

# 17

## Motor Vehicles

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This session several bills affecting motor vehicle law were enacted. One of the most significant of these creates a new crime of aggressive driving, and another expands child vehicle restraint regulations. Other new legislation adds to the ever-growing list of license plates that support particular causes—in this short session alone, eleven additional special license plates were authorized. This chapter summarizes these and other substantive bills enacted in 2004 relating to motor vehicle law.

### **Drivers' Licenses**

#### **Limited Driving Privileges (Out-of-State Speeding Convictions)**

A *limited driving privilege* is a court order authorizing a person to drive even though the Division of Motor Vehicles (DMV) has otherwise revoked that person's driving privileges. Typically this privilege authorizes driving only for restricted purposes, such as going to work or taking children to school. Limited privileges are authorized in many different situations, including certain speeding violations. In some instances a North Carolina resident may be convicted of speeding while in another state, and that state may revoke the person's license as a result. Usually the revoking state notifies the North Carolina DMV of the revocation, and the DMV may then revoke the North Carolina resident's license based on the out-of-state conviction. In those cases in which the person was convicted of driving more than fifty-five miles per hour and more than fifteen miles per hour over the speed limit, a judge may issue a limited driving privilege to offset the revocation. S.L. 2004-199 (S 1225) amends the statute authorizing the privilege [G.S. 20-16.1(b)(3)] to transfer the jurisdiction for issuing the privileges from the superior court to the district court.

#### **Organ Donation Program Changes**

S.L. 2004-189 (S 852) directs the DMV to establish and maintain an organ donation Internet site. The site must include only organizations legitimately involved in the organ donation process.

The information to be included is limited to basic data concerning persons who indicated a willingness to donate organs when they obtained their drivers' licenses. The act also establishes a License to Give Trust Fund to promote organ donation and, to provide money for the fund, raises the fee to obtain a driver's license by \$0.05 per year.

## **Rules of the Road**

### **Child Restraints**

Since 1982 North Carolina has required that children be properly secured when they are traveling in motor vehicles. S.L. 2004-191 (S 1218), effective January 1, 2005, amends this law to include all children who are younger than eight years old and who weigh less than eighty pounds (the current law does not apply to children who are four years old or older or who weigh more than forty pounds). The new law creates two categories of restraint. Children younger than five years old and who weigh less than forty pounds must be secured in traditional child or infant car seats, which should generally be placed in the rear seat of the vehicle. Children who are older than five or who weigh more than forty pounds may be placed in "booster" seats, which are designed to make adult lap and shoulder belts fit correctly over the child. According to the North Carolina Child Fatality Task Force, which suggested these changes to the law, between 2000 and 2002 forty-three North Carolina children between five and eight years of age were killed in vehicular accidents, only three of which had been placed in booster seats. North Carolina now joins twenty-two other states and the District of Columbia in requiring booster seats. The punishment for failure to use a booster seat is the same as for failure to use an infant car seat—a fine of up to \$25. A conviction has no effect on one's insurance, but two driver's license points are assessed (accumulation of a specified number of these points may result in license revocation).

### **Aggressive Driving**

*Aggressive driving* is defined by the National Highway Traffic Safety Administration (NHTSA) as "the operation of a motor vehicle in a manner that endangers or is likely to endanger persons or property." The agency distinguishes aggressive driving from road rage, which is deliberately assaultive behavior, but postulates that aggressive driving can often lead to road rage. According to NHTSA statistics, nearly thirteen thousand of the motor vehicle deaths between 1990 and 1997 were attributed to aggressive driving.

S.L. 2004-193 (H 1046) creates a new offense of aggressive driving, to be codified as G.S. 20-141.6. The new law defines the offense to include violating the speeding laws in combination with driving carelessly and heedlessly in willful or wanton disregard for the rights or safety of others. This language is identical to one formulation of the offense of reckless driving as codified in G.S. 20-140. North Carolina's appellate cases have established that no particular kind of traffic violation is required to establish a reckless driving charge. For a charge of aggressive driving, however, specific offenses must have been committed to establish a violation of the "carelessly and heedlessly" element, even if reckless driving is the formal charge. To prove the offense of aggressive driving, the state must show that the defendant committed two or more of the following violations:

- Running a red light
- Running a stop sign
- Illegal passing
- Failing to yield the right-of-way
- Following too closely

Aggressive driving is a Class 1 misdemeanor. A conviction carries five driver's license points, and six points if the offense occurs in a commercial vehicle. For driver's license revocation purposes, aggressive driving is treated in the same manner as reckless driving—two or more convictions in a

year or a conviction accompanied by a serious speeding conviction will result in revocation. Reckless driving under G.S. 20-140 is a lesser-included offense of aggressive driving.

### **Right-of-Way and Vehicle Control Signals**

S.L. 2004-172 (H 965) increases penalties for persons who cause serious bodily injury to another while entering an intersection, turning at a stop or yield sign, entering a roadway, failing to yield to an emergency vehicle, or driving through a highway construction site. Any of those offenses, coupled with serious injury, result in a mandatory fine of \$500 and a ninety-day driver's license revocation. Apparently the offenses remain infractions but carry higher penalties. For purposes of this statute, *serious bodily injury* involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted impairment of a bodily function or organ.

S.L. 2004-172 also amends the statutes regulating driving at intersections (G.S. 20-158) to provide that vehicles stopped at traffic lights must, when turning right on red, yield not only to traffic and pedestrians in the intersection, but also to pedestrians moving toward the intersection who are in reasonably close proximity and preparing to cross in front of the stopped vehicle. Conviction of failure to yield to a pedestrian under this law is an infraction punishable by a penalty of not more than \$500 nor less than \$100. A conviction also carries four driver's license points (five if the offense is committed in a commercial vehicle) and one insurance point under the Safe Driver Incentive Plan. Failure to yield to a bicycle, scooter, or motorcycle also carries four and five points. S.L. 2004-172 was effective December 1, 2004.

Another bill enacted this session amends the law regulating stoplights themselves. S.L. 2004-141 (S 1078) changes the nomenclature used in G.S. 20-158 to refer to stoplights, redesignating them as traffic signals with "vertical-arranged" or "horizontal-arranged signal faces." It also clarifies that the red light controls vehicles approaching the intersection (instead of those "passing straight through"). This act became effective July 29, 2004.

Portions of S.L. 2004-141 amend the same statutory sections as does S.L. 2004-172 but in inconsistent ways. Since S.L. 2004-141 took effect in July and S.L. 2004-172 took effect in December, it is likely that the portions of S.L. 2004-141 that are in conflict with S.L. 2004-172 will have remained in effect only until December 1, 2004.

### **DWI**

Two bills this session amend the impaired driving statutes. S.L. 2004-128 (S 577) revises G.S. 20-28.4 to require the court to include in its orders releasing a vehicle seized due to repeated impaired driving conduct a notice to the owner that within thirty days of the order, the owner must either (1) pay the towing and storage charges and retrieve the vehicle or (2) give notice to the DMV requesting a judicial hearing on the validity of any mechanic's lien the storage company has on the vehicle. The bill also amends G.S. 20-28.4 to provide that this notice satisfies the notice requirement of G.S. 44A-4(b). In addition, it amends G.S. 44A-4(b) to provide that if (1) the registered or certified mail notice to the vehicle owner is returned as undeliverable and (2) the court has given the owner notice of his or her right to a judicial hearing as described above, then no further notice is required. Previously, a party who had obtained the release of a DWI-seized vehicle had thirty days in which to retrieve the vehicle. If the owner did not act within thirty days, the company storing the vehicle would have a mechanic's lien on the vehicle for the accrued towing and storage charges. The notice required to sell a vehicle pursuant to such a lien was expensive and time-consuming to produce. The changes described above are designed to make the lien process simpler and more efficient for the statewide contractor that stores these seized vehicles.

S.L. 2004-197 (H 1356) raises the fee for substance abuse assessments of impaired drivers from \$50 to \$100. Assessments are made by local mental health department employees or certified private assessors. Often defendants charged with impaired driving will choose to be assessed before they are tried, since the act of obtaining the assessment is a mitigating factor in sentencing.

If an assessment is not obtained before trial, it will be required of every person convicted of impaired driving or some other related offenses. For those required to obtain an assessment, failure to do so will result in the continuation of any driver's license revocation imposed as a result of the conviction until the assessment is obtained. In addition, those convicted must complete any alcohol treatment or education the assessor recommends before they may be relicensed. S.L. 2004-197 also directs the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services to study the certification requirements for persons conducting alcohol and drug education traffic schools. Many offenders convicted of impaired driving offenses, especially those not found to have substance abuse dependencies or problems, are required to complete these schools as a condition of relicensing. Finally, S.L. 2004-197 specifies the minimum qualifications for those who may be certified to conduct assessments. The minimum qualifications are effective October 1, 2005.

### **Towing**

S.L. 2004-124 (H 1414) (as later amended by S.L. 2004-199) regulates how vehicles towing other vehicles must be operated. It enacts new G.S. 20-147.1 to provide that when a noncommercial passenger vehicle is towing another vehicle, the driver of the towing vehicle must "cause the vehicle to travel on the right half of the highway." A violation is an infraction.

### **Equipment**

Several minor changes were made to the size and equipment statutes. S.L. 2004-82 (S 1086) provides that public transit vehicles may be equipped with amber, high-mounted, flashing deceleration lamps on the rear of the vehicle.

Under legislation enacted in recent years, some local governments have installed cameras at intersections to monitor vehicles that fail to stop at red lights. The cameras record the registration plate numbers of these vehicles. S.L. 2004-79 (H 26) addresses the problem of drivers who obscure license plates with certain types of covers so that the cameras cannot clearly photograph the registration plates. It amends G.S. 20-63 to make it an infraction to willfully cover any part of a registration plate by any device intended to prevent the taking of these photographs. Transparent covers that are not designed or intended to prevent the taking of such photographs are not affected. This provision was effective October 1, 2004.

G.S. 20-118 establishes weight limits for property-hauling vehicles based on the size of the vehicle and its number of axles. An exception exists for vehicles that haul wood residuals (chips, sawdust, bark, or mulch) on non-Interstate highways, roads, or bridges posted for specific weights and that do not exceed their normal limits by more than 4,000 pounds. S.L. 2004-145 (S 1043) modifies that exemption to include vehicles transporting soil, rock, sand, or asphalt if the site from which the substances are transported does not have a certified scale for weighing the vehicle. In addition, if the vehicle exceeds the 4,000-pound overage limit or the maximum of 42,000 pounds (for tandem-axle vehicles) or 22,000 pounds (for single-axle vehicles), the penalty imposed is halved if the vehicle is transporting material from a site that does not have a scale.

S.L. 2004-79 also prohibits a law enforcement officer from issuing a citation to a person for violating the size, weight, or equipment laws if that person has a permit to use the type of vehicle that is involved in the offense. If the officer can determine by electronic means that the person has been issued such a permit, the officer may not issue the citation, even if the person does not have physical possession of the permit. This amendment becomes effective January 1, 2005.

## Registration

Most private passenger vehicle registration plates include a number randomly assigned by the DMV and bear the slogan "First in Flight." In addition, the DMV may issue over eighty types of specialized registration plates. Most retain the slogan "First in Flight," but they also include some phrase or image that indicates an affiliation with or affinity for a college, university, or professional sports franchise; military status; or a personal interest in animals, exercise, breast cancer awareness, or some specific geographical region of the state. A person obtaining one of these special plates must pay an additional annual fee. S.L. 2004-200 (S 1118) authorizes the following new categories of special plates:

- Commercial Fishing
- Daughters of the American Revolution (DAR)
- El Pueblo
- High school insignia plates (which may be issued in the name of any public high school)
- HOMES4NC
- North Carolina 4-H Development Fund
- Surviving spouse of retired highway patrol officer
- Sports Fishing

These license plates may not be issued until at least three hundred people have applied for them. All of the plates incur an additional fee of \$30, with the exceptions of the high school plates (which are \$25) and the DAR plates (which are \$20). A portion of these additional fees is transferred to the organizations represented on the license plates.

S.L. 2004-182 (S 464) authorizes the issuance of a National Rifle Association plate. No additional fee is required for this plate, but a minimum of three hundred applications must be received before the plate may be issued.

Two other special plates take the additional step of replacing the "First in Flight" slogan in the plate design. S.L. 2004-185 (S 754) authorizes stock car racing theme plates, which will be issued with images displaying themes of professional stock car auto racing or of specific race car drivers. The state may not pay for the use of any copyrighted images or slogans, and the additional fee required is \$30, \$20 of which is to be paid to the North Carolina Motorsports Foundation, Inc. If the auto racing sponsors provide the plates, no minimum number of applications is required before the plates may be issued.

S.L. 2004-131 (S 1144) authorizes plates that replace the "First in Flight" slogan with "In God We Trust." There is an additional \$30 fee for the plates, \$20 of which is to be used to support the N. C. National Guard Soldiers and Airmen Assistance Fund. Three hundred applications must be received by the DMV before the plates may be issued.

For many years private vehicle plates have been issued on a staggered basis so that renewals are spread throughout the year and do not occur all at once (typically in January). Commercial vehicles and dealer registration plates, however, were not being renewed on a staggered basis. S.L. 2004-167 (S 1083) staggers these types of renewals as well. In addition, the bill exempts historic vehicles from the annual vehicle safety inspections.

## Law Enforcement Jurisdiction

S.L. 2004-148 (H 1345) expands the jurisdiction of law enforcement officers of the DMV and personnel employed as State Highway Patrol Motor Carrier Enforcement officers so that they may enforce criminal laws as well as motor vehicle laws. This additional authority is granted in two instances: (1) when the officers have probable cause to believe a person has committed a criminal act in their presence at the time the officers are engaged in the enforcement of the laws otherwise in their jurisdiction and (2) when the officers are asked to provide temporary assistance to another law enforcement agency in a matter within the jurisdiction of the other agency.

## Local Motor Vehicle Regulation

Motor vehicle regulation is primarily a matter of state law. Some local governments, however, have recently sought legislative permission to create special local regulations. Examples of such bills include those concerning installation of cameras to detect stoplight violations and others seeking to regulate the operation of golf carts, utility vehicles, and the like. Although the legislature took up no new “red light camera” bills this session, it did enact several new laws granting local governments the authority to regulate some types of nontraditional vehicles.

As a matter of state law, golf carts are motor vehicles, as are the all-terrain vehicles and “four-wheelers” that meet the definition of utility vehicles. [The definition of *utility vehicle* in G.S. 20-4.01(48c) includes vehicles designed for maintenance, security, recreational, or landscaping purposes but not those designed to be used primarily on streets and highways.] Thus golf carts and all-terrain vehicles would be subject to the same rules as other motor vehicles, rules requiring vehicle registration, maintenance of liability insurance, certain types of equipment, and so forth.

In 2001 the General Assembly prohibited the DMV from registering golf carts and utility vehicles. Because of this prohibition, these vehicles may not be legally operated on any public street or highway, subject to narrow exemptions allowing the vehicles to cross roads (such as when a golf cart crosses a road to get to the next hole on the golf course). In many resort communities, however, golf carts and utility vehicles are used extensively for transportation within the communities. In the past such communities have sought permission from the legislature to regulate the use of these vehicles and to allow them to travel on community roads.

The 2004 General Assembly enacted three bills addressing these concerns. S.L. 2004-58 (H 1462) authorizes the town of Seven Devils to regulate golf carts in the manner described above. S.L. 2004-108 (H 1422) authorizes law enforcement officers in Mint Hill and Kings Mountain to operate all-terrain vehicles on streets in those towns in areas where the speed limit is 35 miles per hour or less.

Finally, S.L. 2004-38 (H 1363) allows the Lake Toxaway Property Owners’ Association to regulate the use of golf carts in its community. The authority granted by this bill is somewhat different from that granted by S.L. 2004-58, however, and reflects another trend affecting resort communities. Many of these communities are not in incorporated towns or cities, and the roads within them are private and are typically maintained and controlled by a property owners’ association. Nonetheless, the communities want to regulate to some degree the vehicles driven by property owners and their guests. S.L. 2004-38 in effect makes all the private roads controlled by the Lake Toxaway Property Owners’ Association subject to the G.S. 20 provisions relating to the use of highways and the operation of vehicles on those highways, with one exception—the rules prohibiting the operation of golf carts on streets are not applicable to these private Lake Toxaway roads. Before the association may change any speed limits now in effect on those roads, the Transylvania County Board of Commissioners must approve the change.

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