

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 368
Commerce Committee Substitute Adopted 4/22/09

Short Title: Various Changes in Motor Vehicle Law.-AB

(Public)

Sponsors:

Referred to:

March 4, 2009

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY THE REQUIREMENTS FOR A RETIRED STATE HIGHWAY
2 PATROL SPECIAL REGISTRATION PLATE; TO PROVIDE FOR THE RECOVERY
3 OF CIVIL PENALTIES ASSESSED BY THE DEPARTMENT OF CRIME CONTROL
4 AND PUBLIC SAFETY; TO REQUIRE THAT ALL MOTOR VEHICLES USED IN
5 INTRASTATE COMMERCE WEIGHING MORE THAN TEN THOUSAND POUNDS
6 BE MARKED; TO MODIFY THE REQUIREMENTS FOR FLAGS AND LIGHTING
7 AND WHEN HEADLAMPS WOULD BE REQUIRED TO BE USED ON LOADS THAT
8 ARE PROJECTING FROM THE END OR SIDES OF A COMMERCIAL MOTOR
9 VEHICLE OR A MOTOR VEHICLE WEIGHING MORE THAN TEN THOUSAND
10 POUNDS AND ENGAGED IN COMMERCE; TO REQUIRE SAFE TIRES ON
11 COMMERCIAL MOTOR VEHICLES AS REQUIRED BY PART 393 OF TITLE 49 OF
12 THE CODE OF FEDERAL REGULATIONS; TO MAKE A CHANGE TO THE WEIGHT
13 AND SIZE PENALTY PROVISIONS TO ALLOW FOR THE ASSESSMENT OF A
14 CIVIL PENALTY FOR ONLY THAT AMOUNT OF WEIGHT IN EXCESS OF THE
15 PERMITTED AMOUNT, TO REQUIRE THE DEPARTMENT OF CRIME CONTROL
16 AND PUBLIC SAFETY TO ASSESS CIVIL FINES FOR VIOLATIONS OF THE
17 SPECIAL PERMIT REQUIREMENTS OF G.S. 20-119, AND TO PREVENT MOTOR
18 CARRIERS FROM OPERATING VEHICLES THAT HAVE BEEN DECLARED
19 "OUT-OF-SERVICE"; TO REQUIRE BRAKES AS STANDARD EQUIPMENT FOR
20 SEMITRAILERS BEING PULLED BY TRACTOR TRUCKS AND OTHER PULL
21 UNITS; TO REQUIRE THAT OWNERS OF MOTORCYCLES MAINTAIN IN GOOD
22 WORKING ORDER DIRECTIONAL SIGNALS INSTALLED BY THE
23 MANUFACTURER; TO MODIFY THE SEAT BELT EXEMPTION PROVIDED FOR
24 GARBAGE AND RECYCLING TRUCK OPERATORS AND PASSENGERS TO
25 COMPLY WITH FEDERAL LAW; TO PROHIBIT THE OPERATION OF A DIGITAL
26 VIDEO DISC PLAYER AT ANY POINT FORWARD OF THE BACK OF A DRIVER'S
27 SEAT WHILE OPERATING A MOTOR VEHICLE; TO INCREASE THE CAP ON THE
28 MAXIMUM ALLOWABLE SUPERVISORY PERSONNEL IN THE STATE HIGHWAY
29 PATROL FROM TWENTY-ONE PERCENT TO TWENTY-THREE PERCENT; AND
30 TO ENSURE THAT PROCEEDS FROM LEASE OF PROPERTY OWNED BY THE
31 STATE HIGHWAY PATROL AS PART OF THE VIPER PROJECT BE USED TO
32 CONSTRUCT, MAINTAIN, AND SUPPORT THE PROJECT, AS REQUESTED BY
33 THE STATE HIGHWAY PATROL.
34

35 The General Assembly of North Carolina enacts:

36 **SECTION 1.** G.S. 20-79.4(104) reads as rewritten:



1 "(104) Retired State Highway Patrol. – The plate authorized by this subdivision
2 shall bear the phrase "SHP, Retired." The Division may not issue the plate
3 authorized by this subdivision unless it receives at least 300 applications for
4 the plate. The plate is issuable to one of the following:

- 5 a. An individual who has retired from the North Carolina State
6 Highway Patrol, presenting to the Division, along with the
7 application for the plate, a copy of the retiree's retired identification
8 card or letter of retirement.
- 9 b. The surviving spouse of a person who had a retired highway patrol
10 plate at the time of death so long as the surviving spouse continues to
11 renew the plate and does not remarry. retired from the State Highway
12 Patrol who, along with the application for the plate, presents a copy
13 of the deceased retiree's identification card or letter of retirement and
14 certifies in writing that the retiree is deceased and that the applicant
15 is not remarried.
- 16 e. The surviving spouse of a person who qualified for a retired highway
17 patrol plate so long as the surviving spouse applies for the plate
18 within ninety (90) days of the qualifying spouse's death and does not
19 remarry."

20 **SECTION 2.** Chapter 20 of the General Statutes is amended by adding a new
21 section to read:

22 "**§ 20-91.4. Civil penalties assessed by the Department of Crime Control and Public**
23 **Safety; procedures for recovery.**

24 (a) Unless collection of penalties is made pursuant to G.S. 20-96, G.S. 20-382.2, or
25 some other statutory provision, any person or entity that does not deny liability for a civil
26 penalty assessed by the Department of Crime Control and Public Safety pursuant to this Article
27 shall make payment within 30 calendar days of the date the penalty is assessed. Payment shall
28 be made to the Department of Transportation, Fiscal Section. A penalty payable pursuant to this
29 section that remains unpaid for more than 30 days following the date of assessment shall be
30 delinquent and shall be subject to the maximum allowable late penalties and interest as a
31 past-due account pursuant to G.S. 147-86.23.

32 (b) Any person or entity who denies liability for a penalty imposed by the Department
33 of Crime Control and Public Safety under this Article may pay the penalty under protest and
34 request an informal review by the Secretary of the Department of Crime Control and Public
35 Safety or the Secretary's designee. For penalties of one thousand five hundred dollars (\$1,500)
36 or less that are paid under protest, the penalty must be paid in full prior to the informal review.
37 For penalties greater than one thousand five hundred dollars (\$1,500) that are paid under
38 protest, one thousand five hundred dollars (\$1,500) must be paid prior to the informal review.
39 A request for informal review must be made within 30 days of the assessment of a civil penalty,
40 must be made in writing, must certify that payment has been paid to the Department of
41 Transportation, Fiscal Section, and must contain sufficient information for the Secretary of
42 Crime Control and Public Safety to determine the specific basis upon which liability is being
43 challenged.

44 (c) Upon receiving a request for informal review, the Secretary of Crime Control and
45 Public Safety, or the Secretary's designee, shall review the record and determine whether the
46 civil penalty was assessed in error. If, after reviewing the record, the Secretary, or the
47 Secretary's designee, determines that the assessment was issued in error, the penalty, or the
48 appropriate amount thereof, shall be refunded. If, after reviewing the record, the Secretary, or
49 the Secretary's designee, determines that the assessment was not issued in error, any amount of
50 the penalty that remains unpaid must be paid within 30 days of the notice of decision.

1 (d) Any person or entity who is dissatisfied with the decision of the Secretary of Crime
2 Control and Public Safety pursuant to subsection (c) of this section may, within 60 days of the
3 decision, bring an action for refund of the penalty against the Department of Crime Control and
4 Public Safety in the Superior Court of Wake County or in the superior court of the county in
5 which the civil penalty was assessed."

6 **SECTION 3.** G.S. 20-101(b) reads as rewritten:

7 (b) A motor vehicle that is not subject to 49 C.F.R. Part 390, has a gross vehicle weight
8 rating of more than 10,000 ~~pounds, but less than 26,001 pounds,~~pounds and is used in intrastate
9 commerce, and is not a farm vehicle, as further described in G.S. 20-118(c)(4), (c)(5), or
10 (c)(12), shall have the name of the owner printed on ~~the~~each side of the vehicle in letters not
11 less than three inches in height."

12 **SECTION 4.** G.S. 20-117 reads as rewritten:

13 "**§ 20-117. Flag or light at end of load.**

14 (a) General Provisions. – Whenever the load on any vehicle shall extend more than four
15 feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load,
16 in such position as to be clearly visible at all times from the rear of such load, a red or orange
17 flag not less than ~~12-18~~18 inches both in length and width, except that from sunset to sunrise there
18 shall be displayed at the end of any such load a red or amber light plainly visible under normal
19 atmospheric conditions at least 200 feet from the rear of such vehicle. At no time shall a load
20 extend more than 14 feet beyond the rear of the bed or body of the vehicle, with the exception
21 of vehicles transporting forestry products or utility poles.

22 (b) Commercial Motor Vehicles. – Notwithstanding the provisions of subsection (a) of
23 this section, a commercial motor vehicle, or a motor vehicle with a GVWR of 10,001 pounds or
24 more that is engaged in commerce, that is being used to tow a load or that has a load that
25 protrudes from the rear or sides of the vehicle shall comply with the provisions of 49 C.F.R. §
26 393."

27 **SECTION 5.** G.S. 20-122.1 reads as rewritten:

28 "**§ 20-122.1. Motor vehicles to be equipped with safe tires.**

29 (a) Every motor vehicle subject to safety equipment inspection in this State and
30 operated on the streets and highways of this State shall be equipped with tires which are safe
31 for the operation of the motor vehicle and which do not expose the public to needless hazard.
32 Tires shall be considered unsafe if cut so as to expose tire cord, cracked so as to expose tire
33 cord, or worn so as to expose tire cord or there is a visible tread separation or chunking or the
34 tire has less than two thirty-seconds inch tread depth at two or more locations around the
35 circumference of the tire in two adjacent major tread grooves, or if the tread wear indicators are
36 in contact with the roadway at two or more locations around the circumference of the tire in
37 two adjacent major tread grooves: Provided, the two thirty- seconds tread depth requirements of
38 this section shall not apply to dual wheel trailers. ~~Provided further that as to trucks owned by~~
39 ~~farmers and operated exclusively in the carrying and transportation of the owner's farm~~
40 ~~products which are approved for daylight use only and which are equipped with dual wheels,~~
41 ~~the tread depth requirements of this section shall not apply to more than one wheel in each set~~
42 ~~of dual wheels.~~ For the purpose of this section, the following definitions shall apply:

- 43 (1) "Chunking" – separation of the tread from the carcass in particles which may
44 range from very small size to several square inches in area.
45 (2) "Cord" – strands forming a ply in a tire.
46 (3) "Tread" – portion of tire which comes in contact with road.
47 (4) "Tread depth" – the distance from the base of the tread design to the top of
48 the tread.

49 (a1) Any motor vehicle that has a GVWR of at least 10,001 pounds or more and is
50 operated on the streets or highways of this State shall be equipped with tires that are safe for the
51 operation of the vehicle and do not expose the public to needless hazard. Tires shall be

1 considered unsafe if cut so as to expose tire cord, cracked so as to expose tire cord, or worn so
2 as to expose tire cord, or there is a visible tread separation or chunking, or if the steering axle
3 tire has less than four thirty-seconds inch tread depth at any location around the circumference
4 of the tire on any major tread groove, or if any nonsteering axle tire has less than two
5 thirty-seconds inch tread depth around the circumference of the tire in any major tread groove,
6 or if the tread wear indicators are in contact with the roadway at any location around the
7 circumference of the tire on any major tread groove.

8 (b) The driver of any vehicle who is charged with a violation of this section shall be
9 allowed 15 calendar days within which to bring the tires of such vehicle in conformance with
10 the requirements of this section. It shall be a defense to any such charge that the person arrested
11 produce in court, or submit to the prosecuting attorney prior to trial, a certificate from an
12 official safety inspection equipment station showing that within 15 calendar days after such
13 arrest, the tires on such vehicle had been made to conform with the requirements of this section
14 or that such vehicle had been sold, destroyed, or permanently removed from the highways.
15 Violation of this section shall not constitute negligence per se."

16 **SECTION 6.** G.S. 20-118(e)(3) reads as rewritten:

17 "(3) If an axle-group weight of a vehicle exceeds the weight limit set in
18 subdivision (b)(3) of this section plus any tolerance allowed in subsection (h)
19 of this section or axle-group weights or gross weights authorized by special
20 permit under G.S. 20-119(a), the Department of Crime Control and Public
21 Safety shall assess a civil penalty against the owner or registrant of the
22 motor vehicle. The penalty shall be assessed on the number of pounds by
23 which the axle-group weight exceeds the limit set in subdivision
24 ~~(b)(3)~~, (b)(3) of this section, or by a special permit issued pursuant to
25 G.S. 20-119, as follows: for the first 2,000 pounds or any part thereof, two
26 cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four
27 cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents
28 (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision
29 (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed
30 in subsection (h) of this section. These penalties apply separately to each
31 axle-group weight limit violated. Notwithstanding any provision to the
32 contrary, a vehicle with a special permit that is subject to additional penalties
33 under this subsection based on a violation of any of the permit restrictions
34 set out in G.S. 20-119(d1) shall be assessed a civil penalty, not to exceed ten
35 thousand dollars (\$10,000), based on the number of pounds by which the
36 axle-group weight exceeds the limit set in subdivision (b)(3) of this section."

37 **SECTION 7.** G.S. 20-119(d) reads as rewritten:

38 "(d) For each violation of any of the terms or conditions of a special permit issued or
39 where a permit is required but not obtained under this section the Department of Crime Control
40 and Public Safety ~~may~~ shall assess a civil penalty for each violation against the registered
41 owner of the vehicle as follows:

42 (1) A fine of one thousand five hundred dollars (\$1,500) for operating without
43 the proper number of certified escorts as determined by the actual loaded
44 weight or size of the vehicle combination.

45 ~~(1a)~~ (1a) A fine of five hundred dollars (\$500.00) for any of the following: operating
46 without the issuance of a permit, moving a load off the route specified in the
47 permit, falsifying information to obtain a permit, or failing to comply with
48 dimension restrictions of a permit. ~~permit, or failing to comply with the~~
49 ~~number of properly certified escort vehicles required.~~

50 (2) A fine of two hundred fifty dollars (\$250.00) for moving loads beyond the
51 distance allowances of an annual permit covering the movement of house

1 trailers from the retailer's premises or for operating in violation of time of
2 travel restrictions.

- 3 (3) A fine of one hundred dollars (\$100.00) for any other violation of the permit
4 conditions or requirements imposed by applicable regulations.

5 The Department of Transportation may refuse to issue additional permits or suspend
6 existing permits if there are repeated violations of subdivision ~~(4)~~(1), (1a), or (2) of this
7 subsection. ~~In addition to the penalties provided by this subsection, a civil penalty in~~
8 ~~accordance with G.S. 20-118(e)(1) and (3) may be assessed if a vehicle is operating without the~~
9 ~~issuance of a required permit, operating off permitted route of travel, operating without the~~
10 ~~proper number of certified escorts as determined by the actual loaded weight of the vehicle~~
11 ~~combination, fails to comply with travel restrictions of the permit, or operating with improper~~
12 ~~license. Fees assessed for permit violations under this subsection shall not exceed a maximum~~
13 ~~of twenty five thousand dollars (\$25,000)."~~

14 **SECTION 8.** G.S. 20-119 is amended by adding a new subsection to read:

15 "(d1) In addition to the penalties assessed pursuant to subsection (d) of this section, the
16 Department of Crime Control and Public Safety shall assess a civil penalty, not to exceed ten
17 thousand dollars (\$10,000), in accordance with G.S. 20-118(e)(1) and (3) against the registered
18 owner of the vehicle for any of the following:

- 19 (1) Operating without the issuance of a required permit.
20 (2) Operating off permitted route of travel.
21 (3) Failing to comply with travel restrictions of the permit.
22 (4) Operating without the proper vehicle registration or license for the class of
23 vehicle being operated.

24 A violation of this subsection constitutes operating a vehicle without a special permit."

25 **SECTION 9.** G.S. 20-381(a)(2a) reads as rewritten:

- 26 "(2a) To prohibit the use by a motor carrier of any motor vehicle or motor vehicle
27 equipment the Department of Crime Control and Public Safety ~~finds~~finds,
28 by reason of its mechanical condition or loading, would be likely to cause a
29 crash or breakdown unsafe for use in the transportation of passengers or
30 property on a highway. If an agent of the Department of Crime Control and
31 Public Safety finds a motor vehicle of a motor carrier in actual use upon the
32 highways in the transportation of passengers or property that, by reason of
33 its mechanical condition or loading, would be likely to cause a crash or
34 breakdown, to be unsafe or any parts thereof or any equipment thereon to be
35 unsafe and is of the opinion that further use of such vehicle, parts or
36 equipment are imminently dangerous, the agent shall declare the vehicle
37 "Out-of-Service." The agent shall~~may~~require the operator thereof to
38 discontinue its use and to substitute therefor a safe vehicle, parts or
39 equipment at the earliest possible time and place, having regard for both the
40 convenience and the safety of the passengers or property. When an inspector
41 or agent stops a motor vehicle on the highway, under authority of this
42 section, and the motor vehicle is declared "Out-of-Service," no motor carrier
43 operator shall require, or permit, any person to operate, nor shall any person
44 operate, any motor vehicle equipment declared "Out-of-Service" until all
45 repairs required by the "Out-of-Service" notice have been satisfactorily
46 completed, in operative condition and its further movement is not dangerous
47 to the passengers or property or to the users of the highways, it shall be the
48 duty of the inspector or agent to guide the vehicle to the nearest point of
49 substitution or correction of the defect. Such agents or inspectors shall also
50 have the right to stop any motor vehicle which is being used upon the public
51 highways for the transportation of passengers or property by a motor carrier

1 subject to the provisions of this Article and to eject therefrom any driver or
2 operator who shall be operating or be in charge of such motor vehicle while
3 under the influence of alcoholic beverages or impairing substances. It shall
4 be the duty of all inspectors and agents of the Department of Crime Control
5 and Public Safety to make a written report, upon a form prescribed by the
6 Department of Crime Control and Public Safety, of inspections of all motor
7 equipment and a copy of each such written report, disclosing defects in such
8 equipment, shall be served promptly upon the motor carrier operating the
9 same, either in person by the inspector or agent or by mail. Such agents and
10 inspectors shall also make and serve a similar written report in cases where a
11 motor vehicle is operated in violation of this Chapter or, if the motor vehicle
12 is subject to regulation by the North Carolina Utilities Commission, of
13 Chapter 62 of the General Statutes."

14 **SECTION 10.** G.S. 20-124(e1) reads as rewritten:

15 "(e1) Every motor truck and ~~tractor-truck~~truck-tractor with semitrailer attached, shall be
16 equipped with brakes acting on all wheels, except trucks and truck-tractors having three or
17 more axles need not have brakes on the front wheels, ~~except that when such vehicles are~~
18 ~~equipped with at least two steerable axles, the wheels of one steerable axle need not have~~
19 ~~brakes.~~wheels if it was manufactured prior to July 25, 1980. However, such trucks and
20 truck-tractors must be capable of complying with the performance requirements of
21 G.S. 20-124(e)."

22 **SECTION 11.** G.S. 20-124(g) reads as rewritten:

23 "(g) The provisions of this section shall not apply to any trailer ~~or semitrailer~~ when used
24 by a farmer, his tenant, agent, or employee under such circumstances that such trailer ~~or~~
25 ~~semitrailer~~ is exempt from registration by the provisions of G.S. 20-51. This exemption does
26 not apply to trailers that are equipped with brakes from the manufacturer and that are
27 manufactured after October 1, 2009."

28 **SECTION 12.** G.S. 20-125.1(d) reads as rewritten:

29 "(d) Nothing in this section shall apply to ~~motoreycles~~motorcycles unless the
30 motorcycle was equipped with electrical or mechanical directional signals from the
31 manufacturer."

32 **SECTION 13.** G.S. 20-135.2A(c)(8) reads as rewritten:

33 "(8) A ~~driver or~~ passenger of a residential garbage or recycling truck while the
34 truck is operating during collection ~~rounds, and while traveling to and from~~
35 ~~garbage and recycling material loading and unloading locations.~~rounds."

36 **SECTION 14.** G.S. 20-136.1 reads as rewritten:

37 "**§ 20-136.1. Location of ~~television viewers.~~television, computer, or video disc players,**
38 **monitors, and screens.**

39 No person shall drive any motor vehicle upon a public street or highway or public vehicular
40 area equipped with any television viewer, screen, or other means of visually receiving a
41 television broadcast while operating, using, or viewing any television, computer, or video disc
42 player which is located in the motor vehicle at any point forward of the back of the driver's
43 seat, or which is visible to the driver while operating the motor vehicle. This section does not
44 apply to the use of global positioning systems; turn-by-turn navigation displays or similar
45 navigation devices; equipment that displays audio system information, functions or controls, or
46 weather, traffic, and safety information; vehicle safety or equipment information; or image
47 displays that enhance the driver's view in any direction, inside or outside of the vehicle. The
48 provisions of this section shall not apply to law enforcement or emergency personnel while in
49 the performance of their official duties."

50 **SECTION 15.** G.S. 20-185(a) reads as rewritten:

1 "(a) The State Highway Patrol shall consist of a commanding officer, who shall be
2 appointed by the Governor and whose rank shall be designated by the Governor, and such
3 additional subordinate officers and members as the Secretary of Crime Control and Public
4 Safety, with the approval of the Governor, shall direct. Members of the State Highway Patrol
5 shall be appointed by the Secretary, with the approval of the Governor, and shall serve at the
6 pleasure of the Governor and Secretary. The commanding officer, other officers and members
7 of the State Highway Patrol shall be paid such salaries as may be established by the Division of
8 Personnel of the Department of Administration. Notwithstanding any other provision of this
9 Article, the number of supervisory personnel of the State Highway Patrol shall not exceed a
10 number equal to ~~twenty-one percent (21%)~~ twenty-three percent (23%) of the personnel actually
11 serving as uniformed highway patrolmen. Nothing in the previous sentence is intended to
12 require the demotion, reassignment or change in status of any member of the State Highway
13 Patrol presently assigned in a supervisory capacity. If a reduction in the number of Highway
14 Patrol personnel assigned in supervisory capacity is required in order for the State Highway
15 Patrol to meet the mandatory maximum percentage of supervisory personnel as set out in the
16 fourth sentence of this subsection, that reduction shall be achieved through normal attrition
17 resulting from supervisory personnel resigning, retiring or voluntarily transferring from
18 supervisory positions."

19 **SECTION 16.** G.S. 20-382.2(d) reads as rewritten:

20 "(d) Proceeds. – A penalty imposed under this section is payable to the Department of
21 Crime Control and Public Safety. ~~Penalties collected under this section shall be credited to the~~
22 ~~Highway Fund as nontax revenue.~~ The clear proceeds of all civil penalties, civil forfeitures, and
23 civil fines that are collected by the Department pursuant to this section shall be remitted to the
24 Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

25 **SECTION 17.** G.S. 146-30 is amended by adding a new subsection to read:

26 "(b2) Notwithstanding the other provisions of this section, no service charge into the State
27 Land Fund shall be deducted from or levied against the proceeds of any disposition by lease,
28 rental, or easement of State lands purchased and owned by the North Carolina State Highway
29 Patrol, Department of Crime Control and Public Safety, as part of the Voice Interoperability
30 Plan for Emergency Responders (VIPER) project being managed by the North Carolina State
31 Highway Patrol, Department of Crime Control and Public Safety. All net proceeds of these
32 dispositions shall be deposited into an account created in the Department of Crime Control and
33 Public Safety to be used only for the purpose of constructing, maintaining, or supporting the
34 VIPER network."

35 **SECTION 18.** Sections 1, 6, 15, 16, and 17 of this act are effective when this act
36 becomes law. The remaining sections of this act become effective October 1, 2009, and apply
37 to offenses committed on or after that date.