

103.80 FINANCIAL RESPONSIBILITY <sup>1</sup> - EXPRESS OR IMPLIED  
PERMISSION/ USE OF MOTOR VEHICLE.

*NOTE WELL: This instruction is to be used with claims implicating the Motor Vehicle Safety and Financial Responsibility Act, N.C.G.S. § 20-279.1, et seq. and is most likely to arise in a declaratory judgment action related to insurance coverage.*

This (*state number*) issue reads:

"Did the driver have permission to operate the owner's vehicle at the time of the accident?"

On this issue the burden of proof is on the [party seeking to establish permission].

[Express permission is directly and distinctly stated, clear and outspoken, and not merely implied or left to inference.<sup>2</sup>]

[Implied permission 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 or approval. The relationship between the owner and the driver, such as kinship, social ties, and the purpose of the use, should all be taken into consideration to determine the owner's implied permission for the actual use.<sup>3</sup>

Implied permission may be found where the owner has knowledge of a violation of instructions and fails to make a significant protest. Knowledge may be actual or constructive.<sup>4</sup> Actual knowledge is direct and clear knowledge of a fact.<sup>5</sup> Constructive knowledge is knowledge that a person using reasonable care or diligence should have, and therefore that knowledge is attributed to the person by law.<sup>6</sup>

Additionally, use must fall within the scope of implied permission. A person is permitted to slightly deviate from the authority or permission

granted by the owner of the vehicle to operate the vehicle. However, a material deviation from the permission or authority granted, if any, constitutes a use of the automobile without the owner's implied permission.<sup>7</sup> If the permission granted is general in nature, then specific trip permission would not have to be shown.]

Finally, as to this (*state number*) issue on which the (*the party who is attempting to establish permission*) has the burden of proof, if you find, by the greater weight of the evidence, that the driver had [express] [implied] permission to operate the owner's vehicle at the time of the accident, then it would be your duty to answer this issue "Yes" in favor of [the party who is attempting to establish permission].

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" against (*the party who is attempting to establish permission*).

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1. *Belasco v. Nationwide Mut. Ins. Co.*, 73 N.C. App. 413, 416, 326 S.E.2d 109, 111 (1985) outlines lawful possession of another's vehicle pursuant to the Motor Vehicle Safety and Financial Responsibility Act, N.C.G.S. § 20-279.1, *et seq.*

2. *Hawley v. Indem. Ins. Co. of N. Am.*, 257 N.C. 381, 384, 126 S.E.2d 161, 164 (1962).

3. *Hawley v. Indem. Ins. Co. of N. Am.*, 257 N.C. 381, 384, 126 S.E.2d 161, 164 (1962).

4. *Hawley v. Indem. Ins. Co. of N. Am.*, 257 N.C. 381, 384, 126 S.E.2d 161, 164 (1962).

5. *Phillips ex rel. Bates v. N. Carolina Dep't of Transp.*, 200 N.C. App. 550, 558, 684 S.E.2d 725, 731 (2009) (citing *State v. Poteat*, 163 N.C. App. 741, 746, 594 S.E.2d 253, 255-56 (2004)); see also *Knowledge*, Black's Law Dictionary (11th ed. 2019).

6. *Phillips ex rel. Bates v. N. Carolina Dep't of Transp.*, 200 N.C. App. 550, 558, 684 S.E.2d 725, 731 (2009) (citing *State v. Poteat*, 163 N.C. App. 741,

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746, 594 S.E.2d 253, 255–56 (2004)); *see also* *Knowledge*, Black’s Law Dictionary (11th ed. 2019).

7. *Hawley v. Indem. Ins. Co. of N. Am.*, 257 N.C. 381, 384, 126 S.E.2d 161, 164 (1962); *see also* *Nationwide Mut. Ins. Co. v. Baer*, 113 N.C. App. 517, 522, 439 S.E.2d 202, 205 (1994).