

March 3, 2009

S 368. VARIOUS CHANGES IN MOTOR VEHICLE LAW. Filed 3/3/09. TO CLARIFY THE REQUIREMENTS FOR A RETIRED STATE HIGHWAY PATROL SPECIAL REGISTRATION PLATE, TO PROVIDE FOR THE RECOVERY OF CIVIL PENALTIES ASSESSED BY THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY, TO REQUIRE THAT ALL MOTOR VEHICLES USED IN INTRASTATE COMMERCE WEIGHING MORE THAN TWENTY-SIX THOUSAND ONE POUNDS BE MARKED, TO MODIFY THE REQUIREMENTS FOR FLAGS AND LIGHTING, WHEN HEADLAMPS WOULD BE REQUIRED TO BE USED ON LOADS THAT ARE PROJECTING FROM THE END OR SIDES OF A COMMERCIAL MOTOR VEHICLE OR A MOTOR VEHICLE WEIGHING MORE THAN TEN THOUSAND POUNDS AND ENGAGED IN COMMERCE, TO REQUIRE SAFE TIRES ON COMMERCIAL MOTOR VEHICLES AS REQUIRED BY PART 393 OF TITLE 49 OF THE CODE OF FEDERAL REGULATIONS, TO MAKE A CHANGE TO THE WEIGHT AND SIZE PENALTY PROVISIONS TO ALLOW FOR THE ASSESSMENT OF A CIVIL PENALTY FOR ONLY THAT AMOUNT OF WEIGHT IN EXCESS OF THE PERMITTED AMOUNT, TO REQUIRE THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY TO ASSESS CIVIL FINES FOR VIOLATIONS OF THE SPECIAL PERMIT REQUIREMENTS OF G.S. 20-119, AND TO PREVENT MOTOR CARRIERS FROM OPERATING VEHICLES THAT HAVE BEEN DECLARED "OUT-OF-SERVICE," TO REQUIRE BRAKES AS STANDARD EQUIPMENT FOR SEMITRAILERS BEING PULLED BY TRACTOR TRUCKS AND OTHER PULL UNITS, TO REQUIRE THAT OWNERS OF MOTORCYCLES MAINTAIN IN GOOD WORKING ORDER DIRECTIONAL SIGNALS INSTALLED BY THE MANUFACTURER, TO MODIFY THE SEAT BELT EXEMPTION PROVIDED FOR GARBAGE AND RECYCLING TRUCK OPERATORS AND PASSENGERS TO COMPLY WITH THE PROVISIONS OF FEDERAL REGULATION 49 C.F.R. 392.16, TO PROHIBIT THE OPERATION OF A DIGITAL VIDEO DISC PLAYER AT ANY POINT FORWARD OF THE BACK OF A DRIVER'S SEAT WHILE OPERATING A MOTOR VEHICLE, AND TO INCREASE THE CAP ON THE MAXIMUM ALLOWABLE SUPERVISORY PERSONNEL IN THE STATE HIGHWAY PATROL FROM TWENTY-ONE PERCENT TO TWENTY-THREE PERCENT, AS REQUESTED BY THE STATE HIGHWAY PATROL.

Amends GS 20-79.4(104) to require that an individual who has retired from the state highway patrol, or a surviving spouse of that individual, present to the Division of Motor Vehicles (Division) a copy of the retiree's retired identification card or letter of retirement when applying for a Retired State Highway Patrol special registration plate. Also requires that the surviving spouse certify in writing that the retiree is deceased and that the applicant is not remarried. Deletes that a surviving spouse of a qualified retiree may only receive a plate if the spouse applies within 90 days of the qualifying spouse's death and does not remarry. Makes technical changes.

Enacts a new GS 20-91.4 to provide that any person or entity that does not deny liability for a civil penalty assessed pursuant to Article 3 of GS Chapter 20 must make payment to the Division, Fiscal Section, within 30 calendar days of the date the penalty is assessed. If the penalty is not paid in that time period, it is delinquent and subject to the maximum allowable late penalties and interest as a past-due account under GS 147-86.23. Allows the penalty to be paid under protest with a written request for informal review by the Secretary of Crime Control and Public Safety (CCPS) or the Secretary's designee within the 30-day period. Requires certain information to be included in the request. The Secretary must review the record and determine whether the civil penalty was assessed in error, with the appropriate amount refunded if required. Allows a person or entity dissatisfied with the Secretary's decision to bring an action for refund of the penalty against CCPS in Wake County Superior Court or a superior court in the county where the penalty was assessed within 60 days of the decision.

Amends GS 20-101(b) to require that a motor vehicle, not subject to 49 C.F.R. Part 390, with a gross vehicle weight rating (GVWR) of more than 10,000 pounds (was, more than 10,000 pounds *but less than 26,001 pounds*) that is used in intrastate commerce, with exceptions, must be marked with the owner's name on the side of the vehicle in letters no less than three inches in height.

Amends GS 20-117 by increasing the size of the flag required to be displayed at the end of an oversized load to 18 (was, 12) inches in length and width and by specifying that the light displayed at the end of the load must be amber (was, red or amber). Requires that a commercial

motor vehicle, or a motor vehicle with a GVWR of 10,001 pounds or more that is engaged in commerce, being used to tow a load or that has a load that protrudes from the rear or sides of the vehicle must comply with the provisions of 49 C.F.R. 393. Makes technical changes.

Amends GS 20-122.1 by eliminating the exception from the safe tire tread depth requirement for trucks with dual wheels owned by farmers and operated exclusively in the carrying and transporting of products and during daylight hours. Requires that any motor vehicle with a GVWR of 10,001 pounds or more that is operated on state streets or highways must be equipped with safe tires. Lists specific factors that indicate that tires are unsafe.

Enacts new GS 20-119(d1) to require that CCPS assess an additional maximum \$25,000 civil penalty for vehicles that require a special permit for any of the following: (1) operating without the issuance of the required permit, (2) operating off permitted route of travel, (3) operating without the proper number of certified escorts as determined by the actual loaded weight or size of the vehicle combination, (4) failure to comply with the travel restrictions of the permit, and (5) operating without the proper vehicle registration or license for the class of the vehicle being operated. Any of these violations constitutes operating a vehicle without a special permit. Makes a conforming change to GS 20-119(d) and requires the assessment of a civil penalty for violation of special permit requirements (was, CCPS *may* assess a civil penalty).

Effective when the act becomes law, amends GS 20-118(e)(3) to provide that a vehicle with an excessive weight special permit is subject to a \$25,000 maximum additional civil penalty, based on the number of pounds by which the axle-group weight exceeds the limit set in GS 20-118(b)(3), for violations of permit restrictions set out in proposed GS 20-119(d1). Makes a conforming change.

Amends GS 20-381(a)(2a) to specify that a vehicle is prohibited from use if *by reason of mechanical condition or loading, that a vehicle would be likely to cause a crash or breakdown* (was, if found unsafe for use by CCPS). Requires that, if an agent of CCPS finds such a vehicle in actual use on the highways, it must declare it "out-of-service." Provides that if a vehicle is declared "out-of-service" by an inspector or agent, then the motor carrier is prohibited from requiring or permitting any person to operate any "out-of-service" motor vehicle equipment until all repairs required by the notice have been completed (was, that the vehicle is guided to the nearest point of substitution or correction of the defect).

Amends GS 20-124 by clarifying that the exception for trucks and truck-tractors having three or more axles from not needing brakes on front wheels applies *if it was manufactured prior to July 25, 1980* (was, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes). Deletes that semitrailers used by a farmer, or the farmer's tenant, agent, or employee are exempt from the section's provisions and adds that trailers are exempt if *the trailer was not equipped with brakes from the manufacturer* and is also exempt from registration. Makes a technical change.

Amends GS 20-125.1(d) to specify that requirements related to directional signals do not apply to motorcycles *unless the motorcycle was equipped with electrical or mechanical directional signals from the manufacturer*.

Amends GS 20-135.2A(c)(8) to modify the exception to the use of seat belts to only apply to the passenger (was, driver or passenger) of a residential garbage or recycling truck while the truck is operating during collection rounds (was, also applied to traveling to and from garbage and recycling material loading and unloading locations).

Amends GS 20-136.1 to include a prohibition on operating a computer or video disc player located at any point forward of the back of the driver's seat or in a location which is visible to the driver while a person is driving a motor vehicle. Provides that the section does not apply to (1) the use of global positioning systems, turn-by-turn navigation displays, or similar navigation devices or (2) to law enforcement or emergency personnel while in performance of their official duties.

Amends GS 20-185(a) to increase the maximum number of supervisory personnel of the State Highway Patrol to 23% (was, 21%) of the personnel actually serving as uniformed highway patrolmen.

Amends GS 20-382.2(d) to provide that the clear proceeds from a civil penalty, civil forfeiture, and civil fine imposed for failure to comply with registration or insurance verification requirements that are collected by CCPS must be remitted to the Civil Penalty and Forfeiture Fund (was, penalty proceeds were credited to the Highway Fund as nontax revenue).

Effective for offenses committed on or after October 1, 2009, unless otherwise noted.
Intro. by Jenkins. GS 20

April 22, 2009

S 368. VARIOUS CHANGES IN MOTOR VEHICLE LAW. Filed 3/3/09. Senate committee substitute makes the following changes to 1st edition. Amends proposed GS 20-91.4 to clarify that the civil penalties subject to the statute's provisions are civil penalties assessed *by the Department of Crime Control and Public Safety (CCPS)*, if collection of those penalties has not been made under some other statute. Requires a certification that payment has been made to the Department of Transportation (DOT), Fiscal Section (was, Division of Motor Vehicles, Fiscal Section), when requesting informal review. Provides that (1) for penalties of \$1,500 or less that are paid under protest, payment must be made in full prior to the informal review by the Secretary of CCPS, or a designee, and (2) for penalties greater than \$1,500 that are paid under protest, at least \$1,500 must be paid prior to informal review. Requires that if the Secretary, or a designee, determines after reviewing the record that an assessment was not issued in error, any remaining penalty amount must be paid within 30 days of the notice of decision. Also makes a technical change.

Deletes the amendment to GS 20-117 that would require an *amber* light to be displayed at the end of a load from sunset to sunrise (retains current law that requires a *red or amber* light to be displayed).

Decreases, in proposed amended GS 20-118(e) and proposed GS 20-119(d1), the maximum penalty, based on the number of pounds by which the axle-group weight exceeds the set limit, for any violation of the permit restrictions listed in GS 20-119(d1) to \$10,000 (was, \$25,000). Deletes in GS 20-119(d1) that a civil penalty must be assessed by CCPS, in accordance with GS 20-118(e)(1) and (3), against the registered owner of a vehicle if the vehicle is operating without the proper number of certified escorts as determined by the actual load weight or size of the vehicle combination. Adds to proposed amended GS 20-119(d) that (1) a \$1,500 fine must be assessed for operating a special permitted vehicle without the proper number of certified escorts as determined by the actual loaded weight or size of vehicle combination and (2) DOT may refuse to issue additional permits or suspend existing permits if there are repeated violations of that requirement.

Specifies in GS 20-124(g) that the exemption from brake requirements for any trailer used by a farmer, a tenant, agent, or employee under circumstances that such trailer is exempt from registration under GS 20-51 does not apply to trailers equipped with brakes from the manufacturer and that are manufactured after October 1, 2009 (was, proposed amended exemption applied to trailers not equipped with brakes from the manufacturer and are exempt from registration under GS 20-51).

Adds to proposed amended GS 20-136.1 that the restriction on operating, using, or viewing any television, computer, or video disc player which is located in the motor vehicle at any point forward of the back of the driver's seat or which is visible to the driver while operating the motor vehicle does not apply to equipment that displays audio system information, functions or controls; 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.

Enacts new GS 146-30(b2) to prohibit any service charge into the State Land Fund from being deducted from or levied against the proceeds of any disposition by lease, rental, or easement of state lands purchased or owned by the State Highway Patrol (SHP), CCPS, as part of the Voice Interoperability Plan for Emergency Responders (VIPER) project being managed by the SHP. Requires that all net proceeds of these dispositions be deposited into an account created in CCPS to be used only for the purpose of constructing, maintaining, or supporting the VIPER network.

Changes the effective date from October 1, 2009, to when the act becomes law for sections related to the SHP and the amended provision regarding funds remitted to the Civil Penalty and Forfeiture Fund (Sections 1, 15, 16, and 17).

Makes technical changes and makes conforming changes to the title.

May 7, 2009

S 368. VARIOUS CHANGES IN MOTOR VEHICLE LAW. Filed 3/3/09. Senate committee substitute makes the following changes to 2nd edition. Changes title to *AN ACT TO MAKE VARIOUS CHANGES TO THE MOTOR VEHICLE LAW AS REQUESTED BY THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY*. Replaces the version of proposed GS 20-91.4 in the 2nd edition which detailed procedures related to the Collection of Penalties with a new GS 20-91.4 which provides that a person who denies liability for a penalty imposed by the Department of Crime Control and Public Safety (DCCPS) under Article 3 of GS Chapter 20 may pay the penalty under protest and apply to DCCPS for a review and hearing. Provides that the hearing and review procedures in GS 20-382.2 apply. Amends GS 20-382.2 by requiring DCCPS to conduct an informal review of its records to determine whether the penalty was properly assessed. If the penalty was properly assessed, DCCPS must schedule a hearing for 30 days after DCCPS concludes its informal review. Deletes Section 15 of the 2nd edition [which amended GS 20-185(a) to provide that the number of supervisory personnel of the State Highway Patrol shall not exceed a number equal to 23% (rather than 21%) of the personnel actually serving as uniformed highway patrolmen]. Makes clarifying changes to GS 20-118(c)(14) and (c)(15). Makes organizational, technical, and conforming changes.

May 12, 2009

S 368. VARIOUS CHANGES IN MOTOR VEHICLE LAW. Filed 3/3/09. Senate amendment makes the following changes to 3rd edition. Enacts GS 20-178.1 providing for the payment and review of a civil penalty imposed by the Department of Crime Control and Public Safety. Individual must pay penalty within 30 days or make a written request for review within that period. Provides for review by the department, appeal of the department's decision to OAH, and for judicial review. Prescribes the accrual and payment of interest. Modifies GS 20-382.2 pertaining to penalties for failure to comply with registration or insurance verification requirements. Repeals GS 150B-1(e)(14). Deletes GS 20-91.4, added by prior edition. Modifies effective date provision to state that the remaining sections of the act become effective October 1, 2009, and apply to civil penalties assessed and offenses committed on or after that date.

July 2, 2009

S 368. VARIOUS CHANGES IN MOTOR VEHICLE LAW. Filed 3/3/09. House committee substitute makes the following changes to 4th edition. Section 2 amends the review process for civil penalties in new GS 20-178.1 to provide for informal review of contested penalties by the Secretary of the Department of Crime Control and Public Safety or the Secretary's designee and to require that the penalty be paid within 30 days of Department's decision. Removes the Office of Administrative Hearings from the review process as well as references to GS 150B. Allows a person to seek review of Secretary's decision if they have paid the penalty within 30 days of decision, by filing within 60 days 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. Requires court to review the Secretary's decision without deference and to make findings of fact and conclusion of law. Permits court to award attorney's fees to a prevailing plaintiff only upon a showing of bad faith on the part of the Department. Provides that the clear proceeds of all civil penalties assessed by the Department pursuant to this Article minus fees paid as interest, filing fees, attorney's fees, or other necessary costs of the court associated with the defense of penalties be remitted to the Civil Penalty and Forfeiture Fund.

Section 3 amends GS 20-101(b) to provide that a motor vehicle with a gross vehicle weight rating (was "gross vehicle weight" in 4th edition) of more than 10,000 pounds that is used in interstate commerce have the name of the owner printed on the side of the vehicle.

Section 14 amends GS 20-136.1 to remove language in 4th edition prohibiting the driver of a motor vehicle from operating or using certain electronic devices. As amended, GS 20-136.1 prohibits a driver from viewing (was, operating, using, or 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, and which is visible to the driver." Adds to list of devices excepted from this provision "factory-installed or aftermarket global positioning systems or wireless communications devices

used to transmit or receive data as part of a global dispatch system.” Excepts the operator of a vehicle that is lawfully parked or stopped from the ban on viewing certain devices.

Section 15 amends GS 20-282.2(d) to make penalties for failure to comply with registration or insurance verification requirements payable to the Department of Transportation, Fiscal Section (was, Department of Crime Control and Public Safety) and to subtract from clear proceeds payable to the Civil Penalty and Forfeiture Fund fees paid as interest, filing fees, attorney’s fees, and necessary costs of court associated with the defense of penalties imposed.

July 20, 2009

S 368. VARIOUS CHANGES IN MOTOR VEHICLE LAWS. Filed 3/3/09. House committee substitute makes the following changes to 5th edition. Deletes proposed amendment to GS 20-125.1(d) which provided that the requirements related to directional signals do not apply to motorcycles *unless the motorcycle was equipped with electrical or mechanical directional signals from the manufacturer.*

August 3, 2009

SL 2009-376 (S 368). VARIOUS CHANGES IN MOTOR VEHICLE LAWS. AN ACT TO MAKE VARIOUS CHANGES TO THE MOTOR VEHICLE LAWS, AS REQUESTED BY THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY. Summarized in *Daily Bulletin* 3/3/09, 4/22/09, 5/7/09, 5/12/09, 7/2/09, and 7/20/09. Enacted July 31, 2009. Sections 1, 6, 14, and 15 are effective July 31, 2009. The remainder is effective October 1, 2009.