

205.50 OVERTAKING AND PASSING ON TWO-LANE HIGHWAY.<sup>1</sup>

The motor vehicle law provides that the driver of a vehicle in overtaking and passing another vehicle proceeding in the same direction on a two-lane highway (use one or more of the following bracketed statements as the evidence justifies)

[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 the vehicle being overtaken]<sup>2</sup>

[shall not drive to the left side of the center of the highway, unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety]<sup>3</sup>

[shall not overtake and pass upon [the crest of a grade] [a curve in the highway] where the driver's view along the highway is obstructed within a distance of five hundred feet]<sup>4</sup>

[shall not drive to the left side of a visible centerline<sup>5</sup> placed by the Department of Transportation upon [the crest of a grade] [a curve] in a highway]]<sup>6</sup>

[shall not overtake and pass at [a railway grade crossing] [a street intersection in a city or town<sup>7</sup>] [a highway intersection designated and marked as such with appropriate signs by the Department of Transportation] (unless permitted to pass by a traffic or police officer)]<sup>8</sup>

[shall not overtake and pass on any portion of the highway which is marked by [signs] [markings] [markers] placed by the Department of Transportation<sup>9</sup>, stating or clearly indicating that passing should not be

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attempted]<sup>10</sup>.

A violation of [this law] [any of these provisions of law] is negligence within itself.<sup>11</sup>

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1. As the title makes clear, this instruction does "not apply upon a one-way street nor to the driver of a vehicle turning left in or from an alley, private road, or driveway." N.C. Gen. Stat. § 20-150(f). In addition, although N.C. Gen. Stat. § 20-150 does not specifically contain a limitation to two-lane highways, the provisions thereof "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 from the opposite direction." *Byerly v. Shell*, 312 F.2d 141, 143 (4th Cir.1962).

2. N.C. Gen. Stat. § 20-149(a); provided that in Durham, Mecklenburg, Vance, and Wake counties this section shall not apply as to streets in cities and towns upon which local authorities have designated separate lanes for traffic and have clearly marked such lanes upon the surface of such street. Sessions Laws, c. 772 (1953). For occasions when passing on the right may be permitted, see N.C.P.I.-Civil 205.60, Motor Vehicle Volume.

3. N.C. Gen. Stat. § 20-150(a).

4. N.C. Gen. Stat. § 20-150(b). The 500-foot rule applies when there is no center line. When there is a center line on a curve or hill, the center line provision (N.C. Gen. Stat. § 20-150(d)) governs. *Walker v. Bakeries Co.*, 234 N.C. 440, 442, 67 S.E.2d 459, 461 (1951) ("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 [Department of Transportation]").

*See also Johnson v. Harris*, 166 F. Supp. 417, 421 (M.D.N.C. 1958) (holding that crossing the center line on a curve was negligence within itself). But *cf. Rushing v. Polk*, 258 N.C. 256, 128 S.E.2d 675 (1962), wherein the defendant, after crossing a yellow line (at the crest of a hill) in an attempt to pass, lost control and ran off the road, injuring the plaintiff, a passenger in the defendant's car. The Court held that, with respect to the plaintiff-passenger, crossing the yellow line was not negligence within itself, stating: "[y]ellow lines are designed primarily to prevent collision between an overtaking and passing automobile and a vehicle coming in the opposite direction, and to protect occupants of other cars, pedestrians and property on the highway." *Id.* at 259, 128 S.E.2d at 678 (citations omitted). As support the Court cited *Walker, supra.*, in which the N.C. Supreme Court observed: "Although the statute is primarily designed 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 statute." *Walker*, 234 N.C. at 443, 67 S.E.2d at 461. It seems that the decision in *Rushing v. Polk* should be taken as confined to fact situations closely resembling the facts of that case.

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5. "[F]or the purposes of [N.C. Gen. Stat. § 20-150] a 'centerline' is a solid yellow line which indicates that passing from the adjacent lane is forbidden." *Croom v. Humphrey*, 175 N.C. App. 765, 768, 625 S.E.2d 165, 167 (2006).

6. N.C. Gen. Stat. § 20-150(d). See note 3 *supra*.

7. "[A] private driveway is not an intersecting highway within the meaning of N.C. Gen. Stat. § 20-150(c)." *Levy v. Carolina Aluminum*, 232 N.C. 158, 161, 59 S.E.2d 632, 634 (1950).

8. N.C. Gen. Stat. § 20-150(c).

9. Solid centerlines are considered "markings" under N.C. Gen. Stat. § 20-150(e). 49 N.C.A.G. 1 (1979).

10. N.C. Gen. Stat. § 20-150(e).

11. *Duncan v. Ayers*, 55 N.C. App. 40, 45-46, 284 S.E.2d 561, 565 (1981); see also note 3 *supra*.