

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 454
HOUSE BILL 684

AN ACT TO ADD A NEW ARTICLE 17 TO CHAPTER 20 OF THE GENERAL STATUTES AND MAKE OTHER NECESSARY CHANGES IN CHAPTER 20 AND CHAPTER 62.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new Article 17 to read:

"Article 17.

"Motor Carrier Safety Regulation Unit.

"Part 1. General Provisions.

"§ 20-376. **Definitions.**—As used in this Article,

(1) 'Certificate' means a certificate of public convenience and necessity issued by the North Carolina Utilities Commission pursuant to the provisions of Chapter 62 to a common carrier by motor vehicle.

(2) 'Certificate of Exemption' means a certificate issued by the Division authorizing transportation services which are exempt from economic regulations under the Public Utilities Act.

(3) 'Charter party', with regard to motor carriers, means a group of persons who, pursuant to a common purpose and under a single contract, and at a fixed charge for the vehicle in accordance with the carrier's tariff, lawfully on file with the North Carolina Utilities Commission, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group from a point of origin to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartering group after having left the place of origin.

(4) 'Common carrier by motor vehicle' means any person which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property or any class or classes thereof for compensation, whether over regular or irregular routes, except as exempted in G.S. 62-260.

(5) 'Contract carrier by motor vehicle' means any person which, under an individual contract or agreement with another person and with such additional persons as may be approved by the North Carolina Utilities Commission, engages in the transportation other than the transportation referred to in subdivision (4) of this section, by motor vehicle of persons or property in intrastate commerce for compensation, except as exempted in G.S. 62-260.

(6) 'Division' means the North Carolina Division of Motor Vehicles.

(7) 'Exempt carrier' means any person providing transportation by motor vehicle for compensation which is declared to be exempt from economic regulation by the North Carolina Utilities Commission or the Interstate Commerce Commission.

(8) 'For-hire carrier' means any person engaged in the transportation of persons or property by motor vehicle for compensation.

(9) 'Foreign commerce' means commerce between any place in the United States and any place in a foreign country, or between places in the United States through any foreign country.

(10) 'Franchise' means the grant of authority by the North Carolina Utilities Commission to any person to engage in business as a common carrier or contract carrier, whether or not exclusive or shared with others or restricted as to terms and conditions and whether described by area or territory or not, and includes certificates and permits, and all other forms of licenses or orders and decisions granting such authority.

(11) 'Highway' means any road or street in this State used by the public or dedicated or appropriated to public use; and public vehicular area as defined in G.S. 20-4.01(32).

(12) 'Industrial plant' means any plant, mill, or factory engaged in the business of manufacturing.

(13) 'Interstate commerce' means commerce between any place in a state and any place in another state or between places in the same state through another state.

(14) 'Intrastate commerce' means commerce between points and over a route or within a territory wholly within this State, which commerce is not a part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce, and includes all transportation within this State for compensation in interstate or foreign commerce which has been exempted by Congress from federal regulation.

(15) 'Intrastate operations' means the transportation of persons or property for compensation in intrastate commerce.

(16) 'Motor carrier' means both a for-hire carrier by motor vehicle and a private carrier by motor vehicle.

(17) 'Motor vehicle' means any vehicle, machine, tractor, semitrailer, or any combination thereof, which is propelled or drawn by mechanical power and used upon the highways within the State.

(18) 'Municipality' means any incorporated community, whether designated in its Charter as a city, town or village.

(19) 'Permit' means a permit issued by the North Carolina Utilities Commission pursuant to the provisions of Chapter 62 to a contract carrier by motor vehicle.

(20) 'Person' means a corporation, individual, copartnership, company, association, or any combination of individuals or organizations doing business as a unit, and includes any trustee, receiver, assignee, lessee, or personal representative thereof.

(21) 'Private carrier' means any person not included in the definitions of common carrier or contract carrier, which transports in intrastate commerce in its own vehicle or vehicles property of which such person is the owner, lessee, or bailee, when such

transportation is for the purpose of sale, lease, rent or bailment, or when such transportation is purely an incidental adjunct to some other established private business owned and operated by such person other than the transportation of property for compensation.

(22) 'Town' means any unincorporated community or collection of people having a geographical name by which it may be generally known and is so generally designated.

"Part 2. Authority and Powers of Division.

"§ 20-377. General powers of Division.—The Division shall have and exercise such general power and authority to supervise and control the motor carriers of the State as may be necessary to carry out the laws providing for their regulation, and all such other powers and duties as may be necessary or incident to the proper discharge of its duties.

"§ 20-378. Power to make and enforce rules and regulations for motor carriers.—The Division shall have and exercise full power and authority to administer and enforce the provisions of this Article, and to make and enforce necessary rules and regulations to that end.

"§ 20-379. To investigate motor carriers under its control; visitation and inspection.—(a) The Division shall from time to time visit the places of business and investigate the books and papers of all motor carriers to ascertain if all the orders, rules and regulations of the North Carolina Utilities Commission and the Division have been complied with, and shall have full power and authority to examine all officers, agents and employees of such motor carriers, and all other persons, under oath or otherwise, and to compel the production of papers and the attendance of witnesses to obtain the information necessary for carrying into effect and otherwise enforcing the provisions of this Article and Chapter 62 of the General Statutes.

(b) Officers of the Division may during all reasonable hours enter upon any premises occupied by any motor carrier for the purpose of making the examinations and tests and exercising any power provided for in this Article and in Chapter 62 of the General Statutes, and may set up and use on such premises any apparatus and appliances necessary therefor. Such motor carrier shall have the right to be represented at the making of such examinations, tests and inspections.

"§ 20-380. To investigate accidents involving motor carriers; to promote general safety program.—The Division may conduct a program of accident prevention and public safety covering all motor carriers with special emphasis on highway safety and transport safety and may investigate the causes of any accident on a highway involving a motor carrier. Any information obtained upon such investigation shall be reduced to writing and a report thereof filed in the office of the Division, which shall be subject to public inspection but such report shall not be admissible in evidence in any civil or criminal proceeding arising from such accident. The Division may adopt rules and regulations for the safety of the public as affected by motor carriers and the safety of motor carrier employees. The Division shall cooperate with and coordinate its activities for motor carriers with other programs of the North Carolina Utilities Commission, the North Carolina Insurance Department, the North Carolina Industrial Commission and other organizations engaged in the promotion of highway safety and employee safety.

"§ 20-381. Additional powers and duties of Division applicable to motor vehicles.—

The Division is hereby vested with the following powers and duties:

(1) To prescribe qualifications and maximum hours of service of drivers and their helpers, and rules regulating safety of operation and equipment; and in the interest of uniformity of intrastate and interstate rules and regulations applicable within the State with respect to maximum hours of service of vehicle drivers and their helpers, and safety of operation and equipment, the Division may adopt and enforce the rules and regulations adopted and promulgated by the United States Department of Transportation with respect thereto, insofar as it finds the same to be practical and advantageous for application in this State and not in conflict with this Article. In order to promote safety of operation of motor carriers, the Division may avail itself of the assistance of any other agency of the State having special knowledge of such matters and it may make such investigations and tests as may be deemed necessary to promote safety of equipment and operation of vehicles upon the highways.

(2) The Division and its duly authorized inspectors and agents shall have authority at any time to enter upon the premises of any motor carrier, subject to the provisions of this Article, for the purpose of inspecting any motor vehicle and equipment used by such motor carriers in the transportation of passengers and property, and to prohibit the use by any motor carrier of any motor vehicle or parts thereof or equipment thereon adjudged by such agents and inspectors to be unsafe for use in the transportation of passengers and property upon the public highways of this State; and when such agents or inspectors shall discover any motor vehicle of such motor carrier in actual use upon the highways in the transportation of passengers and property to be unsafe or any parts thereof or any equipment thereon to be unsafe, such agents or inspectors may, if they are of the opinion that further use of such vehicle, parts or equipment are imminently dangerous, stop such vehicle and require the operator thereof to discontinue its use and to substitute therefor a safe vehicle, parts or equipment at the earliest possible time and place, having regard for both the convenience and the safety of the passengers and property. When an inspector or agent stops a motor vehicle on the highway, under authority of this section, and the motor vehicle is in operative condition and its further movement is not dangerous to the passengers and property and to the users of the highways, it shall be the duty of the inspector or agent to guide the vehicle to the nearest point of substitution or correction of the defect. Such agents or inspectors shall also have the right to stop any motor vehicle which is being used upon the public highways for the transportation of passengers and property by a motor carrier subject to the provisions of this Article and to eject therefrom any driver or operator who shall be operating or be in charge of such motor vehicle while under the influence of intoxicating liquors. It shall be the duty of all inspectors and agents of the Division to make a written report, upon a form prescribed by the Division, of inspections of all motor equipment and a copy of each such written report, disclosing defects in such equipment, shall be served promptly upon the motor carrier operating the same, either in person by the inspector or agent or by mail. Such agents and inspectors shall also make and serve a similar written report in cases where a motor vehicle is operated in violation

of the laws of this State or of the orders, rules and regulations of the North Carolina Utilities Commission or Division.

(3) To relieve the highways of all undue burdens and safeguard traffic thereon by promulgating and enforcing reasonable rules, regulations and orders designed and calculated to minimize the dangers attending transportation on the highways of all commodities including explosives or highway flammable or combustible liquids, substances or gases.

"§ 20-382. Interstate carriers.—(a) This Article shall apply to persons and vehicles engaged in interstate commerce over the highways of this State, except insofar as the provisions of this Article may be inconsistent with, or shall contravene, the Constitution or laws of the United States, and the Division may, in its discretion, require such carriers to file with it copies of their respective interstate authority or register their exempt operation and registration of their vehicles operated in the State, and to observe such reasonable rules and regulations as the Division may deem advisable in the administration of this Article and for the protection of persons and property upon the highways of the State.

(b) The Division or its authorized representative is authorized to confer with and to hold joint hearings with the authorities of other states or with the Interstate Commerce Commission or its representatives, or any other federal or State agency in connection with any matter arising under this Chapter, or under the Federal Motor Carrier Act, or under any other federal law which may directly or indirectly affect the interests of the people of this State or the policy declared by this Chapter or by the Interstate Commerce Act.

(c) Any person operating a for-hire motor vehicle in interstate commerce over the highways of this State without having properly registered with the Division its respective exempt operation or a copy of its interstate authority and each vehicle operated in this State shall be subject to a penalty of seventy-five dollars (\$75.00), which shall be added to the registration fees provided in G.S. 20-385 and said penalty shall be collected with said registration fee from any carrier operating on the highways of North Carolina without registering his interstate authority by inspectors and officers of the Division in accordance with rules and regulations duly adopted by the Division before said vehicle shall be permitted to operate further upon the highways of North Carolina.

(d) No motor carrier, whether operating as a regulated carrier or exempt for-hire carrier, shall operate or cause to be operated in interstate commerce in this State any vehicle until he has filed evidence of required insurance with the Division and has been issued an identification stamp for such vehicle, which stamp must be attached to the approved uniform cab card and carried in the vehicle at all times. The identification stamp herein provided for shall be issued on an annual basis as of January 1st each year and shall be valid through February 1st the next succeeding year. When any person is discovered in this State, operating a vehicle in violation of this section, it shall be unlawful for anyone thereafter to operate said vehicle on the streets or highways of this State, except to remove it from the street or highway for purposes of parking or storing said vehicle until he shall pay to the Division a penalty of seventy-five dollars (\$75.00).

No court of the State shall entertain a suit of any kind brought for the purpose of preventing the collection of any penalty imposed in this section. Whenever a person shall have a valid defense to the enforcement of the collection of a penalty assessed or charged against him, such person shall pay such penalty to the proper officer, and notify such officer in writing that he pays the same under protest. Such payment shall be without prejudice to any defense or rights he may have in the premises, and he may, at any time within 30 days after such payment, demand the same in writing from the Commissioner of Motor Vehicles; and if same shall not be refunded within 90 days thereafter, may sue such official in the courts of the State for the amount so demanded. Such suit must be brought in the Superior Court of Wake County, or in the county in which the person paying the penalty resides. No restraining order or injunction shall issue from any court of the State to restrain or enjoin the collection of the penalty or to permit the operation of said vehicle without payment of the penalty prescribed herein.

"§ 20-383. Inspectors and officers given enforcement authority.—Only designated inspectors and officers of the Division shall have the authority to enforce the provisions of this Article and provisions of Chapter 62 applicable to motor transportation, and they are empowered to make complaint for the issue of appropriate warrants, informations, presentments or other lawful process for the enforcement and prosecution of violations of the transportation laws against all offenders, whether they be regulated motor carriers or not, and to appear in court or before the North Carolina Utilities Commission and offer evidence at the trial pursuant to such processes.

"§ 20-384. Safety regulations applicable to motor carrier and private carrier vehicles.—The Division of Motor Vehicles may promulgate highway safety rules and regulations for all for-hire motor carrier vehicles and all private carrier vehicles engaged in interstate commerce and intrastate commerce over the highways of North Carolina whether common carriers, contract carriers, exempt carriers, or private carriers.

"Part 3. Fees and charges.

"§ 20-385. Particular fees and charges fixed; payment.—(a) The Divisions shall receive and collect the following fees and charges:

- (1) One dollar (\$1.00) for the registration with the Division of each motor vehicle to be put in operation by a motor carrier operating under the jurisdiction of the North Carolina Utilities Commission, and a fee of one dollar (\$1.00) for the annual reregistration of each such motor vehicle.
- (2) Twenty-five dollars (\$25.00) for the filing with the Division of the interstate motor carrier operating authority or registration of interstate exempt operation of every motor carrier operating into, from, within, or through North Carolina and filed with the Division under the provisions of G.S. 20-382 and five dollars (\$5.00) for filing all subsequent amendments thereto to maintain said filing in a current status.
- (3) One dollar (\$1.00) for the registration with the Division of each motor vehicle operated into, from, within, or through North Carolina by interstate carriers and registered with the Division under the provisions

of G.S. 20-382, and a fee of one dollar (\$1.00) for the annual reregistration of each such motor vehicle.

- (4) Twenty-five dollars (\$25.00) for each Certificate of Exemption issued by the Division.
- (5) Ten dollars (\$10.00) for each emergency permit issued by the Division in accordance with G.S. 20- 382.

"§ 20-386. Fees, charges and penalties; disposition.—All fees and charges received by the Division under G.S. 20-385 shall be in addition to any other tax or fee provided by law and shall be placed in the Highway Fund.

"Part 4. Penalties and Actions.

"§ 20-387. Motor carrier violating any provision of Article, rules or orders; penalty.—Any motor carrier which violates any of the provisions of this Article or refuses to conform to or obey any rule, order or regulation of the Division shall, in addition to the other penalties prescribed in this Article forfeit and pay a sum up to one thousand dollars (\$1,000) for each offense, to be recovered in an action to be instituted in the Superior Court of Wake County, in the name of the State of North Carolina on the relation of the Division; and each day such motor carrier continues to violate any provision of this Article or continues to refuse to obey or perform any rule, order or regulation prescribed by the Division shall be a separate offense.

"§ 20-388. Willful acts of employees deemed those of motor carrier.—The willful act of any officer, agent, or employee of a motor carrier, acting within the scope of his official duties of employment, shall, for the purpose of this Article, be deemed to be the willful act of the motor carrier.

"§ 20-389. Actions to recover penalties.—Except as otherwise provided in this Article, an action for the recovery of any penalty under this Article shall be instituted in Wake County, and shall be instituted in the name of the State of North Carolina on the relation of the Division against the person incurring such penalty; or whenever such action is upon the complaint of any injured person, it shall be instituted in the name of the State of North Carolina on the relation of the Division upon the complaint of such injured person against the person incurring such penalty. Such action may be instituted and prosecuted by the Attorney General, the District Attorney of the Wake County Superior Court, or the injured person. The procedure in such actions, the right of appeal and the rules regulating appeals shall be the same as provided by law in other civil actions.

"§ 20-390. Refusal to permit Division to inspect records made misdemeanor.—Any motor carrier, its officers or agents in charge thereof, that fails or refuses upon the written demand of the Division to permit its authorized representatives or employees to examine and inspect its books, records, accounts and documents, or its plant, property, or facilities, as provided for by law, shall be guilty of a misdemeanor. Each day of such failure or refusal shall constitute a separate offense and each such offense shall be punishable by a fine of not less than five hundred dollars (\$500.00) and not more than five thousand dollars (\$5,000).

"§ 20-391. Violating rules, with injury to others.—If any motor carrier doing business in this State by its agents or employees shall be guilty of the violations of the rules and regulations provided and prescribed by the Division, and if after due notice of such

violation given to the principal officer thereof, if residing in the State, or, if not, to the manager or superintendent or secretary or treasurer if residing in the State, or, if not, then to any local agent thereof, ample and full recompense for the wrong or injury done thereby to any person as may be directed by the Division shall not be made within 30 days from the time of such notice, such motor carrier shall incur a penalty for each offense of five hundred dollars (\$500.00).

"§ 20-392. Failure to make report; obstructing Division.— Every officer, agent or employee of any motor carrier, who shall willfully neglect or refuse to make and furnish any report required by the Division for the purposes of this Article, or who shall willfully or unlawfully hinder, delay or obstruct the Division in the discharge of the duties hereby imposed upon it, shall forfeit and pay five hundred dollars (\$500.00) for each offense, to be recovered in an action in the name of the State. A delay of 10 days to make and furnish such report shall raise the presumption that the same was willful.

"§ 20-393. Disclosure of information by employee of Division unlawful.—It shall be unlawful for any agent or employee of the Division knowingly and willfully to divulge any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of this Article, except to the Division or as may be directed by the Division or upon approval of a request to the Division by the Utilities Commission or by a court or judge thereof.

"§ 20-394. Remedies for injuries cumulative.—The remedies given by this Article to persons injured shall be regarded as cumulative to the remedies otherwise provided by law against motor carriers.

"§ 20-395. Willful injury to property of motor carrier a misdemeanor.—If any person shall willfully do or cause to be done any act or acts whatever whereby any building, construction or work of any motor carrier, or any engine, machine or structure of any matter or thing appertaining to the same shall be stopped, obstructed, impaired, weakened, injured or destroyed, he shall be guilty of a misdemeanor.

"§ 20-396. Unlawful motor carrier operations.—(a) Any person, whether carrier, shipper, consignee, or any officer, employee, agent, or representative thereof, who by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, shall knowingly and willfully seek to evade or defeat regulations as in this Article provided for motor carriers, shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not more than five hundred dollars (\$500.00) for the first offense and not more than two thousand dollars (\$2,000) for any subsequent offense.

(b) Any motor carrier, or other person, or any officer, agent, employee, or representative thereof, who shall willfully fail or refuse to make a report to the Division as required by this Article, or other applicable law, or to make specific and full, true, and correct answer to any question within 30 days from the time it is lawfully required by the Division so to do, or to keep accounts, records, and memoranda in the form and manner prescribed by the Division or shall knowingly and willfully falsify, destroy, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully neglect or fail to make true and correct entries in such accounts, records,

or memoranda of all facts and transactions appertaining to the business of the carrier, or person required under this Article to keep the same, or shall knowingly and willfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the Division with respect thereto, shall be deemed guilty of a misdemeanor and upon conviction thereof be subject for each offense to a fine of not more than five thousand dollars (\$5,000). As used in this subsection the words 'kept' and 'keep' shall be construed to mean made, prepared or compiled as well as retained.

"§ 20-397. Furnishing false information to the Division; withholding information from the Division.—(a) Every person, firm or corporation operating under the jurisdiction of the Division or who is required by law to file reports with the Division who shall knowingly or willfully file or give false information to the Division in any report, reply, response, or other statement or document furnished to the Division shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court.

(b) Every person, firm, or corporation operating under the jurisdiction of the Division or who is required by law to file reports with the Division who shall willfully withhold clearly specified and reasonably obtainable information from the Division in any report, response, reply or statement filed with the Division in the performance of the duties of the Division or who shall fail or refuse to file any report, response, reply or statement required by the Division in the performance of the duties of the Division shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court."

Sec. 2. G.S. 20-87 (1) is amended by deleting the word "nine" in both places it appears in the first sentence and substituting in lieu thereof the word "fifteen" and by deleting the numbers and words "G.S. 62-259 through G.S. 62-281" in the third sentence and substituting in lieu thereof the phrase "Article 17 of this Chapter".

Sec. 3. G.S. 20-143.1(c)(1) is rewritten to read as follows:

"(1) 'Flammable liquids' shall mean any liquid having a flash point below 100° F as determined by Tag Closed Tester method."

Sec. 4. G.S. 20-143.1(e) is amended by deleting the words "Utilities Commission" and substituting in lieu thereof the words "Division of Motor Vehicles".

Sec. 5. G.S. 20-145 is amended by deleting the comma ",", after the word "duties" where it first appears in the first sentence, inserting a period, ".", in lieu thereof, and striking the remainder of the sentence.

Sec. 6. G.S. 20-161(c) is rewritten to read as follows:

"(c) The operator of any truck, truck tractor, trailer or semitrailer which is disabled upon any portion of the highway shall display warning devices of a type and in a manner as required under the rules and regulations of the United States Department of Transportation as adopted by the Division of Motor Vehicles. Such warning devices shall be displayed as long as the vehicle is disabled."

Sec. 7. G.S. 20-167 is rewritten to read as follows:

"Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the rules and regulations of the

United States Department of Transportation as adopted by the Division of Motor Vehicles."

Sec. 8. G.S. 20-215.3 is repealed. Sec. 9. G.S. 62-260(a)(2) is amended by deleting the word "nine" in both places it appears in the first clause and substituting in lieu thereof the word "fifteen".

Sec. 10. G.S. 62-260(f) is amended by deleting the word "this" in the first sentence after the word "of" and before the word "Chapter" and inserting between the words "Chapter" and "and" in the first sentence the number "20"; by deleting the word "Commission" in the first sentence after the word "the" and before the word "adopted" and substituting in lieu thereof the word "Division"; and by deleting the word "Commission" in both places it appears in the second sentence and substituting in lieu thereof the word "Division".

Sec. 11. G.S. 62-260(g) is amended by deleting the words "Utilities Commission" in both places it appears and substituting in lieu thereof the words "Division of Motor Vehicles".

Sec. 12. G.S. 62-261 is amended by deleting subsection (3), (7) and (10) and renumbering remaining subsections.

Sec. 13. G.S. 62-266 is repealed. Sec. 14. G.S. 62-268 is amended by deleting the word "Commission" where it first appears in the first sentence after the word "the" and before the word "such" and inserting in lieu thereof the words "Division of Motor Vehicles".

Sec. 15. G.S. 62-270 is amended by deleting the word "Commission" in the first sentence and substituting in lieu thereof the words "Division of Motor Vehicles".

Sec. 16. G.S. 62-277 is repealed. Sec. 17. G.S. 62-281 is repealed. Sec. 18. G.S. 62-300(a) is amended by deleting subsections (8), (11) and (12) and renumbering remaining subsections.

Sec. 19. G.S. 62-300(d) is amended by deleting the words "(9)" and "(10)" in the first sentence and substituting in lieu thereof the words "(8) and(9)".

Sec. 20. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 24th day of June, 1985.