

GENERAL ASSEMBLY OF NORTH CAROLINA  
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SENATE BILL DRS35023-ML-42 (01/20)

Short Title: ALJ Review of DPS Civil Penalties.

(Public)

Sponsors: Senator Randleman (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO REVISE THE PROCESS BY WHICH A PERSON MAY APPEAL THE  
ASSESSMENT OF CERTAIN CIVIL PENALTIES BY THE DEPARTMENT OF PUBLIC  
SAFETY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-178.1 reads as rewritten:

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

(a) Procedure. – A person who is assessed a civil penalty under this Article by the Department of 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~~ administrative review of the penalty in accordance with subsection (b) of this section. 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~~ Administrative 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.~~ challenge the Department's decision by filing a contested case under Article 3 of Chapter 150B of the General Statutes.

(c) Judicial Review. – Any person who is dissatisfied with ~~the final~~ 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 under subsection (b) of this section may seek judicial review in accordance with Article 4 of Chapter 150B of the General Statutes. Notwithstanding G.S. 150B-45, a petition for judicial review may be filed 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.

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

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

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

15 **SECTION 3.** G.S. 150B-1(e)(14) is repealed.

16 **SECTION 4.** This act becomes effective October 1, 2017, and applies to civil  
17 penalties assessed on or after that date.