 767 (1962).

### § 25-28. Effect of forged signature.

Applied in Wachovia Bank & Trust Co. v. Smith Crossroads, Inc., 258 N. C. 696, 129 S. E. (2d) 116 (1963).

## ARTICLE 3.

### Consideration.

#### § 25-29. Presumption of consideration.

**Instrument Not Deemed Issued as Gift.**  
—A negotiable instrument is deemed prima facie to have been issued for a valuable consideration and not as a gift, unless the circumstances indicate otherwise. Diemar & Kirk Co. v. Smart Styles, Inc., 261 N.C. 156, 134 S.E.2d 134 (1964).

#### Instruments under Seal.—

A note under seal creates a rebuttable presumption of consideration. Wachovia Bank & Trust Co. v. Smith Crossroads, Inc., 258 N. C. 696, 129 S. E. (2d) 116 (1963).

#### § 25-30. What constitutes consideration.

Quoted in Bumgardner v. Groover, 245 N. C. 17, 95 S. E. (2d) 101 (1956).

#### § 25-31. What constitutes a holder for value.

**Deposit Passing Title to Bank.**—Regardless of formal statements on a deposit slip, e.g., that deposits are accepted for collection only, or that items are credited conditionally, or are subject to final payment. If the facts and circumstances surrounding the making of the deposit indicate at the time it was made it was the actual agree-

ment and intention of the parties that the depositor might withdraw completely the deposit, or otherwise completely employ it, and he does so, the title to the item deposited thereupon passes to the bank. State Planters Bank v. Courtesy Motors, Inc., 250 N. C. 466, 109 S. E. (2d) 189 (1959).

#### § 25-33. Effect of want of consideration.

**Presumption of Consideration May Be Rebutted.**—

In accord with original. See Mills v. Bonin, 239 N. C. 498, 80 S. E. (2d) 365 (1954).

**Parol Evidence Rule Not Violated.**—

In accord with original. See Mills v. Bonin, 239 N. C. 498, 80 S. E. (2d) 365 (1954).

**Failure of consideration is an affirmative defense** and therefore must be specifically pleaded by setting out the applicable facts. Diemar & Kirk Co. v. Smart Styles, Inc., 261 N.C. 156, 134 S.E.2d 134 (1964).

Failure of consideration may not be shown under a general denial of indebted-

ness. Diemar & Kirk Co. v. Smart Styles, Inc., 261 N.C. 156, 134 S.E.2d 134 (1964).

**Failure of consideration is a valid defense, etc.**—

It is the general rule in this jurisdiction, and elsewhere, that a total failure of the consideration for a note under seal renders it unenforceable in the hands of any person other than a holder in due course. Mills v. Bonin, 239 N. C. 498, 80 S. E. (2d) 365 (1954).

Applied in Industrial Distributors, Inc. v. Mitchell, 255 N. C. 489, 122 S. E. (2d) 61 (1961).

Cited in Royster v. Hancock, 235 N. C. 110, 69 S. E. (2d) 29 (1952).

## ARTICLE 4.

### Negotiation.

#### § 25-35. What constitutes negotiation.

**Indorsement Must Be Proven.**—

In accord with original. See First-Citizens Bank & Trust Co. v. Raynor, 243 N. C. 417, 90 S. E. (2d) 894 (1956).

**Check Stamped "Absence of Endorsement Guaranteed."** — Where a bank accepts a check indorsed only for deposit to the credit of the payee, the bank's stamp

"absence of endorsement guaranteed" cannot change the positive law requiring that a negotiable instrument payable to order must be indorsed to constitute the transferee a holder in due course. First-Citizens Bank & Trust Co. v. Raynor, 243 N. C. 417, 90 S. E. (2d) 894 (1956).

**§ 25-53. Continuation of negotiable character.**

**Editor's Note.** — The case cited in the note under this section in the bound volume should be. *Thomas v. De Moss*, 202 N. C. 646, 163 S. E. 759 (1932).

**§ 25-55. Effect of transfer without indorsement.**

Applied in *State v. Cruse*, 253 N. C. 456, 117 S. E. (2d) 49 (1960).

ARTICLE 5.

*Rights of Holder.*

**§ 25-58. What constitutes holder in due course.**

**Title of Bona Fide Holder.**—Subject to certain limitations, e. g., when a negotiable instrument is declared void by statute, legal incapacity to contract, fraud in the factum, the rule under the law merchant and also under the Uniform Negotiable Instrument Act is that a bona fide holder of a negotiable instrument in due course holds a title valid as against all the world. *State Planters Bank v. Courtesy Motors, Inc.*, 250 N. C. 466, 109 S. E. (2d) 189 (1959).

**Note Acquired after Maturity.**—Where plaintiff acquires a note from the payee subsequent to the date plaintiff contends the note was due, plaintiff may not assert that he was a holder in due course before maturity, and is not protected by this section. *Industrial Distributors, Inc. v. Mitchell*, 255 N. C. 489, 122 S. E. (2d) 61 (1961).

**§ 25-63. Rights of holder in due course.**

Cited in *Industrial Distributors, Inc. v. Mitchell*, 255 N. C. 489, 122 S. E. (2d) 61 (1961).

**§ 25-65. Who deemed holder in due course.**

**Defective Title — Holder's Burden of Proof.**—  
In accord with 1st paragraph in original.

See *Whitfield v. Carolina Housing & Mtg. Corp.*, 243 N. C. 658, 92 S. E. (2d) 78 (1956).

ARTICLE 6.

*Liabilities of Parties.*

**§ 25-67. Liability of drawer.**

**When Liability of Drawee Accrues.**—Until the instrument is accepted, the payee or holder of the bill must look to the drawer for his protection. The liability of the drawee to the payee or holder accrues when he makes a valid acceptance of the bill and when it is in the possession or is delivered to one who is entitled to enforce the en-

gagement contained in the acceptance. The legal intentment of the acceptance is that the acceptor engages to pay the instrument according, but only according, to the tenor of his acceptance. It is, in short, a promise to pay. *Branch Banking & Trust Co. v. Bank of Washington*, 255 N. C. 205, 120 S. E. (2d) 830 (1961).

**§ 25-68. Liability of acceptor.**

**Liability of Drawee.**—A drawee (unless also the drawer) becomes liable for the payment of a draft only upon his acceptance

thereof. *Branch Banking & Trust Co. v. Bank of Washington*, 255 N. C. 205, 120 S. E. (2d) 830 (1961).

ARTICLE 7.

*Presentment for Payment.*

**§ 25-79. Place of presentment.**—Presentment for payment is made at the proper place:

- (1) Where a place of payment is specified in the instrument and it is there presented;



- (2) Where no place of payment is specified, but the address of the person to make the payment is given in the instrument, and it is there presented;
- (3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;
- (4) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence;
- (5) Where a bank presents for payment an instrument drawn upon or payable at another bank, either
  - a. Through a clearing house or
  - b. At a place where such other bank has requested the presenting bank to make presentment of such instrument for payment. (1899, c. 733, s. 73; Rev., s. 2222; C. S., s. 3054; 1963, c. 242.)

**Editor's Note.** — The 1963 amendment added subdivision (5).

**§ 25-94. Rule where instrument is payable at bank.**

**Drawer Must Have Account in Bank.**— This section contemplates a situation where the drawer of the instrument has or purports to have an account with the bank at

which the instrument is payable. *Branch Banking & Trust Co v Bank of Washington* 255 N. C. 205 120 S. E. (2d) 830 (1961).

ARTICLE 9.

*Discharge.*

**§ 25-127. Discharge of person secondarily liable.**

**Editor's Note.** For note on effect of discharge of prior party by statute of limitations on guarantor or surety under

negotiable instruments law, see 29 N. C. Law Rev. 307.

**§ 25-129. Renunciation by holder.**

**Editor's Note.** For note on renunciation of rights by holder conditioned upon holder's death, see 32 N. C. Law Rev. 210.

ARTICLE 10.

*Bills of Exchange.*

**§ 25-133. Bill of exchange defined.**

Quoted in *State v. Ivey*, 248 N. C. 316, 103 S. E. (2d) 398 (1958).

**§ 25-134. Bill not an assignment of funds in hands of drawee.**

Payees of unaccepted checks held to have no cause of action against drawee bank, in view of general principles and

this section *Marx v. Maddrey*, 106 F. Supp 535 (1952).

ARTICLE 11.

*Acceptance.*

**§ 25-143. Time allowed drawee to accept.**

**Cross Reference.** See note to 25-144.  
**Application of Section to Banks.** A check is an order to the bank on which it is drawn to pay the amount thereof and charge it to the drawer's account. In respect of a check, the bank on which it is

drawn is the drawee; and, when presented to the drawee the provisions of this section apply. *Branch Banking & Trust Co v. Bank of Washington* 255 N. C. 205 120 S. E. (2d) 836 (1961).

**§ 25-144. Liability of drawee retaining or destroying bill; conditional payment of checks by drawee banks.**

This statute does not apply to drafts drawn by a creditor against his debtor. *Washington, 255 N. C. 205, 120 S. E. (2d) 830 (1961).*  
*Branch Banking & Trust Co. v. Bank of*

ARTICLE 17.

*Promissory Notes and Checks.*

**§ 25-192. Check defined.**

A check is further defined. etc.—

A check is an order to the bank on which it is drawn to pay the amount thereof and charge it to the drawer's account. In respect of a check the bank on which it is drawn is the drawee, and when presented to the drawee the provisions of § 25 143 apply. *Branch Banking & Trust Co v. Bank of Washington 255 N. C. 205, 120 S E (2d) 830 (1961)*

A check is an instrument by which a depositor seeks to withdraw funds from a bank. *Diemar & Kirk Co. v. Smart Styles, Inc., 261 N.C. 156, 134 S.E.2d 134 (1964).*

It is a contract within itself. *Diemar & Kirk Co. v. Smart Styles, Inc., 261 N.C. 156, 134 S.E.2d 134 (1964).*

And it is equivalent to the drawer's promise to pay the payee or holder. *Diemar*

*& Kirk Co. v. Smart Styles, Inc., 261 N.C. 156, 134 S.E.2d 134 (1964).*

By the act of drawing and delivering a check to the payee, the drawer commits himself to pay the amount of the check in the event the drawee refuses payment upon presentment. *Diemar & Kirk Co. v. Smart Styles, Inc., 261 N.C. 156, 134 S.E.2d 134 (1964).*

There is little difference between a check and a demand note, as a practical matter, in business transactions; both are acknowledgments of indebtedness and an unconditional promise to pay. *Diemar & Kirk Co. v. Smart Styles, Inc., 261 N.C. 156, 134 S.E.2d 134 (1964).*

Quoted in *State v. Ivey, 248 N. C. 316, 103 S. E. (2d) 398 (1958).*

**§ 25-197. Check not assignment of funds.**

Editor's Note.—

For note on check as assignment, see 31 N. C. Law Rev. 190.

Applied in *Marx v. Maddrey, 106 F. Supp. 535 (1952).*

**Chapter 26.**

**Suretyship.**

- |                                                                        |                                     |
|------------------------------------------------------------------------|-------------------------------------|
| Sec.                                                                   | Sec.                                |
| 26-3.1. Surety's recovery on obligation paid; no assignment necessary. | 26-12. Joinder of debtor by surety. |

**§ 26-3. Summary remedy of surety against principal.**

**I. GENERAL CONSIDERATION.**

When Surety, etc.—

The principal is not obligated to his

surety until his surety has made a payment. *American Nat'l Fire Ins. Co. v. Gibbs, 260 N.C. 681, 133 S.E.2d 669 (1963).*

**§ 26 3.1. Surety's recovery on obligation paid; no assignment necessary.**—(a) A surety who has paid his principal's note, bill, bond or other written obligation, may either sue his principal for reimbursement or sue his principal on the instrument and may maintain any action or avail himself of any remedy which the creditor himself might have had against the principal debtor. No assignment of the obligation to the surety or to a third-party trustee for the surety's benefit shall be required.

(b) The word "surety" as used herein includes a guarantor, accommodation maker, accommodation indorser, or other person who undertakes liability for the written obligation of another. (1959 c. 1120.)

§ 26-5. Contribution among sureties.—Where there are two or more sureties for the performance of a contract, and one or more of them may have been compelled to perform and satisfy the same, or any part thereof such surety may have and maintain an action against every other surety for a just and ratable proportion of the same which may have been paid as aforesaid, whether of principal, interest or cost. (1807, c. 722. P. R.; R. C., c. 110, s. 2; Code, s. 2094. Rev., s. 2844; C. S., s. 3965; 1957, c. 981.)

I. THE RIGHT TO CONTRIBUTION GENERALLY.

Editor's Note.—

The 1957 amendment deleted the words "and the principal shall be insolvent, or out of the State," formerly appearing immediately after the word "thereof" in line three.

sum so paid. American Nat'l Fire Ins. Co. v. Gibbs, 260 N.C. 681, 133 S.E.2d 669 (1963).

This section affords a right to one surety, who has paid a debt for which he and another are equally liable, to call on the other for contribution. American Nat'l Fire Ins. Co. v. Gibbs, 260 N.C. 681, 133 S.E.2d 669 (1963).

B. Actions and Incidents Thereto.

A surety's right of action accrues at the time of payment, not before. American Nat'l Fire Ins. Co. v. Gibbs, 260 N.C. 681, 133 S.E.2d 669 (1963).

III. CONTRIBUTION ENFORCED.

A. In General.

Rights of Surety, etc.—

A surety who, pursuant to his contractual obligation, pays the debt of his principal has a right of action to recover the

§ 26-7. Surety, indorser, or guarantor may notify creditor to take action.

Editor's Note.—

For brief comment on the 1951 amend-

ment of this section and §§ 26-8 and 26-9. see 29 N. C. Law Rev 413.

§ 26-12. Joinder of debtor by surety.—(a) As used in this section, "surety" includes guarantors, accommodation makers, accommodation indorsers, or others who undertake liability on the obligation and for the accommodation of another.

(b) When any surety is sued by the holder of the obligation, the court, on motion of the surety, may join the principal as an additional party defendant, provided the principal is found to be or can be made subject to the jurisdiction of the court. Upon such joinder the surety shall have all rights, defenses, counterclaims, and setoffs which would have been available to him if the principal and surety had been originally sued together. (1959, c. 1121.)

Chapter 27.

Warehouse Receipts.

ARTICLE 1.

General Provisions.

§ 27-1. Name of chapter.

Cross Reference.—For provisions of the Uniform Commercial Code as to documents of title, see §§ 25-7-101 to 25-7-603.

Editor's Note.—Section 2, c. 700, Session Laws 1965, repeals ss. 27-1 to 27-53, effective at midnight June 30, 1967.

ARTICLE 4.

Negotiation and Transfer of Receipts.

§ 27-51. Rights of bona fide holder not affected by fraud.

Section Creates Exception to General Rule.—By this section the General As

sembly has added another exception to the general rule that no one can transfer a

better title than he has, by exempting Motor Co. v Wood, 237 N. C. 318, 75 S. therefrom warehouse receipts. Handley E. (2d) 312 (1953).

## STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 1, 1965

I, Thomas Wade Bruton, Attorney General of North Carolina, do hereby certify that the foregoing 1965 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

THOMAS WADE BRUTON  
*Attorney General of North Carolina*

