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Miscellaneous

During the 2006 legislative session, the General Assembly made changes to a number of miscellaneous subjects, including administrative procedure, identify theft, junk faxes, the lottery, wildlife, and boating. These changes are summarized below.

Administrative Procedures Act

N.C. Register

S.L. 2006-66 (S 1741) authorizes the Office of Administrative Hearings to license the private indexing, marketing, and distribution of the *N.C. Register*.

Special Education Petitions

As part of the program for education of children with disabilities enacted in 2006, S.L. 2006-69 (H 1908) adds a new section to G.S. Chapter 150B, Article 3, the contested case provisions of the Administrative Procedures Act. The new section provides special timelines, procedural safeguards, and judicial qualifications for hearings under new G.S. 115C-109.9 (“any matter relating to the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education of a child, or a manifestation determination”).

Identity Theft

The 2005 General Assembly enacted legislation attempting to protect citizens against identity theft. For state and local governments, the principal provisions of the 2005 act concerned the collection and distribution of Social Security account numbers and other personal identifying information. There were also specific provisions dealing with documents that contained personal identifying information and were filed with and held by registers of deeds and clerks of court. S.L. 2006-173 (H 1248) follows up on the 2005 legislation, modifying and expanding upon its provisions. The act does three things:

1. It extends to documents collected by the Secretary of State the same provisions enacted in 2005 with respect to documents collected by registers of deeds and clerks of court. Thus, persons filing documents may not include any social security numbers or other listed identifying information in the documents. In addition, until July 1, 2007, any person whose Social Security number or other identifying information is included on a document already filed with the Secretary of State may require the secretary to redact the number or other information from the document before it is published on the Internet. (The act intends that this information be removed from filed documents generally by June 30, 2007.)
2. It provides that if a state agency or local government experiences a security breach—an unauthorized breach of records that results in the release of personal information—the agency or local government must give notice of the breach to the persons whose personal information was lost. This provision became effective October 1, 2006.
3. It makes clear that personal identifying information in public documents is not public record and must be redacted before the documents are made available to the public. The principal kinds of identifying information include Social Security numbers, bank account numbers, bank card numbers, and driver’s license numbers.

Junk Faxes

S.L. 2006-207 (S 1295) enacts a new Article 5 in G.S. Chapter 75 (monopolies, trusts, and consumer protection), addressing unsolicited facsimiles. The new law prohibits the sending of unsolicited facsimiles if either the sender or the recipient is located in North Carolina. The prohibition does not apply when an established business relationship exists between the sender and recipient; however, all faxes must include identifying information of the sender and a toll free number for sending a “do not send” request. The recipient of an unlawful fax may bring an action to enjoin further violations and an action to recover \$500 for a first violation, \$1,000 for a second violation, and \$5,000 for any subsequent violation within two years of the first. The court may award reasonable attorneys’ fees to a prevailing party in specified circumstances. In addition, sending an unlawful fax is a violation of G.S. 75-1.1 (unfair or deceptive practices in commerce), which may subject the offender to criminal penalties or an award of treble damages under Article 1 of G.S. Chapter 75.

The Lottery

Lottery Oversight Committee

The Lottery Act (S.L. 2005-344), ratified by the General Assembly in 2005 and signed by the governor, contained a provision pledging that net lottery revenues would not *supplant* existing or projected state revenues for the purposes identified in the Lottery Act, but would *supplement* existing funds. Had this provision become law, there would be no lingering questions as to whether lottery proceeds will significantly increase state funding for the educational purposes designated in the act. However, the 2005 appropriations act (S.L. 2005-276), which became law two weeks before the Lottery Act, provided that if the Lottery Act became law, language prohibiting net lottery revenues from supplanting existing revenues was repealed. Thus, the Lottery Act, as amended, does not address the issue of whether state spending for the purposes set forth in the act will increase as a result of the lottery. The General Assembly in the 2006 session returned again to the issue of whether lottery proceeds would increase spending for the purposes set forth in the act. This time, the legislature did not directly prohibit lottery revenues from supplanting other state education revenues, but instead established a Lottery Oversight Committee

charged with studying ways to ensure that existing revenues were not in fact supplanted by lottery proceeds.

S.L. 2006-225 (H 2212) establishes a nine-member Lottery Oversight Committee, administratively located in the General Assembly and charged with four tasks: (1) reviewing expenditures of net lottery revenues; (2) studying ways to ensure that net proceeds of the lottery will supplement, rather than supplant, existing education funding, (3) receiving and reviewing reports submitted to the General Assembly pursuant to Chapter 18C of the General Statutes; and (4) studying other lottery matters necessary to fulfill the committee's mandate. New G.S. 18C-172 governs the creation of the committee and its membership and duties. It provides that three members each are to be appointed by the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor. One of the three appointees made by each of these officeholders must be an educator. Another must be a person trained or experienced in financial management. The appointing officers must strive to ensure racial, gender, and geographical diversity among the membership of the committee. The President Pro Tempore and the Speaker of the House each must designate a committee co-chair.

The committee must meet at least once each quarter upon joint call of the co-chairs. Six members constitute a quorum. All committee action must be by majority vote at a meeting at which a quorum is present. Committee members are appointed for three-year terms to begin on January 1. The committee must report its analysis and any findings and recommendations to the General Assembly by September 15 of each year and may make interim reports regarding the expenditure of net lottery revenues.

Allocation of Unclaimed Prizes

S.L. 2006-225 repeals Section 31.1(ii) of S.L. 2005-276, which required the General Assembly to transfer unclaimed prize money to the Escheat Fund in an amount equal to the principal transferred from the Escheat Fund for scholarships in fiscal years 2003–04, 2004–05, 2005–06, and 2006–07. S.L. 2006-225 also makes a clarifying change to G.S. 18C-132(b) to specify that unclaimed prize money should be handled in accordance with G.S. Chapter 18C rather than in accordance with Article 35A of G.S. Chapter 115C. G.S. 18C-162(c) provides that unclaimed prizes are not considered abandoned property but instead are allocated in equal portions to enhance prize payments and to the Education Lottery Fund.

Withholding of State Income Taxes from Winnings

S.L. 2006-264 (S 602) and S.L. 2006-259 (S 1523) enact identical amendments to G.S. 105-163.2B to require the Lottery Commission to withhold state income taxes from the payment of lottery winnings of at least \$600.

Removal of Lottery Commissioners

S.L. 2006-259 amends G.S. 18C-111(a) to provide that members of the Lottery Commission may be removed for cause by the authority that appointed them.

Lottery Fund Revenue

The 2006 appropriations act transfers \$425,000 from the State Lottery Fund to the Education Lottery Fund for the 2006–07 fiscal year as required by G.S. 18C-164. These funds are appropriated pursuant to G.S. 18C-164(d) for class size reduction, the prekindergarten program, the public school building capital fund, and scholarships for needy students. S.L. 2006-259 amends G.S. 18C-164(a) to require that the net revenue of the North Carolina State Lottery Fund be transferred four times a year (rather than “periodically”) to the Education Lottery Fund.

Defense to Unlawful Sale of Lottery Ticket to a Minor

S.L. 2006-259 amends G.S. 18C-131(e) to clarify that it is a defense for a person who sold a lottery ticket to a minor to show that the purchaser produced a *valid* driver's license (the statute previously required production of "a drivers license") showing the purchaser to be at least eighteen years old and bearing a physical description of the person named on the card that reasonably describes the purchaser.

Technical Corrections

Sections 8(a), (d), (g), and (l) of S.L. 2006-259 make technical corrections to G.S. 18C-130(a) (governing types of lottery games), G.S. 18C-151(e) (requiring lottery contractors to periodically update required disclosures), G.S. 114-19.16 (providing for criminal record checks for prospective Lottery Commission employees and lottery vendors), and Section 12 of S.L. 2005-344 (establishing time for first lottery audits). These changes appear to have no substantive effect.

Wildlife and Boating

Boating Safety and Vessel Titling Changes

Effective January 1, 2007, S.L. 2006-185 (S 948) reorganizes, clarifies, and amends the Boating Safety Act and the Vessel Titling Act, Articles 1 and 4, respectively, of G.S. Chapter 75A. The act extends the offense of boating while impaired in G.S. 75A-10(b1) to cover operating any vessel, not just a motorized vessel. It also enacts new G.S. 75A-16.1 directing the Wildlife Resources Commission to institute and coordinate a statewide course of instruction in boating safety. The act clarifies boating safety requirements by deleting specific safety requirements set by statute and authorizing the commission to adopt safety rules to conform with federal law on boating safety.

S.L. 2005-185 amends G.S. 75A-11 to (1) expand the list of occurrences that must be reported to the Wildlife Resources Commission to include an occurrence that results in a disappearance indicating death or injury and (2) raise the physical damage threshold for reporting accidents from \$500 to \$2,000. It also requires a report to law enforcement if an occurrence results in a person's death or disappearance from a vessel. The act authorizes law enforcement vessels to use a flashing blue light and siren when engaged in law enforcement or public safety activities and makes it a Class 2 misdemeanor for a vessel to fail to stop when directed to do so by a law enforcement officer. Use of a blue light by any other vessel is a Class 1 misdemeanor. The act requires vessels to slow when passing a law enforcement vessel displaying a flashing blue light; violation is a Class 3 misdemeanor.

S.L. 2006-185 makes several changes to fees in the Boating Safety Act and the Vessel Titling Act: (1) it specifies that a certificate of number for a registered commercial fishing vessel may be renewed free of charge for a one-year period; (2) it increases from \$2 to \$5 the fee for duplicate certificates of number; (3) it increases from \$10 to \$20 the fee to issue a transfer certificate of title, making it the same as the fee to issue a new certificate of title; and (4) it deletes the \$10 fee for the holder of a certificate of title failing to notify the Wildlife Resources Commission of a change of address.

Under former law, titling a vessel was optional. Effective January 1, 2007, S.L. 2006-185 amends G.S. 75A-34 to require titling of motorized vessels and sailboats fourteen feet or longer and of personal watercraft when the owner is applying for a certificate of number for the first time in North Carolina or when ownership of the vessel is transferred. The act also establishes a mechanism for canceling the certificate of title or certificate of number for destroyed or junked vessels and directs the Wildlife Resources Commission to adopt rules to establish a mechanism by which a person may acquire ownership of an abandoned vessel.

Fishing Licenses

In contrast to 2005, which saw enactment of a major revision of the coastal recreational fishing license system, the 2006 session resulted in only minor changes to fishing license laws. S.L. 2006-254 (S 1242) authorizes the Marine Fisheries Commission to establish gear-specific permits and limits for striped bass in the ocean and to charge up to \$10 for a permit.

S.L. 2006-255 (S 1587) expands the authority of the Wildlife Resources Commission to offer personalized licenses for any lifetime licenses (formerly, only lifetime “sportsman” combination licenses could be personalized). The act also provides that G.S. 132-1.10, a 2005 law sometimes referred to as the identity theft protection act for government agencies, governs the disclosure of personal identifying information obtained by the Wildlife Resources Commission, the Marine Fisheries Commission, and the Division of Marine Fisheries.

S.L. 2006-255 also authorizes the Marine Fisheries Commission to exempt individuals who participate in organized fishing events from the recreational fishing license requirements. Finally, it clarifies that the lifetime unified inland/coastal recreational fishing license is a resident-only license and removes ambiguities regarding the scope of the for hire blanket coastal recreational fishing license and the special landholder and guest fishing licenses.

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