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The Commercial Driver's License Law

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This memorandum describes the provisions of 1989 legislation establishing a separate driver's licensing system for drivers of commercial vehicles, as well as a new criminal offense of operating a commercial vehicle while impaired. Most of the new statute became effective September 1, 1990, but one important provision, the requirement that a person have a special driver's license to operate a commercial vehicle, becomes effective April 1, 1992. Unless otherwise indicated, however, all the provisions discussed in this memorandum became effective September 1, 1990.

This law was enacted as Chapter 771 of the 1989 Session Laws to make the state's laws comply with federal requirements adopted by Congress in 1986. Several efforts to make technical changes to the bill were made in the 1990 session of the General Assembly, but none were enacted, so the version discussed in this memo is contained solely in Chapter 771.

Definitions

The new law makes several changes in the definitions contained in Chapter 20 of the General Statutes. While these changes are part of the legislation establishing the commercial driver's license provisions, they apply any time the word described appears in Chapter 20. The important definitional changes are listed below, along with the appropriate section of the General Statutes (hereinafter cited as G.S.).

Alcohol is redefined to include any form of alcohol, including ethanol, methanol, propanol, or isopropanol. [G.S. 20-4.01(0.1)]

Commercial driver license is a license issued in accordance with G.S. Chapter 20, which authorizes the licensee to drive a commercial motor vehicle. [G.S. 20-4.01(3c)] A nonresident commercial driver's license is what its name suggests—a license issued to a nonresident to drive a commercial vehicle. In rare instances it can be issued by the North Carolina Division of Motor Vehicles (DMV). [See G.S. 20-37.14.]

Commercial motor vehicle is a motor vehicle that is designed to transport passengers or property and (1) has a gross vehicle weight rating of 26,001 or more pounds, (2) is designed to transport sixteen or more passengers, or (3) is transporting hazardous materials and is required by federal law to display a placard to that effect. [G.S. 20-4.01(3d)]

Gross vehicle weight rating (GVWR) is the manufacturer's specification of the maximum loaded weight of a vehicle or combination of vehicles or the registered vehicle weight, whichever is greater. The GVWR of a combination of vehicles being driven together as one unit is determined by adding the gross vehicle weight rating of the power unit with that of the trailer or other towed unit. [G.S. 20-4.01(12a)] General Statute 20-26(b) provides that the registered or declared weight on a vehicle registration card or as indicated on a certified copy of DMV's records is *prima facie* evidence of the registered or declared weight of a vehicle and is admissible in court. These certified records may be transmitted by the Division of Criminal Information computer system.

Disqualification is the withdrawal of the privilege to drive a commercial motor vehicle. [G.S. 20-

4.01(5a)] This is in contrast to *revocation* or *suspension*, which withdraw the privilege to drive all vehicles. Disqualification orders are issued by the Division of Motor Vehicles, based on the driver's record of convictions, pursuant to G.S. 20-17.4 or 20-28(c). If the driver has a noncommercial license, it will normally not have to be turned into the DMV if the driver receives a disqualification order. In some cases in which a driver is convicted of impaired driving in a commercial vehicle, a noncommercial license must be turned in when the disqualification order is issued. There is no provision for a restoration fee to be paid to restore a license after a disqualification.

Offense involving impaired driving is an important definition used to establish what prior convictions constitute grossly aggravating factors in impaired driving prosecutions, what convictions render one ineligible for limited privileges, and what offenses are subject to the implied consent laws. The definition is contained in G.S. 20-4.01(24a). It is amended to include commercial driving while impaired under G.S. 20-138.2 among the offenses considered as offenses involving impaired driving. If a conviction for the new offense and a conviction for regular impaired driving are based on the same driving, the two convictions count for future use as a single offense involving impaired driving.

Out-of-service orders are temporary prohibitions against driving a commercial motor vehicle. [G.S. 20-4.01(25a)] They are for shorter periods than disqualifications (no more than twenty-four hours), are subject to less severe criminal sanctions for violations, and are not based on convictions. They are issued by law enforcement officers for safety violations to give the operators time to correct the situation and should not appear in any criminal action, unless the driver is charged under G.S. 20-37.12 with driving in violation of an out-of-service order.

Most driver's license sanctions are based on *convictions* of motor vehicle offenses. The definition of conviction used for this purpose is found in G.S. 20-24(c). This law rewrites the definition to make several important changes:

The new definition applies throughout G.S. Chapter 20 and not simply to Article 2 of G.S. Chapter 20 (the driver's license law). Because there is a conflicting definition in another article [see G.S. 20-279.1(2)], it is unclear whether the new definition will replace the older definition even though it is not specifically repealed.

The new definition draws a distinction between convictions for offenses occurring in North Carolina and offenses occurring outside the state. For offenses occurring in North Carolina, convictions consist of

(1) final convictions for criminal offenses, including no contest pleas; (2) determinations that a person is responsible for an infraction, including no contest pleas; (3) an order of forfeiture of a *cash* bond, which forfeiture has not been vacated; and (4) a third or subsequent prayer for judgment continued within any five-year period.

For offenses occurring outside North Carolina, convictions consist of (1) an unvacated adjudication of guilt; (2) a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an administrative tribunal; (3) an unvacated forfeiture of bail or collateral deposited to secure an appearance in court; and (4) a violation of a condition of release without bail, regardless of whether the penalty was rebated, suspended, or probated.

Licensing

The Division of Motor Vehicles is authorized to issue commercial licenses beginning September 1, 1990, but **it will not be unlawful to drive a commercial vehicle without such a license until April 1, 1992**. Matters such as the procedure for applying for a commercial license, the fees, the tests to be used, and the contents of the license are dealt with extensively in the statutes and will not be discussed in this memorandum. [See G.S. 20-37.13, -37.15, -37.16.] Stringent requirements for employees and employers to report convictions to the DMV and other similar matters are set out in G.S. 20-37.18 and -37.19 (including a requirement that an employer obtain the employee's previous ten-year employment history if the employee is seeking a commercial license to drive the employer's vehicle).

Classes. There are three kinds of commercial licenses—class A, B, or C—and numerous endorsements for special kinds of vehicles within a class. The classes are defined in G.S. 20-37.16(b) and are described below.

Class A covers all commercial motor vehicles. Vehicles that can only be driven with an A license are combination vehicles with a GVWR of 26,001 pounds or more, with a trailer or other towed unit[s] that has a GVWR of 10,001 or more pounds. While the statute does not explicitly say so, the Division of Motor Vehicles has interpreted it as authorizing the operation of all lesser classes of vehicles, both commercial and noncommercial. Otherwise, a person would need one license to drive a large commercial vehicle and another to drive a personal car. One purpose of the federal law is to discourage possession of multiple licenses, so this interpretation is consistent with that purpose.

Class B covers single commercial vehicles with a GVWR of 26,001 pounds or more or such vehicles towing trailers or other units with a GVWR of 10,000 pounds or less, as well as vehicles covered by Class C.

Class C covers any single vehicle with a GVWR of less than 26,001 pounds and any such vehicle towing a trailer or other unit of 10,000 pounds or less if the vehicle is (1) designed to transport sixteen or more passengers or (2) used in transporting hazardous waste and therefore required under federal law to display a warning placard. This class of license (or a class A or B) will be required to drive a school bus. [G.S. 20-218] This statute has been interpreted by the Attorney General's office as not requiring a commercial license for the operation of a school bus until April 1, 1992.

While this classification may seem similar to the classified driver's license system set out in G.S. 20-7 and used in North Carolina since 1981, it is not the same. There are important differences in the vehicle weights assigned to each class and in the manner in which exceptions are defined. In addition and more importantly, as of September 1, 1990, G.S. 20-7 was amended to conform to the classifications described above. Significantly, all exemptions that allowed Class C drivers to drive certain types of vehicles (e.g., church buses, volunteer fire department vehicles) are deleted from G.S. 20-7. Most of the vehicles formerly exempted will require a commercial license as of April 1, 1992. General Statute 20-7 will remain on the books to regulate the licensing of drivers of noncommercial vehicles such as private-passenger vehicles, passenger-carrying vehicles that do not carry sixteen passengers, and vehicles that meet the definition of commercial vehicle but that do not require a commercial license. Those exempt commercial vehicles are Department of Defense vehicles, fire-fighting vehicles, vehicles used for personal use (such as recreational vehicles), and certain farm vehicles. [G.S. 20-37.16(e)] The vehicles that are exempt will still have to have a license for the size of vehicle to be driven, even if the license is a noncommercial license, although it is not clear whether that requirement will apply before April 1, 1992.

In summary then, there will be six different kinds of licenses issued after September 1, 1990—commercial A, B, or C licenses and noncommercial A, B, or C licenses.

Endorsements for commercial vehicles. In addition to a license for the proper class, endorsements will be required to operate certain vehicles. [G.S. 20-37.16(c)] The endorsements are H—vehicles transporting hazardous materials; T—vehicles with double trailers; P—vehicles carrying passengers; N—tank ve-

hicles; X—tank vehicles transporting hazardous materials; M—motorcycles; S—school buses; and K—a limitation instead of an endorsement. A holder of a K endorsement is not entitled to drive a vehicle with air brakes. There is only one endorsement authorized by the noncommercial licensing statutes, and that is for operation of motorcycles. [G.S. 20-7(a1)]

New Criminal Offenses

Driving while impaired in a commercial vehicle. [G.S. 20-138.2] The elements of this offense are (1) driving (2) a commercial motor vehicle (3) on a highway, street, or public vehicular area, (4) while appreciably under the influence of an impairing substance or after having consumed sufficient alcohol that one has, at any relevant time after the driving, an alcohol concentration of 0.04 or more.

The elements of this offense are similar to the elements for regular impaired driving, except that (1) the vehicle driven must be a commercial vehicle and (2) the minimum per se level of alcohol concentration is reduced from 0.10 to 0.04. Unlike the regular impaired driving statute, this offense requires that the person be "appreciably" under the influence. That addition has no real significance, however, because the definition of *under the influence* [G.S. 20-4.01 (48a)] already requires that one's mental or physical faculties be appreciably impaired. Thus the use of the word appreciably is redundant.

This offense is a misdemeanor punishable by a minimum fine of \$100, a maximum imprisonment of two years, or both. Sentencing under this statute, unlike regular DWI, is not subject to levels of punishment and findings of aggravating and mitigating factors. The offense is not a lesser included offense of impaired driving under G.S. 20-138.1, and thus a person may be charged with both offenses arising out of the same driving. If a person is convicted of both offenses, the combined punishments for both offenses may not exceed the maximum allowed for the impaired driving conviction at the level for which the defendant is punished under G.S. 20-138.1.

A person convicted of this offense alone may *not* be given a limited driving privilege to allow him or her to drive a commercial vehicle. G.S. 20-138.2(f) states that if the person's alcohol concentration was lower than 0.10, the person may be eligible to apply for a Class C noncommercial license. (The implication is that a person who has an alcohol concentration of 0.10 or higher, or who refuses or is not offered a chemical test, is thus not eligible for a Class C noncommercial license.) If the person is convicted of both regular impaired driving and commercial vehicle impaired driving, he or she may be given a

limited driving privilege for noncommercial vehicles if eligible under G.S. 20-179.3, but the person would not be eligible to apply for a Class C noncommercial license.

This offense is a case involving impaired driving for purposes of G.S. 20-138.4, and consequently a prosecutor must give written reasons for dismissing or reducing a charge made under this section.

General Statute 20-138.2 provides that the following is sufficient to charge this offense: "unlawfully and willfully did drive a commercial motor vehicle on a highway or public vehicular area while subject to an impairing substance." The uniform traffic ticket will probably charge this offense using a different order because of the introductory language used on the citation, but so long as all the elements are contained in the charge, the order in which they appear in the charging sentence is not crucial.

Driving a commercial vehicle with a revoked commercial license or subject to a disqualification. [G.S. 20-28(c)] The elements of this offense are (1) driving (2) a commercial motor vehicle (3) on a highway or public vehicular area, (4) with a commercial driver's license that is revoked, suspended, or subject to a disqualification order. This offense is a misdemeanor and is apparently governed by G.S. 20-35(b), which provides a maximum of a \$500 fine or six months' imprisonment.

Upon conviction of this offense, the person's commercial driver's license is revoked, suspended, or made subject to a disqualification order for an additional period equal to the same length of time as the revocation, suspension, or disqualification in effect at the time of the offense.

There is an offense nearly identical to this one in G.S. 20-37.12(b) (see the section below). The differences are as follows: (1) The punishments under G.S. 20-37.12 are much less severe and include no imprisonment. (2) Driving after a license is cancelled or while subject to an out-of-service order is covered by G.S. 20-37.12 but not by this offense. (3) This offense covers driving on public vehicular areas. (4) There is always an additional period of revocation or disqualification under this offense, and under G.S. 20-37.12 there is often no sanction other than the possible imposition of points.

Driving a commercial vehicle while driving privilege revoked, suspended, or subject to disqualification or out-of-service order. [G.S. 20-37.12(b)] The elements of this offense are (1) driving (2) a commercial motor vehicle (3) on a highway (4) with a driving privilege that is revoked, suspended, cancelled, subject to a disqualification order, or subject to an out-of-service order.

This offense is a misdemeanor punishable by a minimum \$250 fine for the first offense and a minimum \$500 fine for second or subsequent offenses. [G.S. 20-37.21(a)] There are apparently no driver's license sanctions for convictions of this offense, other than the possible assessment of points, unless the person's license is suspended or revoked. In that instance, the offender would be subject to an additional period of revocation under G.S. 20-28.1. It is unlikely that most officers will choose to lodge an original charge under this section, given the lack of license consequences or possibility of jail compared to the alternative charge under G.S. 20-28(c).

Possessing more than one commercial driver's license. [G.S. 20-30(8)] The elements of this offense are (1) possession (2) of more than one commercial driver's license issued by the North Carolina Division of Motor Vehicles.

This offense is a misdemeanor punishable by a maximum \$500 fine or six months' imprisonment. [G.S. 20-35] General Statute 20-30(8) specifically authorizes a law enforcement officer or judicial official to seize any commercial license other than the license most recently issued to the person charged. Because *commercial license* is defined in G.S. 20-4.01(3c) as a "license issued in accordance with this Chapter," apparently the possession of commercial licenses issued by other states is not covered by this statute.

Driving a commercial vehicle with more than one driver's license. [G.S. 20-37.12(c)] The elements of this offense are (1) driving (2) a commercial vehicle (3) while possessing more than one driver's license.

This offense is a misdemeanor punishable by a minimum fine of \$250 for a first offense and by a minimum fine of \$500 for a second or subsequent offense. [G.S. 20-37.21(a)] Unlike the offense for possessing more than one commercial driver's license, this offense requires that the defendant be driving. However, this offense does not require that any of the multiple licenses be commercial licenses. To meet the definition of *license* in G.S. 20-4.01(17), a license must be issued under or granted by the laws of this state. Because the state's laws authorize driving in this state pursuant to licenses issued in other states [see G.S. 20-8(3)], it is arguable that the possession of one or more licenses from other states can satisfy element three. Unlike G.S. 20-30, this statute contains no specific authority to seize all but the most recently issued licenses, but that authority would usually be available under general law authorizing seizure of evidence of a crime.

Driving a commercial motor vehicle without a commercial driver's license and appropriate endorse-

ments applicable to the vehicle being driven. [G.S. 20-37.12(a)] The elements of this offense are (1) operating (2) a commercial motor vehicle (3) on a highway (4) without having been issued a commercial driver's license and any necessary endorsements valid for the vehicle being driven. **The statute creating this offense is not effective until April 1, 1992.** Until that date, a person may drive a commercial motor vehicle with a noncommercial license, but generally the class of the noncommercial license must include the vehicle being driven. (It is possible that school buses, volunteer fire vehicles, and other vehicles currently allowed to be driven with a Class C license may continue to be so driven until April 1, 1992.) This offense is a misdemeanor punishable by a minimum \$250 fine for the first offense and a minimum \$500 fine for second or subsequent offenses.

Operating a commercial motor vehicle without being in possession of a commercial driver's license applicable to the vehicle being driven. [G.S. 20-37.12(a)] The elements of this offense are (1) operating (2) a commercial motor vehicle (3) on a highway (4) without being in immediate possession of a commercial driver's license and any necessary endorsements valid for the vehicle being driven. **The statute creating this offense is not effective until April 1, 1992.** Until that date, G.S. 20-7(n) is the only statute requiring a driver to possess a driver's license while driving, and it creates a defense if the person charged produces for the court a license valid at the time of the offense. After April 1, 1992, that statute and the defense it creates will only apply to persons charged with driving without possessing a noncommercial license.

This offense is a misdemeanor punishable by a minimum \$250 fine for a first offense and a minimum \$500 fine for second or subsequent offenses.

License Sanctions

The commercial driver's license law adds two new sanctions that can be imposed on a person driving a commercial vehicle—a disqualification order and an out-of-service order. As noted earlier, out-of-service orders are issued by law enforcement officers for safety violations. They are issued for very short time periods to allow the correction of the safety hazard.

A disqualification order is based on a driver's record of convictions while driving a commercial vehicle. It only takes away one's right to drive a commercial vehicle; a person subject to a disqualification order can in most circumstances still obtain a regular Class C license to drive a passenger car. As noted above, the exception occurs when a driver is con-

victed of impaired driving in a commercial vehicle and has an alcohol concentration over 0.10.

It is important to note that disqualification orders are based solely on offenses committed while driving a commercial vehicle. It is also important to note that the violation may occur when the person is not licensed to drive a commercial vehicle (i.e., the person may be driving such a vehicle without a license or with an incorrect license). An important implication of that fact is that any offense that occurs in a commercial vehicle will need to be identified by the Division of Motor Vehicles, and some of those offenses will involve drivers who do not have commercial licenses. If the crime for which the defendant is convicted is one in which driving a commercial vehicle is an element, that fact will be easily known. In other cases (such as speeding or reckless driving) the DMV may have to use vehicle registration numbers to determine if the vehicle being driven is a commercial vehicle. It will obviously be important that this number be included on the copy of the citation sent to the DMV by the court.

The instances in which the DMV may issue disqualification orders are listed below. [G.S. 20-17.4(a)]

1. *Impaired driving.* Any conviction of impaired driving in a commercial vehicle, whether the charge is impaired driving [G.S. 20-138.1] or impaired driving in a commercial vehicle [G.S. 20-138.2] will result in a disqualification for at least one year.
2. *Conviction of felonious hit and run in a commercial vehicle.* Results in a disqualification for at least one year. [G.S. 20-166(a)]
3. *Conviction of a felony in which a commercial vehicle is used.* Results in a disqualification for at least one year. If the felony involves the manufacture, distribution, or dispensing of a controlled substance or possession with intent to do so, the disqualification is for life and without the opportunity for restoration. [G.S. 20-17.4(c)]
4. *Refusal to submit to a chemical analysis for an alleged offense committed while driving a commercial vehicle.* Results in a disqualification for at least one year. [G.S. 20-16.2]
5. *Conviction of two serious traffic violations in a commercial vehicle when the offenses occur in a three-year period.* Results in a disqualification for at least sixty days. A *serious traffic violation* is defined in G.S. 20-4.01(41a) as speeding fifteen or more miles over the speed limit, reckless driving, or a violation of any motor vehicle law (other than parking) relating to

traffic control "arising in connection with a fatality." [G.S. 20-4.01(41a)]

6. *Conviction of three serious traffic violations in a commercial vehicle occurring in a three-year period.* Results in a disqualification for at least 120 days.
7. *Conviction of driving while the person is disqualified from driving a commercial vehicle.* Results in a disqualification for an additional period equal to the original disqualification. [G.S. 20-28(c)]

If hazardous materials are being transported when the violations listed in 1, 2, 3, or 4 occur, the revocation is for at least three years. Upon the second conviction for the violations listed in 1, 2, or 3, or a single conviction of any two of these offenses occurring on separate occasions, the disqualification is for life, and the DMV may not restore the license under any circumstances for at least ten years.

Effects on Implied Consent Statutes

There are two basic changes in the implied consent laws made by the commercial driver's license law. First, because the new offense of driving while impaired in a commercial vehicle is an offense involving impaired driving under G.S. 20-4.01(24a), it is by virtue of that definition also an offense subject to the implied consent statutes. [G.S. 20-16.2 (a1)] Upon being charged, persons will be required to submit to a chemical analysis of the breath or blood or have their licenses revoked if they willfully refuse. [G.S. 20-16.2] Until the forms necessary to conduct a chemical analysis properly are amended, they will have to be corrected by hand by the charging officer and chemical analyst to add the new charge where necessary. In addition, the warnings and rights read to the defendant will have to be corrected to reflect the fact that an alcohol concentration of 0.04 can serve as the basis for a pretrial revocation under G.S. 20-16.5 when the person is driving a commercial vehicle.

The other basic change is that a person who is driving a commercial vehicle and is charged with an implied consent offense will lose his or her license under the immediate, pretrial revocation statute if he or she has an alcohol concentration of 0.04 or higher at any relevant time after the driving. That statute, G.S. 20-16.5, is also commonly known as the ten-day revocation statute because the most common period of revocation imposed under it is ten days.

General Statute 20-16.5 already imposes an immediate, pretrial revocation for persons charged with an implied consent offense (1) who have an alcohol concentration of 0.10 or more or (2) who willfully

refuse a chemical analysis. The commercial driver's license legislation simply adds a third category applicable only to people who are driving a commercial vehicle. This revocation applies to any person driving a commercial vehicle, regardless of whether he or she has a commercial license. It applies to people driving commercial vehicles that are exempt from the commercial license requirement. This revocation provision became effective September 1, 1990. The order issued under this section is a revocation order and not a disqualification order. As such it revokes the right to drive any vehicle, not just commercial vehicles.

To properly process a revocation under this section, some forms in use will have to be corrected by hand until new forms can be issued. The changes that will have to be made when a person is charged with driving a commercial vehicle while impaired are listed below:

1. AOC-CVR-1, the Affidavit and Revocation Report of the Charging Officer, will have to be amended in Item 2 to add a block when the crime charged is impaired driving in a commercial vehicle. One way to make the change is as follows:
 impaired driving in a commercial motor vehicle. [G.S. 20-138.2]
2. AOC-CVR-2, the Revocation Order When Person Present, and AOC-CVR-3, the Revocation Order When Person Not Present, will have to be amended when the basis for the revocation order is an alcohol concentration under 0.10. To do that, 0.04 should be substituted for 0.10 in the appropriate place in Finding 4 on both forms.

Examples

The new commercial driver's license law is a complex statute, especially in the sections imposing license sanctions. To illustrate some of the complexity and to make the sections more understandable, some examples follow. In all examples, the offense committed is the person's first offense, unless otherwise indicated.

1. John Daniels, known to his friends as Jack, is driving a tractor-trailer rig for his employer registered at a combined total of 46,000 pounds on October 1, 1990. The trailer is registered at 25,200 pounds. He has a Class B noncommercial license. Is he committing a criminal offense? Yes, because he is driving a class of vehicle for which he

is not licensed, according to G.S. 20-7. He will not have to have a commercial license until April 1, 1992, but until then he will need a noncommercial Class A license to drive this vehicle. After April 1, 1992, he will need a Class A commercial license, and if he obtains one before then, it will be valid to drive this vehicle.

2. Jack is driving the same vehicle on December 1, 1990, and he now has a commercial Class A license. But he says he left it at home. Is he committing a crime? Yes, but the only charge that can be used until April 1, 1992, is under G.S. 20-7(n). Therefore he will have a good defense if he can later produce a license valid at the time of the offense. After April 1, 1992, the charge may be made under G.S. 20-37.12 and there will be no such defense.
3. Jack is driving the same vehicle on December 10, 1990. He has a Class A commercial license, and he is properly arrested for impaired driving in a commercial vehicle. He submits to a chemical analysis and it reveals an alcohol concentration of 0.06. He is convicted under G.S. 20-138.2. What will happen to his license? First, his license will be revoked immediately for at least ten days upon being charged under G.S. 20-16.5. Second, he will be disqualified from driving a commercial vehicle for at least one year pursuant to G.S. 20-17.4(a)(2). Third, because he took a chemical test and his alcohol concentration was under 0.10, he may apply for a Class C noncommercial license for the disqualification period pursuant to G.S. 20-138.2(f).
4. Jack's brother, Zack, is driving the same vehicle on December 15, 1990, and he is properly charged with impaired driving in a commercial vehicle. His alcohol concentration is 0.05. Unlike Jack, Zack has a Class A noncommercial license. He is convicted. What effect will the conviction have on his license? First, his license will be revoked for at least ten days under G.S. 20-16.5. Second, he will be disqualified from driving a commercial vehicle for at least one year pursuant to G.S. 20-17.4(a)(2). The disqualification does not have the effect of a revocation, but because he is convicted of impaired driving in a commercial vehicle, he must turn in his Class A noncommercial license. [See G.S. 20-138.2(f).] He may ob-

tain a Class C noncommercial license because his alcohol concentration was under 0.10.

5. Jack's sister, Sue, is driving that same vehicle on December 20, 1990. She is properly charged with impaired driving under G.S. 20-138.1 based on probable cause, and her alcohol concentration is 0.07. She is not charged under G.S. 20-138.2. She has a Class A commercial license. For the purposes of this case, assume that there is not sufficient evidence to convict her of impaired driving based on her being appreciably impaired. Can she be convicted under the per se portion of the regular impaired driving statute? No, if the only crime she is charged with is impaired driving under G.S. 20-138.1, because that statute requires an alcohol concentration of 0.10 to convict under the per se prong of the offense. She will, however, have her license revoked under G.S. 20-16.5 for at least ten days because she was driving a commercial vehicle, she was properly charged with an implied consent offense, and she had an alcohol concentration of 0.04 or more. She will not receive a disqualification order merely because she had an alcohol concentration over 0.04. She would have to have been convicted under G.S. 20-138.2 under this fact situation to have been disqualified.
6. Mack is driving the same vehicle on December 30, 1990. He has a Class A commercial license and is properly arrested for impaired driving in a commercial vehicle under G.S. 20-138.2. He refuses a chemical test and is then convicted. What will happen to his license? First, because of his refusal, his license will be revoked immediately for at least ten days under G.S. 20-16.5. Second, also because of the refusal, his license will be revoked under G.S. 20-16.2 for one year. Third, he will be subject to a disqualification order for at least one year under G.S. 20-17.4(a)(1), as well as under G.S. 20-17.4(a)(5). Fourth, he will not be able to apply for a noncommercial license because he did not have an alcohol concentration under 0.10. Finally, he is not eligible for a limited privilege under G.S. 20-16.2(e1) because one must be convicted of impaired driving or have the offense involving impaired driving dismissed to be eligible for a privilege under that subsection.

7. Assume the same facts listed in number 6 except that Mack did not refuse a chemical test; instead the machine was broken and no test was offered to him. He in fact asked for a test on his own but was unable to get to the hospital to have blood drawn. What is the effect on his license? First, he will be disqualified from driving a commercial vehicle under G.S. 20-17.4(a)(1) for at least one year. Second, he will not be able to apply for a noncommercial C license because he cannot prove that his alcohol concentration was under 0.10 [G.S. 20-138.2(f)]. Apparently the effect is the same as though his license were revoked for one year without a limited driving privilege.
8. Bob is driving the same vehicle as the others on January 1, 1991. He has a Class A noncommercial license, and he is properly charged with both impaired driving under G.S. 20-138.1 and impaired driving in a commercial vehicle under G.S. 138.2. He has an alcohol concentration of 0.15. He is convicted of both offenses. What happens to his license? First, his license is revoked under G.S. 20-16.5 on two grounds—an alcohol concentration of 0.04 or more in a commercial vehicle or of 0.10 or more in any vehicle. Second, his license will be revoked under G.S. 20-17(2) for one year for the conviction of impaired driving under G.S. 20-138.1. Third, he is disqualified from driving a commercial vehicle for at least one year pursuant to G.S.20-17.4(a)(1) or (a)(2) and must turn in his license. Fourth, he cannot obtain a Class C noncommercial license because his alcohol concentration was over 0.10. Finally, he can get a limited privilege to drive noncommercial vehicles pursuant to G.S. 20-138.2(f).
9. Assume the same facts as in number 8 above, except that Bob is only charged with impaired driving under G.S. 20-138.1. What difference does it make that he is not convicted of impaired driving in a commercial vehicle? There is no substantial difference. The only difference is that instead of having two grounds to enter a disqualification order, there is only one in this case.
10. Assume the same facts as number 8 above, except that Bob is only charged with impaired driving in a commercial vehicle. What difference does it make that he is not convicted of impaired driving under G.S. 20-138.1? It makes a significant difference. He will still lose his license for at least ten days under G.S. 20-16.5. He will also have a disqualification order for at least one year under G.S. 20-17.4(a) and must surrender his license. He will not have a revocation under G.S. 20-17(2); as a result of that, he will also not be allowed to get a limited driving privilege for noncommercial vehicles under G.S. 20-138.2(f) and G.S. 20-179.3. Finally, he will not be allowed to obtain a noncommercial Class C license because he did not have an alcohol concentration under 0.10. The net result is that a person in this case, who is convicted of both impaired driving and impaired driving in a commercial vehicle, may obtain a limited driving privilege to drive noncommercial vehicles, while a person convicted solely of impaired driving in a commercial vehicle under the same circumstances would not be allowed to drive at all during the disqualification period. Of course, the advantage to Bob in this circumstance is that he was only convicted of one offense instead of two, which means that collateral matters like insurance are affected less severely.
11. Jack is back, and this time he is driving the same commercial vehicle on February 1, 1991. On two separate occasions in the fall of 1990 he was convicted—once for speeding 70 in a 55 zone and once for reckless driving. He is disqualified from driving a commercial vehicle for sixty days under G.S. 20-17.4(d) on January 1, 1991. He is stopped and charged with driving while subject to a disqualification order under G.S. 20-28(c). What happens to his license? He will have an additional sixty-day disqualification added to the original sixty-day disqualification. Because his license was not revoked, no additional period of revocation will be imposed under G.S. 20-28 or G.S. 20-28.1.
12. Assume the same facts as in number 11, but this time Jack is charged with violating G.S. 20-37.12(b). What is the effect? Unlike G.S. 20-28(c), there is no apparent license effect for conviction of this almost identical offense.
13. Zack is driving the same commercial vehicle on February 15, 1991. On January 1, 1991, his license (Class A noncommercial) was revoked for one year for two reckless driving convictions in his personal

car. What can he be charged with? To commit an offense under G.S. 20-28(c), his *commercial driver license* has to be revoked. Because he does not have such a license, and because he is not subject to a disqualification order, it would appear that he

cannot be charged with that offense. The most serious offense for which he can be charged is driving with a revoked license under G.S. 20-28(a). Conviction of that offense will result in an additional revocation of one year.

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