

225.37 SPECIAL ACTS OF NEGLIGENCE - MOPED OPERATOR (UNDER AGE).

The motor vehicle law provides that it is unlawful for any person who is under the age of sixteen years to operate a moped upon any [highway or street] [public vehicular area] of this state.

A moped is any vehicle having two or three wheels and operable bicycle pedals and is equipped with a motor which does not exceed fifty (50) cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than thirty (30) miles per hour on a level surface.<sup>1</sup>

[A highway or street<sup>2</sup> includes not only the roadway,<sup>3</sup> but the entire width between property or right-of-way lines when any part is open for the public to use for the purpose of carrying vehicular traffic. (*State name of highway or street*) is a [highway] [street] in this state.]

[A public vehicular area is any area within the State of North Carolina that is generally open to and used by the public.<sup>4</sup>] (*State name of vehicular area*) is a public vehicular area in this state.

A violation of this law is negligence within itself.

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1. See N.C. Gen. Stat. § 20-4.01(27)(d1) (2009) (referencing the definition in N.C. Gen. Stat. § 105-164.3(22) (2009)). In most cases, the parties will stipulate or admit that the vehicle is a moped. In such a case the jury should be instructed: "In this case the parties have [stipulated] [agreed] [admitted] that the vehicle is a moped."

2. "Highway" is synonymous with "street." N.C. Gen. Stat. § 20-4.01(13). A "highway" is defined to be "[t]he entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic." *Id.*

3. A "roadway" is defined to be "[t]hat portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder." N.C. Gen. Stat. § 20-4.01(38).

4. A "Public Vehicular Area" under N.C. Gen. Stat. § 20-4.01(32) is

[a]ny area within the State of North Carolina that meets one or more of the following requirements:

a. The area is used by the public for vehicular traffic at any time, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of any of the following:

1. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions.

2. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space whether the business or establishment is open or closed.

3. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. . . .

b. The area is a beach area used by the public for vehicular traffic.

c. The area is a road used by vehicular traffic within or leading to a gated or non-gated subdivision or community, whether or not the subdivision or community roads have been offered for dedication to the public.

d. The area is a portion of private property used by vehicular traffic and designated by the private property owner as a public vehicular area in accordance with N.C. Gen. Stat. § 20-219.4.