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Motor Vehicles

During the 2001 session, the General Assembly considered more than seventy-five bills dealing with motor vehicles or highway safety. Less than one-third of these were enacted into law, and many of those enacted were of a technical nature of interest primarily to automobile dealers or to government officials who regulate the various aspects of the automotive and trucking industry. This chapter summarizes the motor vehicle legislation that is of general public interest or historical significance.

The most significant motor vehicle legislation this session did *not* deal with impaired driving offenses. In fact, this year's most significant legislation was not even contained in a statewide act, as is the case with almost all motor vehicle law. Instead, it added several additional jurisdictions to local legislation enacted several years ago that authorizes red light enforcement by installing cameras at intersections. Other acts of interest include an increase in the fees for annual vehicle inspections and a bicycle safety act requiring helmets for riders and safety seats for very small passengers. Finally, increasing public concern over persons presenting false identification prompted the General Assembly to amend G.S. 20-7 concerning residency requirements for obtaining a North Carolina driver's license.

Cameras at Intersections

Many motor vehicle accidents take place at intersections, and a substantial number of these happen because one of the vehicles ran through a red light in violation of G.S. 20-158.¹ In 1997 the General Assembly enacted new G.S. 160A-300.1 authorizing Charlotte to install "a traffic control photographic system" and to enforce the provisions of G.S. 20-158 by means of this system (S.L. 1997-216). An ordinance authorized by that act must provide that

1. The owner of the vehicle is responsible for the violation unless he or she can furnish evidence that the vehicle, at the time of the violation, was in the care, custody, or control of another person.

1. For a full treatment of this subject, see Randy J. Harrison, "Smile Red Light Runners . . . You're on Automated Camera," *Popular Government* 66 (Winter 2001): 40.

2. Any violation detected by the traffic control photographic system will be a noncriminal offense for which a civil penalty of \$50 will be assessed. Also, no driver's license points may be assigned to the owner or driver of the vehicle.
3. The owner of the vehicle will be issued a citation that clearly states the manner in which the violation may be challenged.
4. The municipality must institute a nonjudicial administrative hearing procedure to review objections to citations or resulting penalties.

The Charlotte initiative was perceived by many to be a success; and over the next few years several additional cities were added to the provisions of G.S. 160A-300.1, including Fayetteville, Greensboro, High Point, Rocky Mount, Wilmington, Greenville, Lumberton, Chapel Hill, Cornelius, Huntersville, Matthews, and Pineville.

The 2001 General Assembly amended G.S. 160A-300.1 by the addition of a provision mandating that "the duration of the yellow light change interval . . . where traffic photographic systems are in use shall be no less than the yellow light change interval . . . specified in the Design Manual developed by the . . . [N.C.] Department of Transportation." This addition was probably occasioned by complaints from some motorists that the yellow light changed to red more quickly at intersections with photographic systems in place. This act also added additional jurisdictions to the coverage of G.S. 160A-300.1, including Albemarle, Durham, Nags Head, and all municipalities within Union County [S.L. 2001-286 (S 243)].

S.L. 2001-286 also adds new G.S. 160A-300.2 and -300.3, which apply only to Wake County municipalities and the City of Concord, respectively. The new legislation authorizes these municipalities to enforce G.S. 20-158 by means of a traffic photographic system. The validity of this type of legislation is being tested in the courts of California and elsewhere; as of this time, the eventual outcome is uncertain. S.L. 2001-286 became effective July 13, 2001, but its implementation in any jurisdiction requires the adoption of a municipal ordinance.

Impaired Driving Offenses

The only impaired driving legislation enacted in 2001 [S.L. 2001-362 (H 1217)] deals with the vehicle forfeiture provisions added in the late 1990s. Specifically, S.L. 2001-362 addresses three issues that have arisen in the administration of those provisions: late notice to persons holding liens on seized vehicles, the complicated procedure for determining the status of seized vehicles owned by persons alleging that they are innocent owners, and judges' waiving of costs of towing and storage fees. The vehicle forfeiture provisions were added in 1997 to deal with the safety issues posed by persons charged with impaired driving offenses who, at the time of the offense, were driving under licenses that had been revoked due to previous impaired driving conduct. The law directs law enforcement officers to seize vehicles driven by persons subject to the vehicle forfeiture provisions. The law also provides that when the driver of the vehicle is not the owner, that owner may recover the vehicle if he or she can establish that he or she is innocent. To establish innocence, the owner must show that he or she did not know that the defendant had a revoked license, that the defendant drove the vehicle without consent, or that the vehicle was stolen.

Similarly, if the vehicle is one on which there is a lien, the lienholder also has an interest in the vehicle if the conditions of the lien are not being satisfied. For example, if the owner of a vehicle on which there is a lien stops making payment to the lienholder, the lienholder is normally entitled to recover possession of the vehicle. Recovering that possession is more difficult when the state also has a claim to the vehicle under the forfeiture statutes.

Lienholders also face another claim—towing and storage fees—that must be satisfied before they can recover possession. The storage fee is \$10 per day and the towing fee is determined by the local market rates for that service. If there is a substantial delay, the fees can substantially diminish the vehicle's worth. As of September 2001, the average time from seizure to release of a vehicle to a lienholder was seventy days. Including daily fees and towing charges, the fees can easily approach \$1,000. For innocent owners, the average time to release of a vehicle was thirty-

six days, which translates into total fees of around \$500 on average. When a court determines either that an owner was innocent or that a lienholder is entitled to possession, the amount of the fees due can be an obstacle to some people attempting to recover their vehicles, even though they are entitled to do so. In some of those cases, judges have entered orders directing that the vehicles be released without the fees being assessed.

It is this series of issues that S.L. 2001-362 addresses. First, it provides for speedier notice to lienholders that a vehicle on which they hold a lien has been seized. Under existing law, for a lienholder to receive notice, two things have to happen. The seizing officer must first notify the Division of Motor Vehicles (DMV). Previously, an officer had seventy-two hours to do that; S.L. 2001-362 reduces that to twenty-four hours. The DMV must then notify any lienholder of the seizure within forty-eight hours of having received such notice. S.L. 2001-362 retains that requirement but also requires the DMV to notify the lienholder by fax within eight hours (during business hours) if the lienholder has provided the DMV with a fax number. The purpose of the changes is to provide prompt notice to lienholders so that they may act quickly to minimize their economic loss as a result of a seizure.

Innocent owners also must act quickly if they want to minimize the cost of recovering their vehicles, but S.L. 2001-362 approaches that problem differently. Under previous law, an innocent owner had three options for seeking to recover the vehicle before the defendant was tried for the underlying impaired driving offense. First, the owner could recover the vehicle pending a final hearing on the issue by posting a bond and meeting some other requirements. Second, the owner could seek permanent release of the vehicle by petitioning the court for release of the vehicle; if the prosecutor agreed that release was appropriate, the prosecutor could authorize the release of the vehicle. Finally, if the prosecutor declined to release the vehicle, the owner was entitled to a hearing before a judge to determine his or her innocence. S.L. 2001-362 eliminates the final two options and in their place authorizes the clerk of superior court to release a vehicle to an innocent owner. The statute requires the clerk to “consider” the owner’s petition, but there is no notice required by statute to the school board’s attorney or the prosecutor, and there are no statutory provisions specifying the kind of proceeding the clerk must conduct. The only requirement is that the clerk send a copy of his or her order denying or authorizing the release to the school board’s attorney and the prosecutor. The statute does not specify any appeal from the clerk’s order, but it does specify that a clerk’s order denying release may be reconsidered by the judge at any subsequent forfeiture hearing.

The final portion of S.L. 2001-362 deals directly with the fees charged for towing and storing seized vehicles. The fees apply to any seizure under G.S. 20-28.2. In some cases the clerk or the court may conclude that the seizure should never have taken place. Extreme cases include instances in which an owner who is away from home has his or her vehicle stolen and subsequently seized before the owner knows the vehicle is stolen, or cases in which auto repair personnel drive vehicles being repaired in such a manner as to trigger a seizure. In both cases, the owner’s innocence is rarely an issue, but the fees required to release the vehicle may still run to several hundred dollars. In some such cases, courts have ordered the entity holding the vehicle to release it without requiring the fees to be paid.

The entity that stores the seized vehicles is a statewide towing and storage business contracting with the state Department of Public Instruction to provide these services. That contractor is paid solely from the fees collected. In determining who should bear the cost of seizures in cases in which the courts determine that the seizure should not result in a forfeiture of the vehicle to the state, the General Assembly had several options. It could have required the contractor to assume the cost as a cost of administering the contract; it could have raised the fees to cover the loss caused by the waived fees and spread the cost over all the persons with seized vehicles; or it could have compensated the contractor for its expenses in such cases or required the local government or local school system to do so. The legislature chose instead to require the owner determined to be innocent to pay the fees, as owners are required to do in other situations (for example, when a person is arrested for DWI, the vehicle is often towed rather than left in a dangerous place, and that towing is the owner’s responsibility even if the owner is later released because the charge is not supported by the facts of the case). S.L. 2001-362 prohibits the courts

from waiving any fees for towing or storage in any release order that it issues. In all cases, innocent owners must pay the fees to recover their vehicles. If they decline to pay the fees, the seizure law allows the contractor to sell the vehicle when the towing storage fees reach a specified percentage of the value of the vehicle.

Public Vehicular Areas

One element of all motor vehicle infractions and criminal offenses is where they occur. Nearly all such offenses contain an element making them applicable on streets and highways (that is, publicly owned roadways dedicated solely to vehicular traffic; for the precise definition, see G.S. 20-4.01). Virtually none of the offenses apply on private roadways. There is a middle ground, however—public vehicular areas—in which many of the more serious motor vehicle offenses, including impaired driving and reckless driving, may occur. S.L. 2001-441 (S 438) amends the definition of *public vehicular areas*.

Public vehicular areas presently include (1) drives, driveways, roads, alleys, and parking lots on the grounds of hospitals, orphanages, schools, churches, parks, and similar governmental institutions, or on the grounds of commercial establishments providing parking spaces for the public or its customers, or on the grounds of federal institutions; (2) beaches used for vehicular traffic; and (3) roads in private residential subdivisions, even if responsibility for their maintenance has not been assumed by the government. S.L. 2001-441 adds a fourth category: any portion of private property used for vehicular traffic that is designated by the owner as a public vehicular area.

To designate property as a public vehicular area, the owner must register with the Department of Transportation and must post signs in accordance with rules adopted by the department. The Department of Transportation must maintain a registry of public vehicular areas created under this new authority, and it may charge owners up to \$500 to register property with the department. The new definition applies to offenses committed on or after December 1, 2001.

Rules of the Road

Low-Speed Vehicles

S.L. 2001-356 (H 1052) amends G.S. 20-4.01 to add a definition of *low-speed vehicle*. As currently defined by G.S. 20-4.01(27)h, low-speed vehicle means a “four-wheeled electric vehicle whose top speed is greater than 20 mph but less than 25 mph.” New G.S. 20-121.1 requires low-speed vehicles to be: (1) operated only on streets where the posted speed limit is 35 mph or less, (2) equipped with headlights, stoplights, turn signals, parking brakes, rear view mirrors, windshield wipers, and so forth (much like a regular motor vehicle), and (3) registered and insured. Golf carts and utility vehicles, as defined in new G.S. 20-4.01(12a) and (48c), are apparently not included in the definition of low-speed vehicle. S.L. 2001-356 became effective August 1, 2001.

Passing Emergency Vehicles and School Buses

G.S. 20-157 prescribes the duties of a motorist upon the approach of a police, fire, or other emergency service vehicle. S.L. 2001-331 (H 774) adds a new subsection (f) outlining additional duties when a driver is passing a stopped emergency vehicle. If there are two lanes for one direction of travel, then the driver of the passing vehicle should move the vehicle into a lane that is not the nearest lane to a parked emergency vehicle and should continue to drive in that lane until safely clear of the emergency vehicle. If there is only one lane, then the driver of the passing vehicle should slow the vehicle and operate at a reduced speed until completely past the emergency vehicle. This provision became effective October 1, 2001.

S.L. 2001-331 also adds new G.S. 66-207 requiring rental car companies to notify their customers of the law requiring motorists to stop for and not pass stopped school buses that are receiving or discharging passengers. The Division of Motor Vehicles is required to design a written notification in English, French, Japanese, German, and Spanish. This notification may be handed to the customer when he or she presents an International Driver Permit. Or, in the case of rental car companies who operate an airport shuttle, the notice may be posted on the bus. If the company has a counter at which renters pick up documentation, the notice may be posted there. New G.S. 66-207 became effective December 1, 2001.

Leased or Rental Vehicles—Parking Violations

G.S. Chapter 20-162.1 provides that when a vehicle is parked illegally, it constitutes prima facie evidence that it was so parked by the person who is the registered owner as shown by DMV records. This prima facie rule of evidence does not apply to the registered owner of a leased or rented vehicle when the owner can furnish sworn evidence that at the time of the violation, the vehicle was leased or rented to another person. S.L. 2001-259 (H 1342) amends this section to provide that the owner's sworn evidence must be given within thirty days after notification of the violation. If notification is given to the vehicle owner within ninety days after the violation date, the owner must include in the sworn evidence the name and address of the person or company that leased or rented the vehicle. This act became effective June 29, 2001.

Driver's License Law

Proof of Residency

G.S. 20-7 requires as a prerequisite to acquiring a driver's license, learner's permit, or special identification card (used mostly by those who do not drive) that a person be a legal resident of North Carolina. In recent years, there have been numerous complaints that the residency requirement was not being strictly enforced. The 2001 General Assembly addressed this problem by the enactment of new G.S. 20-7(b1) requiring the DMV to adopt rules to implement statutory provisions with respect to proof of residency. These rules must ensure that licensed applicants submit verifiable residency and address information by one of the following:

1. a document issued by an agency of the United States or the government of another nation,
2. a document issued by another state,
3. a document issued by the State of North Carolina or a political subdivision thereof,
4. a preprinted bank or corporate statement,
5. a preprinted business letterhead, or
6. any other document deemed reliable by the DMV.

New G.S. 20-7(b3) lists examples of documents that would meet these requirements, including:

1. a pay stub with the payee's address,
2. a utility bill showing the address of the applicant,
3. a rental contract for an apartment or other dwelling,
4. a receipt for personal property taxes,
5. a receipt for real property taxes,
6. an automobile insurance policy showing the applicant's address,
7. a monthly or quarterly statement from a North Carolina financial institution,
8. a document issued by the Mexican Consulate for North Carolina, or
9. an appropriate document issued by the consulate or embassy of another country.

The General Assembly also amended G.S. 20-7(b1) to provide that the applicant must submit a *valid* Social Security number. Any applicant who does not have a Social Security number (and is

ineligible to obtain one) must swear or affirm that fact under penalty of perjury. In such case, the applicant may provide a valid Individual Taxpayer Identification Number issued by the Internal Revenue Service. The Division of Motor Vehicles is prohibited from issuing an identification card, learner's permit, or driver's license to any applicant who fails to provide either a valid Social Security number or a valid Individual Taxpayer Identification Number. [S.L. 2001-424 (S 1005), sec. 27.10A.] These provisions, which are part of the 2001 Appropriations Act, became effective November 1, 2001.

The legislature amended G.S. 20-37 to require DMV to notify the United States Department of State of any traffic violation involving persons licensed by that department (that is, foreign diplomats). There have been some serious accidents involving diplomats with poor driving records, and this amendment is intended to provide the State Department with information to revoke the license of any drivers with poor records [S.L. 498 (H 110)]. The amendment is effective "as soon as practicable," but no later than January 1, 2003.

Size–Weight–Equipment

Recreational Vehicles

Recreational vehicles, which are popular in North Carolina as well as elsewhere, were not precisely defined prior to this year. S.L. 2001-341 (H 686) adds new G.S. 20-4.01(32a) to define a *recreational vehicle* as one that has its own motor or is towed by another vehicle and is "primarily designed as temporary living quarters for recreational, camping, or travel use." The definition includes (but is not limited to) motor homes, travel trailers, camping trailers, and truck campers. The General Assembly also added a provision to G.S. 20-116(d) limiting recreational vehicles to a maximum length of forty-five feet, excluding bumpers and mirrors. S.L. 2001-341 became effective July 1, 2001.

Vehicle Registration and License Plates

Special License Plates

Special license plates, which originally were intended for vehicles driven by major statewide officeholders, have in recent years become an increasingly popular phenomenon. These plates are currently available to many diverse groups, including former prisoners of war, registers of deeds, and members of square dance clubs. S.L. 2001-40 (S 3) amends G.S. 20-79.4 to add a special plate for Desert Storm Veterans. This plate is issuable to a member or veteran of the armed forces who served during Operation Desert Shield or Operation Desert Storm. The plate will bear the words "Desert Storm Veteran" and a replica of the Southwest Asia Service Medal. This act became effective on April 26, 2001.

Other special plates authorized this year include Audubon of North Carolina, First in Forestry, Military Veteran, Military Wartime Veteran, Save the Sea Turtles, Special Forces Association, U.S. Navy Specialty, The Foundation for Cancer Research, Harley Owners Group, and Rocky Mount Elk Association [S.L. 2001-498 (H 110)].

Dealer Plates

G.S. 20-79 provides for automobile dealer license plates. Unlike regular license plates, these dealer plates may be transferred from one vehicle to another. S.L. 2001-212 (S 91) adds a new sentence to G.S. 20-79(b) providing that a dealer engaged in the alteration and sale of "specialty vehicles" may apply for up to two dealer plates in addition to the number otherwise obtainable under G.S. 20-79. New G.S. 20-4.01(44a) defines *specialty vehicle* as a type of vehicle that has been modified from its original construction for an educational, emergency service, or public safety use. S.L. 2001-212 became effective on June 15, 2001.

Bicycle Safety

Head injuries are the leading cause of disability and death from bicycling accidents, but the risk of injury is significantly reduced for those who wear proper protective helmets. Yet, it is estimated that these helmets are worn by fewer than 5 percent of child bicyclists nationwide. The risk of a head injury or other injury to a small child who is a passenger on a bicycle also could be significantly reduced if the child passenger sat in a separate restraining seat. As a partial solution to these problems, the 2001 General Assembly added new Part 10B to Article 3, G.S. Chapter 20, entitled "Child Bicycle Safety Act" [S.L. 2001-268 (H 63)].

This act makes it unlawful for any parent or legal guardian of a person under age sixteen to knowingly permit that person to operate or to be a passenger on a bicycle without wearing a protective bicycle helmet. It also provides that any person who weighs less than forty pounds or is less than forty inches in height must be properly seated and adequately secured to a bicycle passenger restraining seat. A violation of this act is an infraction punishable by a civil fine of up to \$10, inclusive of all penalties and court costs. In the event of a first conviction only, the fine may be waived upon receipt of proof that the responsible party (parent or guardian) has purchased or otherwise obtained a protective bicycle helmet or restraining seat and intends to use it as required by law. S.L. 2001-268 became effective October 1, 2001.

Annual Vehicle Inspection

The cost for an annual vehicle inspection (and sticker) increased on January 1, 2002, as follows:

1. The cost of a *safety inspection only* remains \$8.25 for the inspection, but the sticker price increased from \$1.00 to \$1.05.
2. The cost of an *emissions and safety inspection* increased from \$17.00 to \$23.50 for the inspection, and from \$2.40 to \$6.50 for the sticker.

[S.L. 2001-504 (H 969)]

Larceny of Motor Fuel

S.L. 2001-352 (S 278) adds new G.S. 14-72.5 providing that any person who takes motor vehicle fuel valued at less than \$1,000 from an establishment where it is sold, with the intent to steal the fuel, is guilty of a Class 1 misdemeanor (larceny of goods with a value of more than \$1,000 is a Class H felony). This act also amends G.S. 20-17 to require revocation of the defendant's driver's license in the event of a second or subsequent conviction of violating G.S. 14-72.5. If the license is revoked, however, a judge may allow the licensee a limited driving privilege for a period not to exceed the period of revocation (which is ninety days for a second conviction). The obvious intent of this act is to discourage motorists from filling up their gas tanks and then driving away without paying. Of course, G.S. 14-72 already makes theft of not more than \$1,000 a Class 1 misdemeanor, so the deterrent effect of the new act (if any) is the license revocation. S.L. 2001-352 became effective December 1, 2001.

Bills That Failed to Pass

As is the case in most sessions of the General Assembly, several interesting motor vehicle proposals were not enacted. These failed bills can be significant because they often reappear a session or so later, sometimes with more support. A few of these bills passed one house in time to be considered further in 2002. Among these were

1. House Bill 495, which would have amended G.S. 20-158(b) to allow vehicles on a one-way street that intersects with another one-way street to make a left turn on a red light after coming to a complete stop and yielding the right-of-way. Right turns on red have

been authorized for many years. A similar proposal was considered last year but failed to get a favorable report from a Senate committee.

2. Senate Bill 961, which would have amended G.S. 20-28(a) to allow the court to decide whether or not a defendant would receive an additional revocation if convicted of driving while license revoked. Under current law, an additional revocation for driving on a revoked license is mandatory.
3. House Bill 600, which would have amended G.S. 20-40 to require the DMV to provide for a system of appointments for the issuance and renewal of driver licenses.
4. House Bill 1120, which would have amended G.S. 20-7 to provide that the DMV may not issue a driver's license to an inexperienced driver (licensed less than three years) without confirming that there is in effect a motor vehicle liability insurance policy covering the applicant.

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