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SENATE BILL 368
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Short Title: Various Changes in Motor Vehicle Law.-AB

(Public)

Sponsors:

Referred to:

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE MOTOR VEHICLE LAW AS
REQUESTED BY THE DEPARTMENT OF CRIME CONTROL AND PUBLIC
SAFETY.

The General Assembly of North Carolina enacts:

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

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

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

SECTION 2.(a) Part 12 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-178.1. Payment and review of civil penalty imposed by Department of Crime Control and Public Safety.

(a) Procedure. – A person who is assessed a civil penalty under this Article by the Department of Crime Control and Public Safety must pay the penalty within 30 calendar days after the date the penalty was assessed or make a written request within this time limit to the Department for a Departmental review of the penalty. A request for review must state the basis for the objection and explain why the person against whom the penalty was assessed believes



1 the penalty was imposed in error. A person who does not submit a request for review within the
 2 required time waives the right to a review and hearing on the penalty.

3 (b) Department Review. – Upon receiving a request to review a penalty, the Department
 4 must review the information in the request for review and the Department's records to
 5 determine if the penalty was properly assessed. The Department must send the person who
 6 submitted the request for review written notice of its decision on the penalty. A penalty must be
 7 paid within 60 days after the Department gives written notice of its decision on the penalty.

8 (c) OAH Hearing. – A person who is dissatisfied with the Department's decision after
 9 its review of the penalty may pay the penalty under protest and file a petition for a contested
 10 case hearing under G.S. 150B-23. A petition to OAH must certify that the penalty has been
 11 paid.

12 (d) Judicial Review. – Except as provided in this subsection, Article 4 of Chapter 150B
 13 of the General Statutes governs judicial review of a final decision made after a contested case
 14 hearing on a penalty that is subject to this section. To obtain judicial review of a final decision
 15 on a penalty subject to this section, the person seeking review must file the petition in the
 16 Superior Court of Wake County or in the superior court of the county in which the penalty was
 17 assessed.

18 (e) Interest. – Interest accrues on a penalty that is overdue. A penalty is overdue if it is
 19 not paid within the time required by this section. Interest is payable on a penalty assessed in
 20 error from the date the penalty was paid. The interest rate set in G.S. 105-241.21 applies to
 21 interest payable under this section."

22 **SECTION 2.(b)** G.S. 20-382.2 reads as rewritten:

23 **"§ 20-382.2. Penalty for failure to comply with registration or insurance verification**
 24 **requirements.**

25 ...

26 ~~(b) Payment.~~ Payment and Review. – When the Department of Crime Control and
 27 Public Safety finds that a for-hire motor vehicle is operated in this State in violation of the
 28 registration and insurance verification requirements of this Part, the Department must place the
 29 motor vehicle shall be placed out of service until the motor carrier is in compliance and the
 30 penalty imposed under this section is paid unless the officer that imposes the penalty
 31 determines that operation of the motor vehicle will not jeopardize collection of the penalty. A
 32 motor carrier that denies liability for a penalty imposed under this section may pay the penalty
 33 under protest and ~~apply to the Department of Crime Control and Public Safety for a~~
 34 hearing follow the procedure in G.S. 20-137.5 for a Departmental review of the penalty and a
 35 hearing on the penalty.

36 ~~(c) Hearing.~~ Judicial Restriction. – Upon receiving a request for a hearing, the Secretary
 37 of Crime Control and Public Safety shall schedule a hearing within 30 days after receipt of the
 38 request. If after the hearing the Secretary of Crime Control and Public Safety determines that
 39 the motor carrier was not liable for the penalty, the amount collected shall be refunded. If after
 40 the hearing the Department of Crime Control and Public Safety determines that the motor
 41 carrier was liable for the penalty, the motor carrier may bring an action in the Superior Court of
 42 Wake County against the Department of Crime Control and Public Safety for refund of the
 43 ~~penalty.~~ A court of this State may not issue a restraining order or an injunction to restrain or
 44 enjoin the collection of the a penalty imposed under this section or to permit the operation of
 45 the a vehicle placed out of service under this section without payment of the penalty.

46"

47 **SECTION 2.(c)** G.S. 150B-1(e)(14) is repealed.

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

49 ~~"(b) A motor vehicle that is not subject to 49 C.F.R. Part 390, has a gross vehicle weight~~
 50 ~~rating of more than 10,000 pounds, but less than 26,001 pounds, and is used in intrastate~~
 51 ~~commerce, and is not a farm vehicle, as further described in G.S. 20-118(c)(4), (c)(5), or~~

1 ~~(c)(12), shall have the name of the owner printed on the side of the vehicle in letters not less~~
2 ~~than three inches in height. A motor vehicle with a gross vehicle weight of more than 10,000~~
3 ~~pounds that is used in interstate commerce shall have the name of the owner printed on each~~
4 ~~side of the vehicle in letters not less than three inches in height, unless either of the following~~
5 ~~applies:~~

6 (1) The motor vehicle is subject to 49 C.F.R. Part 390.

7 (2) The motor vehicle is a farm vehicle as further described in
8 G.S. 20-118(c)(4), (c)(5), or (c)(12)."

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

10 **"§ 20-117. Flag or light at end of load.**

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

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

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

24 **"§ 20-122.1. Motor vehicles to be equipped with safe tires.**

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

39 (1) "Chunking" – separation of the tread from the carcass in particles which may
40 range from very small size to several square inches in area.

41 (2) "Cord" – strands forming a ply in a tire.

42 (3) "Tread" – portion of tire which comes in contact with road.

43 (4) "Tread depth" – the distance from the base of the tread design to the top of
44 the tread.

45 (a1) Any motor vehicle that has a GVWR of at least 10,001 pounds or more and is
46 operated on the streets or highways of this State shall be equipped with tires that are safe for the
47 operation of the vehicle and do not expose the public to needless hazard. A tire is unsafe if any
48 of the following apply:

49 (1) It is cut, cracked, or worn so as to expose tire cord.

50 (2) There is a visible tread separation or chunking.

- 1 (3) The steering axle tire has less than four thirty-seconds inch tread depth at
2 any location around the circumference of the tire on any major tread groove.
3 (4) Any nonsteering axle tire has less than two thirty-seconds inch tread depth
4 around the circumference of the tire in any major tread groove, or
5 (5) The tread wear indicators are in contact with the roadway at any location
6 around the circumference of the tire on any major tread groove.

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

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

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

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

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

- 41 (1) A fine of one thousand five hundred dollars (\$1,500) for operating without
42 the proper number of certified escorts as determined by the actual loaded
43 weight or size of the vehicle combination.
44 ~~(1a)~~ (1a) A fine of five hundred dollars (\$500.00) for any of the following: operating
45 without the issuance of a permit, moving a load off the route specified in the
46 permit, falsifying information to obtain a permit, or failing to comply with
47 dimension restrictions of a permit. ~~permit, or failing to comply with the~~
48 ~~number of properly certified escort vehicles required.~~
49 (2) A fine of two hundred fifty dollars (\$250.00) for moving loads beyond the
50 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 under 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 a trailer or semitrailer~~ when
24 used by a farmer, ~~his a farmer's~~ tenant, agent, or employee under such circumstances that such if
25 the trailer or semitrailer is exempt from registration by the provisions of G.S. 20-51. This
26 exemption does not apply to trailers that are equipped with brakes from the manufacturer and
27 that are 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 and which is visible to the driver while operating the motor vehicle. This section does
44 not 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. 20-382.2(d) reads as rewritten:

1 "(d) Proceeds. – A penalty imposed under this section is payable to the Department of
2 Crime Control and Public Safety. ~~Penalties collected under this section shall be credited to the~~
3 ~~Highway Fund as nontax revenue.~~ The clear proceeds of all civil penalties assessed by the
4 Department pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund
5 in accordance with G.S. 115C-457.2."

6 **SECTION 16.** G.S. 146-30 is amended by adding a new subsection to read:

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

16 **SECTION 17.(a)** G.S. 20-118(c) reads as rewritten:

17 "(c) Exceptions. – The following exceptions apply to G.S. 20-118(b) and 20-118(e).

- 18 ...
- 19 (14) Subsections (b) and (e) of this section do not apply to a vehicle that meets all
20 of the conditions below, but all other enforcement provisions of this Article
21 remain applicable:
- 22 a. Is hauling aggregates from a distribution yard or a State-permitted
23 production site located within a North Carolina county contiguous to
24 the North Carolina State border to a destination in another state
25 adjacent to that county as verified by a weight ticket in the driver's
26 possession and available for inspection by enforcement personnel.
 - 27 b. Does not operate on an interstate highway or ~~posted bridge~~ exceed
28 any posted bridge weight limits.
 - 29 c. Does not exceed 69,850 pounds gross vehicle weight and 53,850
30 pounds per axle grouping for tri-axle vehicles. For purposes of this
31 subsection, a tri-axle vehicle is a single power unit vehicle with a
32 three consecutive axle group on which the respective distance
33 between any two consecutive axles of the group, measured
34 longitudinally center to center to the nearest foot, does not exceed
35 eight feet. For purposes of this subsection, the tolerance provisions of
36 subsection (h) of this section do not apply, and vehicles must be
37 licensed in accordance with G.S. 20-88.
 - 38 d. Repealed by Session Laws 2001-487, s. 10, effective December 16,
39 2001.
- 40 (15) Subsections (b) and (e) of this section do not apply to a vehicle or vehicle
41 combination that meets all of the conditions below, but all other enforcement
42 provisions of this Article remain applicable:
- 43 a. Is hauling wood residuals, including wood chips, sawdust, mulch, or
44 tree bark from any site; is hauling raw logs to first market; or is
45 transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings
46 from a site that does not have a certified scale for weighing the
47 vehicle.
 - 48 b. Does not operate on an interstate highway, a posted light-traffic road,
49 except as provided by subdivision (c)(5) of this section, or ~~a posted~~
50 ~~bridge~~ exceed any posted bridge weight limits.

- 1 c. Does not exceed a maximum gross weight 4,000 pounds in excess of
2 what is allowed in subsection (b) of this section.
3 d. Does not exceed a single-axle weight of more than 22,000 pounds
4 and a tandem-axle weight of more than 42,000 pounds."

5 **SECTION 17.(b)** G.S. 20-118(h) reads as rewritten:

6 "(h) Tolerance. – A vehicle may exceed maximum and the inner axle-group weight
7 limitations set forth in subdivision (b)(3) of this section by a tolerance of ten percent (10%).
8 This exception does not authorize a vehicle to exceed either the single-axle or tandem-axle
9 weight limitations set forth in subdivisions (b)(1) and (b)(2) of this section, or the maximum
10 gross weight limit of 80,000 pounds. This exception does not apply to ~~bridges posted a vehicle~~
11 exceeding posted bridge weight limitations as posted under G.S. 136-72 or to vehicles
12 operating on interstate highways. The tolerance allowed under this subsection does not
13 authorize the weight of a vehicle to exceed the weight for which that vehicle is licensed under
14 G.S. 20-88. No tolerance on the single-axle weight or the tandem-axle weight provided for in
15 subdivisions (b)(1) and (b)(2) of this section shall be granted administratively or otherwise. The
16 Department of Transportation shall report back to the Transportation Oversight Committee and
17 to the General Assembly on the effects of the tolerance granted under this section, any abuses
18 of this tolerance, and any suggested revisions to this section by that Department on or before
19 May 1, 1998."

20 **SECTION 18.** Sections 1, 6, 15, and 16 of this act are effective when this act
21 becomes law. The remaining sections of this act become effective October 1, 2009, and apply
22 to civil penalties assessed and offenses committed on or after that date.