

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-376
SENATE BILL 368**

AN ACT TO MAKE VARIOUS CHANGES TO THE MOTOR VEHICLE LAWS, 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 person who does not submit a request for review within the required time waives the right to a review and hearing on the penalty.

(b) Department Review. – Any person who denies liability for a penalty imposed by the Department may request an informal review by the Secretary of the Department or the Secretary's designee. The request must be made in writing and must contain sufficient information for the Secretary, or the Secretary's designee, to determine the specific basis upon which liability is being challenged. Upon receiving a request for informal review, the Secretary, or the Secretary's designee, shall review the record and determine whether the penalty was assessed in error. If, after reviewing the record, the Secretary, or the Secretary's designee, determines that the assessment or a portion thereof was not issued in error, the penalty must be paid within 30 days of the notice of decision.

(c) Judicial Review. – Any person who is dissatisfied with the decision of the Secretary and who has paid the penalty in full within 30 days of the notice of decision, as required by subsection (b) of this section, may, within 60 days of the decision, bring an action for refund of the penalty against the Department in the Superior Court of Wake County or in the superior court of the county in which the civil penalty was assessed. The court shall review the



Secretary's decision and shall make findings of fact and conclusions of law. The hearing shall be conducted by the court without a jury. In reviewing the case, the court shall not give deference to the prior decision of the Secretary. A superior court may award attorneys' fees to a prevailing plaintiff only upon a showing of bad faith on the part of the Department, and any order for attorneys' fees must be supported by findings of fact and conclusions of law.

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

(e) The clear proceeds of all civil penalties assessed by the Department pursuant to this Article, minus any fees paid as interest, filing fees, attorneys' fees, or other necessary costs of court associated with the defense of penalties imposed by the Department pursuant to this Article shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

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

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

...
(b) ~~Payment.~~Payment and Review. – When the Department of Crime Control and Public Safety finds that a for-hire motor vehicle is operated in this State in violation of the registration and insurance verification requirements of this Part, the Department must place the motor vehicle ~~shall be placed~~ out of service until the motor carrier is in compliance and the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty. A motor carrier that denies liability for a penalty imposed under this section may pay the penalty under protest and apply to the Department of Crime Control and Public Safety for a hearing ~~follow the procedure in G.S. 20-178.1 for a departmental review of the penalty.~~

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

...."

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

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

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

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

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

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

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

extend more than 14 feet beyond the rear of the bed or body of the vehicle, with the exception of vehicles transporting forestry products or utility poles.

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

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

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

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

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

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

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

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

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

- "(3) If an axle-group weight of a vehicle exceeds the weight limit set in subdivision (b)(3) of this section plus any tolerance allowed in subsection (h) of this section or axle-group weights or gross weights authorized by special permit under G.S. 20-119(a), the Department of Crime Control and Public Safety shall assess a civil penalty against the owner or registrant of the motor vehicle. The penalty shall be assessed on the number of pounds by which the axle-group weight exceeds the limit set in subdivision ~~(b)(3)~~, (b)(3) of this section, or by a special permit issued pursuant to G.S. 20-119, as follows: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four

cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed in subsection (h) of this section. These penalties apply separately to each axle-group weight limit violated. Notwithstanding any provision to the contrary, a vehicle with a special permit that is subject to additional penalties under this subsection based on a violation of any of the permit restrictions set out in G.S. 20-119(d1) shall be assessed a civil penalty, not to exceed ten thousand dollars (\$10,000), based on the number of pounds by which the axle-group weight exceeds the limit set in subdivision (b)(3) of this section."

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

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

- (1) A fine of one thousand five hundred dollars (\$1,500) for operating without the proper number of certified escorts as determined by the actual loaded weight or size of the vehicle combination.
- ~~(1)~~(1a) A fine of five hundred dollars (\$500.00) for any of the following: operating without the issuance of a permit, moving a load off the route specified in the permit, falsifying information to obtain a permit, or failing to comply with dimension restrictions of a permit. ~~permit, or failing to comply with the number of properly certified escort vehicles required.~~
- (2) A fine of two hundred fifty dollars (\$250.00) for moving loads beyond the distance allowances of an annual permit covering the movement of house trailers from the retailer's premises or for operating in violation of time of travel restrictions.
- (3) A fine of one hundred dollars (\$100.00) for any other violation of the permit conditions or requirements imposed by applicable regulations.

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

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

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

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

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

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

"(2a) To prohibit the use by a motor carrier of any motor vehicle or motor vehicle equipment the Department of Crime Control and Public Safety ~~finds~~ finds, by reason of its mechanical condition or loading, would be likely to cause a crash or breakdown unsafe for use in the transportation of passengers or property on a highway. If an agent of the Department of Crime Control and Public Safety finds a motor vehicle of a motor carrier in actual use upon the highways in the transportation of passengers or property that, by reason of its mechanical condition or loading, would be likely to cause a crash or breakdown, to be unsafe or any parts thereof or any equipment thereon to be

~~unsafe and is of the opinion that further use of such vehicle, parts or equipment are imminently dangerous, the agent shall declare the vehicle "Out of Service." The agent shall may require the operator thereof to discontinue its use and to substitute therefor a safe vehicle, parts or equipment at the earliest possible time and place, having regard for both the convenience and the safety of the passengers or property. When an inspector or agent stops a motor vehicle on the highway, under authority of this section, and the motor vehicle is declared "Out of Service," no motor carrier operator shall require, or permit, any person to operate, nor shall any person operate, any motor vehicle equipment declared "Out of Service" until all repairs required by the "Out of Service" notice have been satisfactorily completed. in operative condition and its further movement is not dangerous to the passengers or property or to the users of the highways, it shall be the duty of the inspector or agent to guide the vehicle to the nearest point of substitution or correction of the defect. Such agents or inspectors shall also have the right to stop any motor vehicle which is being used upon the public highways for the transportation of passengers or property by a motor carrier subject to the provisions of this Article and to eject therefrom any driver or operator who shall be operating or be in charge of such motor vehicle while under the influence of alcoholic beverages or impairing substances. It shall be the duty of all inspectors and agents of the Department of Crime Control and Public Safety to make a written report, upon a form prescribed by the Department of Crime Control and Public Safety, of inspections of all motor equipment and a copy of each such written report, disclosing defects in such equipment, shall be served promptly upon the motor carrier operating the same, either in person by the inspector or agent or by mail. Such agents and inspectors shall also make and serve a similar written report in cases where a motor vehicle is operated in violation of this Chapter or, if the motor vehicle is subject to regulation by the North Carolina Utilities Commission, of Chapter 62 of the General Statutes."~~

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

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

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

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

SECTION 12. G.S. 20-135.2A(c)(8) reads as rewritten:

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

SECTION 13. G.S. 20-136.1 reads as rewritten:

"§ 20-136.1. Location of television viewers, television, computer, or video players, monitors, and screens.

No person shall drive any motor vehicle upon a public street or highway or public vehicular area ~~equipped with any television viewer, screen, or other means of visually receiving a television broadcast~~ while viewing any television, computer, or video player which is located in the motor vehicle at any point forward of the back of the driver's seat, ~~or and~~ which is visible to the driver while operating the motor vehicle. This section does not apply to the use of global positioning systems; turn-by-turn navigation displays or similar navigation devices; factory-installed or aftermarket global positioning systems or wireless communications devices used to transmit or receive data as part of a digital dispatch system; equipment that displays audio system information, functions, or controls, or weather, traffic, and safety information;

vehicle safety or equipment information; or image displays that enhance the driver's view in any direction, inside or outside of the vehicle. The provisions of this section shall not apply to law enforcement or emergency personnel while in the performance of their official duties, or to the operator of a vehicle that is lawfully parked or stopped."

SECTION 14. G.S. 20-382.2(d) reads as rewritten:

"(d) Proceeds. – A penalty imposed under this section is payable to the Department of ~~Crime Control and Public Safety-Transportation, Fiscal Section. Penalties collected under this section shall be credited to the Highway Fund as nontax revenue.~~ The clear proceeds of all civil penalties assessed by the Department pursuant to this section, minus any fees paid as interest, filing fees, attorneys' fees, or other necessary costs of court associated with the defense of penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 15. G.S. 146-30 is amended by adding a new subsection to read:

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

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

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

- ...
- (14) Subsections (b) and (e) of this section do not apply to a vehicle that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:
- a. Is hauling aggregates from a distribution yard or a State-permitted production site located within a North Carolina county contiguous to the North Carolina State border to a destination in another state adjacent to that county as verified by a weight ticket in the driver's possession and available for inspection by enforcement personnel.
 - b. Does not operate on an interstate highway or ~~posted bridge~~ exceed any posted bridge weight limits.
 - c. Does not exceed 69,850 pounds gross vehicle weight and 53,850 pounds per axle grouping for tri-axle vehicles. For purposes of this subsection, a tri-axle vehicle is a single power unit vehicle with a three consecutive axle group on which the respective distance between any two consecutive axles of the group, measured longitudinally center to center to the nearest foot, does not exceed eight feet. For purposes of this subsection, the tolerance provisions of subsection (h) of this section do not apply, and vehicles must be licensed in accordance with G.S. 20-88.
 - d. Repealed by Session Laws 2001-487, s. 10, effective December 16, 2001.
- (15) Subsections (b) and (e) of this section do not apply to a vehicle or vehicle combination that meets all of the conditions below, but all other enforcement provisions of this Article remain applicable:
- a. Is hauling wood residuals, including wood chips, sawdust, mulch, or tree bark from any site; is hauling raw logs to first market; or is transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings from a site that does not have a certified scale for weighing the vehicle.
 - b. Does not operate on an interstate highway, a posted light-traffic road, except as provided by subdivision (c)(5) of this section, or ~~a posted bridge~~ exceed any posted bridge weight limits.
 - c. Does not exceed a maximum gross weight 4,000 pounds in excess of what is allowed in subsection (b) of this section.

- d. Does not exceed a single-axle weight of more than 22,000 pounds and a tandem-axle weight of more than 42,000 pounds."

SECTION 16.(b) G.S. 20-118(h) reads as rewritten:

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

SECTION 17. Sections 1, 6, 14, and 15 of this act are effective when this act becomes law. The remaining sections of this act become effective October 1, 2009, and apply to civil penalties assessed and offenses committed on or after that date.

In the General Assembly read three times and ratified this the 23rd day of July, 2009.

s/ Walter H. Dalton
President of the Senate

s/ William L. Wainwright
Speaker Pro Tempore of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 12:05 p.m. this 31st day of July, 2009