

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 368
PROPOSED COMMITTEE SUBSTITUTE S368-PCS55344-SU-7

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

(Public)

Sponsors:

Referred to:

March 4, 2009

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



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1 The General Assembly of North Carolina enacts:

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

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

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

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

24 **§ 20-91.4. Civil penalties assessed by the Department of Crime Control and Public**
25 **Safety; procedures for recovery.**

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

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

46 (c) Upon receiving a request for informal review, the Secretary of Crime Control and
47 Public Safety, or the Secretary's designee, shall review the record and determine whether the
48 civil penalty was assessed in error. If, after reviewing the record, the Secretary, or the
49 Secretary's designee, determines that the assessment was issued in error, the penalty, or the
50 appropriate amount thereof, shall be refunded. If, after reviewing the record, the Secretary, or

1 the Secretary's designee, determines that the assessment was not issued in error, any amount of
2 the penalty that remains unpaid must be paid within 30 days of the notice of decision.

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

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

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

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

15 **"§ 20-117. Flag or light at end of load.**

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

24 (b) Commercial Motor Vehicles. – Notwithstanding the provisions of subsection (a) of
25 this section, a commercial motor vehicle, or a motor vehicle with a GVWR of 10,001 pounds or
26 more that is engaged in commerce, that is being used to tow a load or that has a load that
27 protrudes from the rear or sides of the vehicle shall comply with the provisions of 49 C.F.R. §
28 393."

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

30 **"§ 20-122.1. Motor vehicles to be equipped with safe tires.**

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

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

1 (a1) Any motor vehicle that has a GVWR of at least 10,001 pounds or more and is
2 operated on the streets or highways of this State shall be equipped with tires that are safe for the
3 operation of the vehicle and do not expose the public to needless hazard. Tires shall be
4 considered unsafe if cut so as to expose tire cord, cracked so as to expose tire cord, or worn so
5 as to expose tire cord, or there is a visible tread separation or chunking, or if the steering axle
6 tire has less than four thirty-seconds inch tread depth at any location around the circumference
7 of the tire on any major tread groove, or if any nonsteering axle tire has less than two
8 thirty-seconds inch tread depth around the circumference of the tire in any major tread groove,
9 or if the tread wear indicators are in contact with the roadway at any location around the
10 circumference of the tire on any major tread groove.

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

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

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

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

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

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

48 ~~(1)~~(1a) A fine of five hundred dollars (\$500.00) for any of the following: operating
49 without the issuance of a permit, moving a load off the route specified in the
50 permit, falsifying information to obtain a permit, or failing to comply with

1 dimension restrictions of a ~~permit~~, ~~permit~~, or failing to comply with the
2 number of properly certified escort vehicles required.

3 (2) A fine of two hundred fifty dollars (\$250.00) for moving loads beyond the
4 distance allowances of an annual permit covering the movement of house
5 trailers from the retailer's premises or for operating in violation of time of
6 travel restrictions.

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

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

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

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

23 (1) Operating without the issuance of a required permit.

24 (2) Operating off permitted route of travel.

25 (3) Failing to comply with travel restrictions of the permit.

26 (4) Operating without the proper vehicle registration or license for the class of
27 vehicle being operated.

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

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

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

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

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

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

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

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

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

33 "(d) Nothing in this section shall apply to ~~motorcycles~~ motorcycles unless the
34 motorcycle was equipped with electrical or mechanical directional signals from the
35 manufacturer."

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

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

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

41 "**§ 20-136.1. Location of ~~television viewers.~~ television, computer, or video disc players,**
42 **monitors, and screens.**

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

1 provisions of this section shall not apply to law enforcement or emergency personnel while in
2 the performance of their official duties."

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

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

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

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

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

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

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