

BRAKES--MOST MOTOR VEHICLES.<sup>1</sup> G.S. 20-124(a) and (c).

The motor vehicle law provides that every motor vehicle operated on a highway must have brakes in good working order, including two separate means of applying the brakes, and that the brakes must be adequate to control the movement of the vehicle and to stop and hold the vehicle. (If the two separate means are connected in any way, they must be constructed so that the failure of any one part of the operating mechanism shall not leave the vehicle without brakes.)

A violation of this law is negligence within itself.

*(Where the operator puts at issue whether he knew or should have known that the brakes were not in good working order, or in other appropriate circumstances, the following should also be given:)*<sup>2</sup>

(However, the operator is not an insurer of the adequacy of the brakes. The existence of a defect unknown to the operator, not reasonably discoverable upon proper inspection and not resulting from the failure of the operator to exercise reasonable care in the use or maintenance of the brakes, would not be a violation of this law and would not be negligence. On the other hand, if the operator knew or in the exercise of reasonable care should have known of the defect, or should have corrected the defect, then operating the vehicle with such defective brakes would be a violation of this law and is negligence within itself.)

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<sup>1</sup>For motorcycles, use N.C.P.I.--Civil 215.81; for trucks and tractor trucks, 215.82; for towed vehicles, 215.83.

<sup>2</sup>For the basis of the last paragraph of the instruction, see Wilcox v. Motors Co., 269 N.C. 473, 153 S.E.2d 76 (1967) (also applying the statute to an owner of the vehicle), and Stephens v. Oil Co., 259 N.C. 456, 131 S.E.2d 39 (1963). See also Mann v. Knight, 83 N.C. App. 331, 350 S.E.2d 122 (1986) and Lumberman's Mutual Insurance Co. v. Champion, 80 N.C. App. 370, 343 S.E.2d 15 (1986) (citing N.C.P.I.--Civil 215.80 with approval).

