

203.65 STOPPING ON HIGHWAY OR BRIDGE.

*NOTE WELL: Use this instruction only in conjunction with claims for relief arising under this statute based on acts that occurred prior to December 1, 2010. For claims for relief arising on or after December 1, 2010, use N.C.P.I. 203.65A.*

The motor vehicle law provides that no person shall park or leave standing<sup>1</sup> any vehicle, whether attended or unattended, upon the paved or main traveled portion of any [highway] [highway bridge] outside municipal corporate limits.

A violation of this law is negligence within itself.

*NOTE WELL: Where there is evidence that the vehicle was disabled to such an extent that stopping could not be avoided, the following should be given.*

(However, the law further provides that if the vehicle was disabled to such an extent that it was impossible to avoid stopping and temporarily leaving the vehicle upon such portion of the [highway] [highway bridge], it would not violate this law and would not be negligence. The burden of proof is on the operator of the parked or standing vehicle to prove, by the greater weight of the evidence, that the vehicle was disabled to such an extent that it was impossible to avoid stopping and temporarily leaving the vehicle upon such portion of the [highway] [highway bridge]. "Impossible" does not mean physical, absolute impossibility, but rather that the parking or stopping upon such portion of the [highway] [highway bridge] was not reasonably avoidable under the circumstances.<sup>2</sup>)

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1. In *Wilson v. Lee*, 1 N.C. App. 119, 160 S.E.2d 107 (1968), the Court held that a mere temporary or momentary stoppage on the highway, when there is no intent to break

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the continuity of travel, does not constitute "parking" or "leave standing" within the meaning of this section. *Strickland v. Powell*, 10 N.C. App. 225, 178 S.E.2d 136 (1970), is to the same effect as to stopping to receive or discharge passengers, nothing else appearing.

2. *Williams v. Jones*, 53 N.C. App. 171, 177, 280 S.E.2d 474 (1981) puts the burden on the party pleading "impossible to avoid stopping." Shifting the burden of proof suggests a contributory negligence issue is necessary. *Adams v. Mills*, 312 N.C. 181, 187, 322 S.E.2d 164, 169 (1984).