

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

D

SENATE BILL 368
Commerce Committee Substitute Adopted 4/22/09
PROPOSED COMMITTEE SUBSTITUTE S368-PCS35310-TD-25

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

5 The General Assembly of North Carolina enacts:

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

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

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

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

28 **"§ 20-91.4. Review of penalty imposed by Department of Crime Control and Public**
29 **Safety.**

30 A person who denies liability for a penalty imposed by the Department of Crime Control
31 and Public Safety under this Article may pay the penalty under protest and apply to the
32 Department for a review and hearing. The review and hearing procedures in G.S. 20-382.2
33 apply to a request made under this section."



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

2 "**§ 20-382.2. Penalty for failure to comply with registration or insurance verification**
3 **requirements.**

4 ...

5 (b) Payment. – When the Department of Crime Control and Public Safety finds that a
6 for-hire motor vehicle is operated in this State in violation of the registration and insurance
7 verification requirements of this Part, the motor vehicle shall be placed out of service until the
8 motor carrier is in compliance and the penalty imposed under this section is paid unless the
9 officer that imposes the penalty determines that operation of the motor vehicle will not
10 jeopardize collection of the penalty. A motor carrier that denies liability for a penalty imposed
11 under this section may pay the penalty under protest and apply to the Department of Crime
12 Control and Public Safety for a ~~hearing, review and hearing.~~

13 (c) Review and Hearing. – Upon receiving a request for a ~~hearing, review and hearing~~
14 on a penalty, the Department must first conduct an informal review of its records to determine
15 if the penalty was properly assessed. If the Department finds the penalty was properly assessed,
16 the Department must schedule a hearing. The hearing must be scheduled for 30 days after the
17 Department concludes its informal review. ~~the Secretary of Crime Control and Public Safety~~
18 ~~shall schedule a hearing within 30 days after receipt of the request.~~ If after the hearing the
19 Secretary of Crime Control and Public Safety determines that the motor carrier was not liable
20 for the penalty, the amount collected shall be refunded. If after the hearing the Department of
21 Crime Control and Public Safety determines that the motor carrier was liable for the penalty,
22 the motor carrier may bring an action in the Superior Court of Wake County against the
23 Department of Crime Control and Public Safety for refund of the penalty. A court of this State
24 may not issue a restraining order or an injunction to restrain or enjoin the collection of the
25 penalty or to permit the operation of the vehicle without payment of the penalty.

26 "

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

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

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

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

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

40 "**§ 20-117. Flag or light at end of load.**

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

49 (b) Commercial Motor Vehicles. – A commercial motor vehicle, or a motor vehicle
50 with a GVWR of 10,001 pounds or more that is engaged in commerce, that is being used to tow

1 a load or that has a load that protrudes from the rear or sides of the vehicle shall comply with
2 the provisions of 49 C.F.R. § 393."

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

4 "**§ 20-122.1. Motor vehicles to be equipped with safe tires.**

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

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

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

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

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

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

- 46 "(3) If an axle-group weight of a vehicle exceeds the weight limit set in
47 subdivision (b)(3) of this section plus any tolerance allowed in subsection (h)
48 of this section or axle-group weights or gross weights authorized by special
49 permit under G.S. 20-119(a), the Department of Crime Control and Public
50 Safety shall assess a civil penalty against the owner or registrant of the
51 motor vehicle. The penalty shall be assessed on the number of pounds by

1 which the axle-group weight exceeds the limit set in subdivision
 2 ~~(b)(3)~~, (b)(3) of this section, or by a special permit issued pursuant to
 3 G.S. 20-119, as follows: for the first 2,000 pounds or any part thereof, two
 4 cents (2¢) per pound; for the next 3,000 pounds or any part thereof, four
 5 cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents
 6 (10¢) per pound. Tolerance pounds in excess of the limit set in subdivision
 7 (b)(3) are subject to the penalty if the vehicle exceeds the tolerance allowed
 8 in subsection (h) of this section. These penalties apply separately to each
 9 axle-group weight limit violated. Notwithstanding any provision to the
 10 contrary, a vehicle with a special permit that is subject to additional penalties
 11 under this subsection based on a violation of any of the permit restrictions
 12 set out in G.S. 20-119(d1) shall be assessed a civil penalty, not to exceed ten
 13 thousand dollars (\$10,000), based on the number of pounds by which the
 14 axle-group weight exceeds the limit set in subdivision (b)(3) of this section."

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

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

- 20 (1) A fine of one thousand five hundred dollars (\$1,500) for operating without
 21 the proper number of certified escorts as determined by the actual loaded
 22 weight or size of the vehicle combination.
 23 ~~(1a)~~ (1a) A fine of five hundred dollars (\$500.00) for any of the following: operating
 24 without the issuance of a permit, moving a load off the route specified in the
 25 permit, falsifying information to obtain a permit, or failing to comply with
 26 dimension restrictions of a permit. ~~permit, or failing to comply with the~~
 27 ~~number of properly certified escort vehicles required.~~
 28 (2) A fine of two hundred fifty dollars (\$250.00) for moving loads beyond the
 29 distance allowances of an annual permit covering the movement of house
 30 trailers from the retailer's premises or for operating in violation of time of
 31 travel restrictions.
 32 (3) A fine of one hundred dollars (\$100.00) for any other violation of the permit
 33 conditions or requirements imposed by applicable regulations.

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

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

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

- 48 (1) Operating without the issuance of a required permit.
 49 (2) Operating off permitted route of travel.
 50 (3) Failing to comply with travel restrictions of the permit.

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

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

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

5 "(2a) To prohibit the use by a motor carrier of any motor vehicle or motor vehicle
6 equipment the Department of Crime Control and Public Safety ~~finds~~finds,
7 by reason of its mechanical condition or loading, would be likely to cause a
8 crash or breakdown unsafe for use in the transportation of passengers or
9 property on a highway. If an agent of the Department of Crime Control and
10 Public Safety finds a motor vehicle of a motor carrier in actual use upon the
11 highways in the transportation of passengers or property that, by reason of
12 its mechanical condition or loading, would be likely to cause a crash or
13 breakdown, to be unsafe or any parts thereof or any equipment thereon to be
14 unsafe and is of the opinion that further use of such vehicle, parts or
15 equipment are imminently dangerous, the agent shall declare the vehicle
16 "Out-of-Service." The agent shall~~may~~require the operator thereof to
17 discontinue its use and to substitute therefor a safe vehicle, parts or
18 equipment at the earliest possible time and place, having regard for both the
19 convenience and the safety of the passengers or property. When an inspector
20 or agent stops a motor vehicle on the highway, under authority of this
21 section, and the motor vehicle is declared "Out-of-Service," no motor carrier
22 operator shall require, or permit, any person to operate, nor shall any person
23 operate, any motor vehicle equipment declared "Out-of-Service" until all
24 repairs required by the "Out-of-Service" notice have been satisfactorily
25 completed.~~in operative condition and its further movement is not dangerous~~
26 ~~to the passengers or property or to the users of the highways, it shall be the~~
27 ~~duty of the inspector or agent to guide the vehicle to the nearest point of~~
28 ~~substitution or correction of the defect.~~ Such agents or inspectors shall also
29 have the right to stop any motor vehicle which is being used upon the public
30 highways for the transportation of passengers or property by a motor carrier
31 subject to the provisions of this Article and to eject therefrom any driver or
32 operator who shall be operating or be in charge of such motor vehicle while
33 under the influence of alcoholic beverages or impairing substances. It shall
34 be the duty of all inspectors and agents of the Department of Crime Control
35 and Public Safety to make a written report, upon a form prescribed by the
36 Department of Crime Control and Public Safety, of inspections of all motor
37 equipment and a copy of each such written report, disclosing defects in such
38 equipment, shall be served promptly upon the motor carrier operating the
39 same, either in person by the inspector or agent or by mail. Such agents and
40 inspectors shall also make and serve a similar written report in cases where a
41 motor vehicle is operated in violation of this Chapter or, if the motor vehicle
42 is subject to regulation by the North Carolina Utilities Commission, of
43 Chapter 62 of the General Statutes."

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

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

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

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

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

8 "(d) Nothing in this section shall apply to ~~motoreycles~~ motorcycles unless the
9 motorcycle was equipped with electrical or mechanical directional signals from the
10 manufacturer."

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

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

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

16 **"§ 20-136.1. Location of ~~television viewers~~ television, computer, or video disc players,**
17 **monitors, and screens.**

18 No person shall drive any motor vehicle upon a public street or highway or public vehicular
19 area equipped with any television viewer, screen, or other means of visually receiving a
20 television broadcast while operating, using, or viewing any television, computer, or video disc
21 player which is located in the motor vehicle at any point forward of the back of the driver's
22 seat, or and which is visible to the driver while operating the motor vehicle. This section does
23 not apply to the use of global positioning systems; turn-by-turn navigation displays or similar
24 navigation devices; equipment that displays audio system information, functions or controls, or
25 weather, traffic, and safety information; vehicle safety or equipment information; or image
26 displays that enhance the driver's view in any direction, inside or outside of the vehicle. The
27 provisions of this section shall not apply to law enforcement or emergency personnel while in
28 the performance of their official duties."

29 **SECTION 15.** G.S. 20-382.2(d) reads as rewritten:

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

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

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

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

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

47 ...

48 (14) Subsections (b) and (e) of this section do not apply to a vehicle that meets all
49 of the conditions below, but all other enforcement provisions of this Article
50 remain applicable:

- 1 a. Is hauling aggregates from a distribution yard or a State-permitted
2 production site located within a North Carolina county contiguous to
3 the North Carolina State border to a destination in another state
4 adjacent to that county as verified by a weight ticket in the driver's
5 possession and available for inspection by enforcement personnel.
- 6 b. Does not operate on an interstate highway or ~~posted bridge exceed~~
7 any posted bridge weight limits.
- 8 c. Does not exceed 69,850 pounds gross vehicle weight and 53,850
9 pounds per axle grouping for tri-axle vehicles. For purposes of this
10 subsection, a tri-axle vehicle is a single power unit vehicle with a
11 three consecutive axle group on which the respective distance
12 between any two consecutive axles of the group, measured
13 longitudinally center to center to the nearest foot, does not exceed
14 eight feet. For purposes of this subsection, the tolerance provisions of
15 subsection (h) of this section do not apply, and vehicles must be
16 licensed in accordance with G.S. 20-88.
- 17 d. Repealed by Session Laws 2001-487, s. 10, effective December 16,
18 2001.
- 19 (15) Subsections (b) and (e) of this section do not apply to a vehicle or vehicle
20 combination that meets all of the conditions below, but all other enforcement
21 provisions of this Article remain applicable:
- 22 a. Is hauling wood residuals, including wood chips, sawdust, mulch, or
23 tree bark from any site; is hauling raw logs to first market; or is
24 transporting bulk soil, bulk rock, sand, sand rock, or asphalt millings
25 from a site that does not have a certified scale for weighing the
26 vehicle.
- 27 b. Does not operate on an interstate highway, a posted light-traffic road,
28 except as provided by subdivision (c)(5) of this section, or ~~a posted~~
29 bridge exceed any posted bridge weight limits.
- 30 c. Does not exceed a maximum gross weight 4,000 pounds in excess of
31 what is allowed in subsection (b) of this section.
- 32 d. Does not exceed a single-axle weight of more than 22,000 pounds
33 and a tandem-axle weight of more than 42,000 pounds."

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

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

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