

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-29
SENATE BILL 260

AN ACT TO MODIFY THE PENALTY SCHEDULE FOR VIOLATIONS OF THE VEHICLE EMISSION INSPECTION PROGRAM, TO CLARIFY THE PROCEDURE FOR IMPOSING THE PENALTIES, AND TO MAKE OTHER CHANGES TO THE VEHICLE EMISSION INSPECTION LAWS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-183.4(b) reads as rewritten:

"(b) Station Qualifications. – An applicant for a license as a safety inspection station must meet all of the following requirements:

- (1) Have a place of business that has adequate facilities, space, and equipment to conduct a safety inspection. A place of business designated in a station license that has been suspended or revoked cannot be the designated place for any other license applicant during the period of the suspension or revocation, unless the Division finds that operation of the place of business as an inspection station during this period by the license applicant would not defeat the purpose of the suspension or revocation because the license applicant has no connection with the person whose license was suspended or revoked or because of another reason. A finding made by the Division under this subdivision must be set out in a written statement that includes the finding and the reason for the finding.
- (2) Regularly employ at least one mechanic who has a safety inspection mechanic license.
- (3) Designate the individual who will be responsible for the day-to-day operation of the station. The individual designated must be of good character and have a reputation for honesty."

Section 2. G.S. 20-183.4C reads as rewritten:

"§ 20-183.4C. When a vehicle must be inspected. ~~inspected~~; one-way trip permit.

(a) Inspection. – A vehicle that is subject to a safety inspection, an emissions inspection, or both must be inspected as follows:

- (1) A new vehicle must be inspected before it is ~~offered for sale~~ sold at retail in this State.
- (2) A used vehicle must be inspected before it is offered for sale at retail in this State by a dealer at a location other than a public auction.

- (3) A used vehicle that is offered for sale at retail in this State by a dealer at a public auction must be inspected before it is offered for sale unless it has an inspection sticker that was put on the vehicle under this Part and does not expire until at least nine months after the date the vehicle is offered for sale at auction.
- (4) A used vehicle acquired by a resident of this State from a person outside the State must be inspected within 10 days after the vehicle is registered with the Division.
- (5) A vehicle owned by a new resident of this State who transfers the registration of the vehicle from the resident's former home state to this State must be inspected within 10 days after the vehicle is registered with the Division.
- (6) A vehicle that has been inspected in accordance with this Part must be inspected by the last day of the month in which the inspection sticker on the vehicle expires, unless another subdivision of this section requires it to be inspected sooner.

(b) Permit. – The Division may issue a one-way trip permit to a person that authorizes the person to drive to an inspection station a vehicle whose inspection sticker has expired. The permit must describe the vehicle whose inspection sticker has expired. The permit authorizes the person to drive the described vehicle only from the place the vehicle is parked to an inspection station.

The Division may issue a 10-day temporary permit to a person that authorizes the person to drive a vehicle that failed to pass either the safety inspection or emissions inspection. The permit must describe the vehicle that failed to pass inspection and the date that it failed to pass inspection."

Section 3. G.S. 20-183.6 reads as rewritten:

"§ 20-183.6. Businesses that replace windshields must register with Division to get inspection stickers.

A person who is engaged in the business of replacing windshields on vehicles that are subject to inspection under this Part may register with the Division to obtain replacement inspection stickers for use on replaced windshields. A replacement inspection sticker put on a windshield that has been replaced must contain the same information and expire at the same time as the inspection sticker it replaces. A person who puts a replacement inspection sticker on a replaced windshield must remove the inspection sticker from the windshield that was ~~replaced-replaced~~, attach the removed inspection sticker to a copy of the statement given the vehicle owner for replacing the windshield, and keep the removed inspection sticker until 30 days after it expires. that copy of the statement until 18 months after the sticker was removed.

A person registered under this section must keep records of replacement stickers put on replaced windshields and must be able to account for all inspection stickers received from the Division. The Division may suspend or revoke the registration of a person under this section if the person fails to keep records required by the Division or is unable to account for inspection stickers received from the Division. An auditor of the

Division may review the records of a person registered under this section during normal business hours.

A person who is registered under this section and has a safety inspection station license or an emissions inspection station license must keep the records of the inspection stickers used on replaced windshields separate from the records of the inspection stickers used on vehicles inspected. A person who is registered under this section and has an inspection station license may not inspect a vehicle whose windshield is being replaced unless the inspection sticker on the windshield has expired or expires at the end of the month in which the windshield is being replaced and the person has the vehicle owner's permission to inspect the vehicle."

Section 4. G.S. 20-183.7(a) reads as rewritten:

"(a) Fee Amount. – When a fee applies to an inspection of a vehicle or the issuance of an inspection sticker, the fee must be collected. The following fees apply to an inspection of a vehicle and the issuance of an inspection sticker:

<u>Type</u>	<u>Inspection</u>	<u>Sticker</u>
Safety Only, Without After-Factory Tinted Window	\$ 8.25	\$1.00
Safety Only, With After- Factory Tinted Window	18.25	1.00
Emissions and Safety, Without After-Factory Tinted Window	17.00	2.40
Emissions and Safety, With After-Factory Tinted Window	27.00	2.40.

The fee for performing an inspection of a vehicle applies when an inspection is performed, regardless of whether the vehicle passes the inspection. The fee for an inspection sticker applies when an inspection sticker is put on a vehicle. The fee for performing an inspection of a vehicle with a tinted window applies only to an inspection performed with a light meter after a safety inspection mechanic determined that the window had after-factory tint.

A vehicle that is inspected at an inspection station and fails the inspection is entitled to be reinspected at the same station at any time within 30 days of the failed inspection without paying another inspection fee."

Section 5. G.S. 20-183.8 reads as rewritten:

"§ 20-183.8. Infractions and criminal offenses for violations of inspection requirements.

(a) Infractions. – A person who does any of the following commits an infraction and, if found responsible, is liable for a penalty of up to fifty dollars (\$50.00):

- (1) Operates a motor vehicle that is subject to inspection under this Part on a highway or public vehicular area in the State when the vehicle has not been inspected in accordance with this Part, as evidenced by the vehicle's lack of a current inspection sticker or otherwise.
- (2) Allows an inspection sticker to be put on a vehicle owned or operated by that person, knowing that the vehicle was not inspected before the sticker was attached or was not inspected properly.

- (3) ~~Attaches~~ Puts an inspection sticker ~~to~~ on a vehicle, knowing or having reasonable grounds to know an inspection of the vehicle was not performed or was performed improperly. A person who is cited for a civil penalty under G.S. 20-183.8B for an emissions violation involving the inspection of a vehicle may not be charged with an infraction under this subdivision based on that same vehicle.

(b) Defenses to Infractions. – Any of the following is a defense to a violation under subsection (a) of this section:

- (1) The vehicle was continuously out of State for at least the 30 days preceding the date the inspection sticker expired and a current inspection sticker was obtained within 10 days after the vehicle came back to the State.
- (2) The vehicle displays a dealer license plate or a transporter plate, the dealer repossessed the vehicle or otherwise acquired the vehicle within the last 10 days, and the vehicle is being driven from its place of acquisition to the dealer's place of business or to an inspection station.
- (3) ~~The vehicle was in a state of disrepair on the date the inspection sticker expired, the owner has since repaired the vehicle, the vehicle is being driven from the owner's residence or other place where the owner repaired the vehicle to an inspection station, and the owner has not otherwise driven the vehicle since the inspection sticker expired.~~
- (4) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to a safety-only inspection, and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 30 days of the expiration date of the inspection sticker that was on the vehicle when the citation was issued.

(c) Felony. – ~~A person who forges an inspection sticker commits a Class I felony.~~ does any of the following commits a Class I felony:

- (1) Forges an inspection sticker.
- (2) Buys, sells, or possesses a forged inspection sticker.
- (3) Buys, sells, or possesses an inspection sticker other than as the result of either of the following:
 - a. Having a license as an inspection station, a self-inspector, or an inspection mechanic and obtaining the inspection sticker from the Division in the course of business.
 - b. A vehicle inspection in which the vehicle passed the inspection or for which the vehicle received a waiver."

Section 6. G.S. 20-183.8B reads as rewritten:

"§ 20-183.8B. Civil penalties against license holders and suspension or revocation of license for emissions violations.

(a) Kinds of Violations. – The civil penalty schedule established in this section applies to emissions self-inspectors, emissions inspection stations, and emissions inspection mechanics. The schedule categorizes emissions violations into serious (Type I), minor (Type II), and technical (Type III) violations.

A serious violation is a violation of this Part or a rule adopted to implement this Part that directly affects the emission reduction benefits of the emissions inspection program. A minor violation is a violation of this Part or a rule adopted to implement this Part that reflects negligence or carelessness in conducting an emissions inspection or complying with the emissions inspection requirements but does not directly affect the emission reduction benefits of the emissions inspection program. A technical violation is a violation that is not a serious violation, a minor violation, or another type of offense under this Part.

(b) Penalty Schedule. – The Division must take the following action for a violation:

- (1) Type I. – For a first or second Type I violation by an emissions self-inspector or an emissions inspection station, assess a civil penalty of two hundred fifty dollars (\$250.00) and suspend the license of the business for six months. For a third or subsequent Type I violation within ~~seven~~three years by an emissions self-inspector or an emissions inspection station, assess a civil penalty of one thousand dollars (\$1,000) and revoke the license of the business for two years.

For a first or second Type I violation by an emissions inspection mechanic, assess a civil penalty of one hundred dollars (\$100.00) and suspend the mechanic's license for six months. For a third or subsequent Type I violation within seven years by an emissions inspection mechanic, assess a civil penalty of two hundred fifty dollars (\$250.00) and revoke the mechanic's license for two years.

- (2) Type II. – For a first or second Type II violation by an emissions self-inspector or an emissions inspection station, assess a civil penalty of one hundred dollars (\$100.00). For a third or subsequent Type II violation within ~~seven~~three years by an emissions self-inspector or an emissions inspection station, assess a civil penalty of two hundred fifty dollars (\$250.00) and suspend the license of the business for 90 days.

For a first or second Type II violation by an emissions inspection mechanic, assess a civil penalty of fifty dollars (\$50.00). For a third or subsequent Type II violation within seven years by an emissions inspection mechanic, assess a civil penalty of one hundred dollars (\$100.00) and suspend the mechanic's license for 90 days.

- (3) Type III. – For a first or second Type III violation by an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic, send a warning letter. For a third or subsequent Type III violation within ~~seven~~three years by the same emissions license holder, assess a civil penalty of twenty-five dollars (\$25.00).

(c) Station or Self-Inspector Responsibility. – It is the responsibility of an emissions inspection station and an emissions self-inspector to supervise the emissions mechanics it employs. A ~~Type I~~ violation by an emissions inspector mechanic is considered a ~~Type I~~ violation by the station or self-inspector for whom the mechanic is employed. A ~~Type II or III violation by an emissions mechanic is not automatically a~~

~~Type II or III violation by the station or self-inspector for whom the mechanic is employed. The Division may determine which Type II or Type III violations by an emissions mechanic are also violations by the station or self-inspector.~~

(d) **Missing Stickers.** – The Division must assess a civil penalty against an emissions inspection station or an emissions self-inspector that cannot account for an emissions inspection sticker issued to it. A station or a self-inspector cannot account for a sticker when the sticker is missing and the station or self-inspector cannot establish reasonable grounds for believing the sticker was stolen or destroyed by fire or another accident.

The amount of the penalty is twenty-five dollars (\$25.00) for each missing sticker. If a penalty is imposed under subsection (b) of this section as the result of missing stickers, the monetary penalty that applies is the higher of the penalties required under this subsection and subsection (b); the Division may not assess a monetary penalty as a result of missing stickers under both this subsection and subsection (b). Imposition of a monetary penalty under this subsection does not affect suspension or revocation of a license required under subsection (b).

(e) **Mechanic Training.** – An emissions inspection mechanic whose license has been suspended or revoked must retake the course required under G.S. 20-183.4A and successfully complete the course before the mechanic's license can be reinstated. Failure to successfully complete this course continues the period of suspension or revocation until the course is completed successfully.

Section 7. G.S. 20-183.8C reads as rewritten:

"§ 20-183.8C. Acts that are Type I, II, or III emissions violations.

(a) **Type I.** – It is a Type I violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:

- (1) Put an emissions inspection sticker on a vehicle without performing an emissions inspection of the ~~vehicle or after performing an emissions inspection in which the vehicle did not pass the inspection.~~ vehicle.
- (1a) Put an emissions inspection sticker on a vehicle after performing an emissions inspection of the vehicle and determining that the vehicle did not pass the inspection.
- (2) Use a test-defeating strategy when conducting an emissions inspection, such as holding the accelerator pedal down slightly during an idle test, disconnecting or crimping a vacuum hose to effect a passing result, or changing the emission standards for a vehicle by incorrectly entering the vehicle type or model year to achieve a passing result.
- (3) Allow a person who is not licensed as an emissions inspection mechanic to perform an emissions inspection for a self-inspector or at an emissions station.
- (4) Sell or otherwise give an inspection sticker to another other than as the result of a vehicle inspection in which the vehicle passed the inspection or for which the vehicle received a waiver.
- (5) Be unable to account for five or more inspection stickers at any one time upon the request of an auditor of the Division.

- (6) Perform a safety-only inspection on a vehicle that is subject to both a safety and an emissions inspection.
 - (7) Transfer an inspection sticker from one vehicle to another.
- (b) Type II. – It is a Type II violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:
- (1) Use the identification code of another to gain access to an emissions analyzer.
 - (2) Keep inspection stickers and other compliance documents in a manner that makes them easily accessible to individuals who are not inspection mechanics.
 - (3) Put an emissions inspection sticker on a vehicle that is required to have one of the following emissions control devices but does not have it:
 - a. Catalytic converter.
 - b. PCV valve.
 - c. Thermostatic air control.
 - d. Oxygen sensor.
 - e. Unleaded gas restrictor.
 - f. Gasoline tank cap.
 - g. Air injection system.
 - h. Evaporative emissions system.
 - i. Exhaust gas recirculation (EGR) valve.
 - (4) Put an emissions inspection sticker on a vehicle without performing a visual inspection of the vehicle's exhaust system and checking the exhaust system for leaks.
 - (5) Impose no fee for an emissions inspection of a vehicle or the issuance of an emissions inspection sticker or impose a fee for one of these actions in an amount that differs from the amount set in G.S. 20-187.3.
- (c) Type III. – It is a Type III violation for an emissions self-inspector, an emissions inspection station, or an emissions inspection mechanic to do any of the following:
- (1) Fail to post an emissions license issued by the Division.
 - (2) Fail to send information on emissions inspections to the Division at the time or in the form required by the Division.
 - (3) Fail to post emissions information required by federal law to be posted.
 - (4) Fail to put the required information on an inspection sticker in a legible manner using ink.
 - (5) Fail to put the required information on an inspection receipt in a legible manner.
 - (6) Fail to maintain an emissions analyzer maintenance log.
- (d) Other Acts. – The lists in this section of the acts that are Type I, Type II, or Type III violations are not the only acts that are one of these types of violations. The Division may designate other acts that are a Type I, Type II, or Type III violation."

Section 8. G.S. 20-183.8D reads as rewritten:

"§ 20-183.8D. Suspension or revocation of license for safety violations. ~~license.~~

(a) Safety. – The Division may suspend or revoke a safety self-inspector license, a safety inspection station license, and a safety inspection mechanic license issued under this Part if the license holder fails to comply with this Part or a rule adopted by the Commissioner to implement this Part.

(b) Emissions. – The Division may suspend or revoke an emissions self-inspector license, an emissions inspection station license, and an emissions inspection mechanic license issued under this Part for any of the following reasons:

- (1) The suspension or revocation is imposed under G.S. 20-183.8B.
- (2) Failure to pay a civil penalty imposed under G.S. 20-183.8B within 30 days after it is imposed."

Section 9. Article 3A of Chapter 20 of the General Statutes is amended by inserting a new section between G.S. 20-183.8D and G.S. 20-183.8E to read:

"§ 20-183.8D.1. Requirements for giving certain emissions license holders notice of violations and for taking summary action.

(a) Finding of Violation. – When an auditor of the Division finds that an emissions violation has occurred that could result in the suspension or revocation of an emissions inspection station license, an emissions self-inspector license, or an emissions mechanic license, the auditor must give the affected license holder written notice of the finding. The notice must be given within five business days after the violation occurred. The notice must state the period of suspension or revocation that could apply to the violation and any monetary penalty that could apply to the violation. The notice must also inform the license holder of the right to a hearing if the Division charges the license holder with the violation.

(b) Notice of Charges. – When the Division decides to charge an emissions inspection station, an emissions self-inspector, or an emissions mechanic with a violation that could result in the suspension or revocation of the person's emissions license, an auditor of the Division must deliver a written statement of the charges to the affected license holder. The statement of charges must inform the license holder of this right, instruct the person on how to obtain a hearing, and inform the license holder of the effect of not requesting a hearing. The license holder has the right to a hearing before the license is suspended or revoked. G.S. 20-183.8E sets out the procedure for obtaining a hearing.

(c) Exception for Summary Action. – The right granted by subsection (b) of this section to have a hearing before an emissions license is suspended or revoked does not apply if the Division summarily suspends or revokes the license after a judge has reviewed and authorized the proposed action. A license issued to an emissions inspection station, an emissions self-inspector, or an emissions mechanic is a substantial property interest that cannot be summarily suspended or revoked without judicial review."

Section 10. G.S. 20-183.8E reads as rewritten:

"§ 20-183.8E. Administrative and judicial review.

~~A person whose application for a license or registration is denied, whose license or registration is suspended or revoked, who is assessed a civil penalty, or who receives a warning letter under this Part may obtain an administrative review of the action by the Commissioner by filing with the Division a written request for a hearing before the Commissioner. A request for a hearing must be filed within 10 days after the person receives written notice of the action for which a hearing is requested.~~

~~If the action that is the subject of a request for a hearing is the suspension or revocation of an emissions self-inspector license, an emissions inspection station license, or an emissions inspection mechanic license, the Commissioner must hold the hearing within 14 days after the Division receives the request. If the action that is the subject of a request for a hearing is not one of these actions, the Commissioner must hold a hearing within 90 days after the Division receives the request.~~

(a) Right to Hearing. – A person who applies for a license or registration under this Part or who has a license or registration issued under this Part has the right to a hearing when any of the following occurs:

- (1) The Division denies the person's application for a license or registration.
- (2) The Division delivers to the person a written statement of charges of an emissions violation that could result in the suspension or revocation of the person's emissions license.
- (3) The Division summarily suspends or revokes the person's license following review and authorization of the proposed adverse action by a judge.
- (4) The Division assesses a civil penalty against the person.
- (5) The Division issues a warning letter to the person.
- (6) The Division cancels the person's registration.

(b) Hearing After Statement of Charges. – When an emissions license holder receives a statement of charges of an emissions violation that could result in the suspension or revocation of the person's emissions license, the person can obtain a hearing by making a request for a hearing. The person must make the request to the Division within 10 days after receiving the statement of the charges. A person who does not request a hearing within this time limit waives the right to a hearing.

The Division must hold a hearing requested under this subsection within three business days after receiving the request unless the person requesting the hearing asks for additional time to prepare for the hearing. A person may ask for no more than seven additional business days to prepare. If the additional time requested is within this limit, the Division must grant a person the additional time requested. The hearing must be held at the location designated by the Division. Suspension or revocation of the license is stayed until a decision is made following the hearing.

If a person does not request a hearing within the time allowed for making the request, the proposed suspension or revocation becomes effective the day after the time for making the request ends. If a person requests a hearing but does not attend the hearing, the proposed suspension or revocation becomes effective the day after the date set for the hearing.

(c) Hearing After Summary Action. – When the Division summarily suspends a license issued under this Part after judicial review and authorization of the proposed action, the person whose license was suspended or revoked may obtain a hearing by filing with the Division a written request for a hearing. The request must be filed within 10 days after the person was notified of the summary action. The Division must hold a hearing requested under this subsection within 14 days after receiving the request.

(d) All Other Hearings. – When this section gives a person the right to a hearing and subsection (b) or (c) of this section does not apply to the hearing, the person may obtain a hearing by filing with the Division a written request for a hearing. The request must be filed within 10 days after the person receives written notice of the action for which a hearing is requested. The Division must hold a hearing within 90 days after the Division receives the request.

(e) Review by Commissioner. – The Commissioner may conduct a hearing required under this section or may designate a person to conduct the hearing. When a person designated by the Commissioner holds a hearing and makes a decision, the person who requested the hearing has the right to request the Commissioner to review the decision. The procedure set by the Division governs the review by the Commissioner of a decision made by a person designated by the Commissioner.

(f) Decision. ~~After A decision made after a hearing on the imposition of a monetary penalty against a motorist for an emissions violation or on a Type I, II, or III emissions violation by an emissions license holder, the Commissioner holder must uphold any monetary penalty, license suspension, license revocation, or warning required by G.S. 20-183.8A or G.S. 20-183.8B, respectively, if the Commissioner finds decision contains a finding that the motorist or license holder committed the act for which the monetary penalty, license suspension, license revocation, or warning was imposed. After A decision made after a hearing on any other action, the Commissioner action may uphold or modify the action.~~

(g) Judicial Review. – Article 4 of Chapter 150B of the General Statutes governs judicial review of an administrative decision ~~by the Commissioner made~~ under this section."

Section 11. G.S. 20-99(e) reads as rewritten:

"(e) The provisions, procedures, and remedies provided in this section ~~shall be applicable~~ apply to the collection of penalties imposed under the provisions of Article 3A of this Chapter and of G.S. 20-96, G.S. 20-118, or any other provisions of this Chapter imposing a tax or penalty for operation of a vehicle in excess of the weight limits provided in this Chapter and the Commissioner is authorized to collect such taxes or penalties by the use of the procedure established in subsections (a), (b), (c) and (d) of this section."

Section 12. G. S. 20-183.2(b)(5)d. reads as rewritten:

"d. It is a used vehicle offered for sale by a dealer in an emissions ~~county and is not a new vehicle that has not been titled.~~ county."

Section 13. G.S. 20-183.8(c), as amended by Section 5 of this act, becomes effective November 1, 1997, and applies to offenses committed on or after that date.

The remaining changes made by Section 5 of this act and the other sections of this act become effective July 1, 1997.

In the General Assembly read three times and ratified this the 10th day of April, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 12:13 p.m. this 17th day of April, 1997