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SENATE BILL DRS45345-MH-120 (03/29)

Short Title: Business Regulatory Reform Act of 2017. (Public)

Sponsors: Senators Wade, Wells, and Meredith (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE LAWS GOVERNING BUSINESSES
3 AND BUSINESS TRANSACTIONS.

4 The General Assembly of North Carolina enacts:

5
6 **DEPARTMENT OF PUBLIC SAFETY CIVIL PENALTY ASSESSMENT PROCESS**

7 **SECTION 1.(a)** G.S. 20-178.1 reads as rewritten:

8 "**§ 20-178.1. Payment and review of civil penalty imposed by Department of Public**
9 **Safety.**

10 (a) Procedure. – A person who is assessed a civil penalty under this Article by the
11 Department of Public Safety must pay the penalty within 30 calendar days after the date the
12 penalty was assessed or ~~make a written request within this time limit to the Department for a~~
13 ~~Departmental~~an administrative review of the penalty in accordance with subsection (b)
14 of this section. A person who does not ~~submit a request for review~~ within the required time
15 waives the right to a review and hearing on the penalty.

16 (b) ~~Department Administrative Review.~~ – Any person who denies liability for a penalty
17 imposed by the Department may ~~request an informal review by the Secretary of the Department~~
18 ~~or the Secretary's designee. The request must be made in writing and must contain sufficient~~
19 ~~information for the Secretary, or the Secretary's designee, to determine the specific basis upon~~
20 ~~which liability is being challenged. Upon receiving a request for informal review, the Secretary,~~
21 ~~or the Secretary's designee, shall review the record and determine whether the penalty was~~
22 ~~assessed in error. If, after reviewing the record, the Secretary, or the Secretary's designee,~~
23 ~~determines that the assessment or a portion thereof was not issued in error, the penalty must be~~
24 ~~paid within 30 days of the notice of decision.~~challenge the Department's decision by filing a
25 contested case under Article 3 of Chapter 150B of the General Statutes.

26 (c) Judicial Review. – Any person who is dissatisfied with ~~the a final decision of the~~
27 ~~Secretary and who has paid the penalty in full within 30 days of the notice of decision, as~~
28 ~~required by subsection (b) of this section, may, within 60 days of the decision, bring an action~~
29 ~~for refund of the penalty against the Department~~under subsection (b) of this section may seek
30 judicial review in accordance with Article 4 of Chapter 150B of the General Statutes.
31 Notwithstanding G.S. 150B-45, a petition for judicial review may be filed in the Superior Court
32 of Wake County or in the superior court of the county in which the civil penalty was assessed.
33 The court shall review the Secretary's decision and shall make findings of fact and conclusions
34 of law. The hearing shall be conducted by the court without a jury. In reviewing the case, the
35 court shall not give deference to the prior decision of the Secretary. A superior court may
36 award attorneys' fees to a prevailing plaintiff only upon a showing of bad faith on the part of



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1 the Department, and any order for attorneys' fees must be supported by findings of fact and
2 conclusions of law.

3 ...

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

9 **SECTION 1.(b)** G.S. 20-382.2(b) reads as rewritten:

10 "(b) Payment and Review. – When the Department of Public Safety finds that a for-hire
11 motor vehicle is operated in this State in violation of the registration and insurance verification
12 requirements of this Part, the Department must place the motor vehicle out of service until the
13 motor carrier is in compliance and the penalty imposed under this section is paid unless the
14 officer that imposes the penalty determines that operation of the motor vehicle will not
15 jeopardize collection of the penalty. A motor carrier that denies liability for a penalty imposed
16 under this section may pay the penalty under protest and follow the procedure in G.S. 20-178.1
17 for a departmental administrative review of the penalty."

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

19 **SECTION 1.(d)** This section becomes effective October 1, 2017, and applies to
20 civil penalties assessed on or after that date.

21 **EXEMPT FARM VEHICLES FROM CERTAIN MARKING REQUIREMENTS**

22 **SECTION 2.** G.S. 20-101(b) reads as rewritten:

23 "(b) A motor vehicle with a gross vehicle weight rating of more than 26,000 pounds that
24 is used in intrastate commerce shall have (i) the name of the owner and (ii) the motor carrier's
25 identification number preceded by the letters "USDOT" and followed by the letters "NC"
26 printed on each side of the vehicle in letters not less than three inches in height. The provisions
27 of this subsection shall not apply if any of the following are true:

- 28
- 29 (1) The motor vehicle is subject to 49 C.F.R. Part 390.
 - 30 (2) The motor vehicle is of a type listed in 49 C.F.R. 390.3(f).
 - 31 (3) The motor vehicle is a farm vehicle that qualifies for an exception under
32 G.S. 20-118(c)(4), (c)(5), or (c)(12)."

33 **UNEMPLOYMENT INSURANCE DIRECT SELLER DEFINITION**

34 **SECTION 3.** G.S. 96-1(b)(12)b. reads as rewritten:

35 "(b) Definitions. – The following definitions apply in this Chapter:

36 ...

37 (12) Employment. – Defined in section 3306 of the Code, with the following
38 additions and exclusions:

- 39 a. Additions. – The term includes service to a governmental unit, a
40 nonprofit organization, or an Indian tribe as described in 3306(c)(7)
41 and 3306(c)(8) of the Code.
- 42 b. Exclusions. – The term excludes all of the following:
 - 43 1. Service performed by an independent contractor.
 - 44 2. Service performed for a governmental entity or nonprofit
45 organization under 3309(b) and 3309(c) of the Code.
 - 46 3. Service by one or more of the following individuals if the
47 individual is authorized to exercise independent judgment and
48 control over the performance of the work and is compensated
49 solely by way of commission:
 - 50 A. A real estate broker, as defined in G.S. 93A-2.

- 1 B. A securities salesman, as defined in G.S. 78A-2.
- 2 4. Service performed by an individual engaged in the trade or
- 3 business of selling or soliciting the sale of consumer products
- 4 (including services or other intangibles) to any buyer on a
- 5 buy-sell basis, a deposit-commission basis, or any similar
- 6 basis for in the home or other than in a permanent retail
- 7 establishment provided substantially all the remuneration
- 8 (whether or not paid in cash) for the performance of the
- 9 services is:
- 10 A. Directly related to sales or other output, including the
- 11 performance of services, rather than to the number of
- 12 hours worked; and
- 13 B. Pursuant to a written contract between the individual
- 14 and the person for whom the services are performed
- 15 and the contract expressly provides that the individual
- 16 will not be treated as an employee for federal and
- 17 State tax purposes.
- 18 5. Service performed by an individual engaged in the trade or
- 19 business of selling or soliciting the sale of consumer products
- 20 (including services or other intangibles) for in the home or
- 21 other than in a permanent retail establishment provided both
- 22 of the following apply:
- 23 A. Directly related to sales or other output, including the
- 24 performance of services, rather than to the number of
- 25 hours worked; and
- 26 B. Pursuant to a written contract between the individual
- 27 and the person for whom the services are performed
- 28 and the contract expressly provides that the individual
- 29 will not be treated as an employee for federal and
- 30 State tax purposes."

31 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
32 law.