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## Motor Vehicles

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Although the 2006 session was a “short” session, the number and extent of the changes in the motor vehicle laws were more typical of a long session. The new laws in this session include the most significant rewrite of the impaired driving laws since 1983, expansion of the seat belt requirement to include back seat passengers, the first statute to regulate the use of cell phones in vehicles, restrictions on the type of identification necessary to obtain a driver’s license, and a provision for the use of the driver’s license system to help track sex offenders. This chapter does not discuss bills that affect the business of selling or repairing motor vehicles or bills affecting the construction or regulation of the highway system.

Motor vehicle regulation remains a major responsibility of the General Assembly. In 2005 there were 6,899,357 vehicles registered in North Carolina. In 2004, there were 5,214,000 persons aged eighteen or over. It is easy to see why motor vehicle legislation is a staple on legislative agendas.

### **Drivers’ Licenses**

### **Social Security Numbers**

As concerns about homeland security have grown since the terrorist attacks on September 11, 2001, there have been frequent complaints about the inadequacy of the screening process for obtaining a driver’s license. More recently, there have been many complaints about the inability of the driver’s license process to screen out people who are in the country illegally.

S.L. 2006-264 (S 602) narrows the range of identification documents an applicant may use to obtain a driver’s license in North Carolina. Previously an applicant for a driver’s license could use either a Social Security number or a Taxpayer Identification number issued by the Internal Revenue Service (see G.S. 20-7). S.L. 2006-264 deletes the authority of the Division of Motor Vehicles (DMV) to rely on the Taxpayer Identification number. Now an applicant must either present a valid Social Security number or a visa issued by the United States Department of Homeland Security, in addition to the required proof of residence in the state (state-issued documents, bank or utility records, etc.). If the license is issued based on a visa, the license may not remain valid any longer than the visa.

## **Sex Offender Registration**

Sex offender registration laws have been enacted in every state and by the federal government. They all address similar issues, but they may vary from state to state. When sex offenders convicted in other states have moved into North Carolina in the past, questions have arisen as to whether the offenders have been adequately notified of their duties to register in this state. That issue was raised in *State v. Bryant*, 163 N.C. App. 478, 594 S.E.2d 202 (2004), in which the North Carolina Court of Appeals concluded that the state's sex offender statute failed to provide notice to out-of-state offenders and was unconstitutional as it applied to those offenders. That decision was reversed by the North Carolina Supreme Court in 2005 (359 N.C. 554, 614 S.E.2d 479). The issue is also addressed in a major revision of the sex offender statutes passed this year, S.L. 2006-247 (H 1896), which requires DMV to notify every person applying for a driver's license or similar documents of the requirement for sex offenders to register (G.S. 20-9.3).

S.L. 2006-247 also prohibits DMV from issuing a license to a person required to register unless the person proves he or she has in fact registered [G.S. 20-9(i)]. To comply with this requirement, DMV must determine if each applicant who has not been a resident of North Carolina for at least six months is required to register, by checking the National Sex Offender Registry. If the registry does not indicate that the person should register, then the person must file an affidavit indicating they do not have to register. If DMV is not able to access the registry at the time the license is issued, it must obtain an affidavit from the applicant and must also search the registry as soon as possible. If the search then reveals that the person is required to register, DMV must revoke the license issued and notify the sheriff in the person's county of residence. A person denied a license because of this requirement may obtain judicial review in superior court of DMV's decision. The judge hearing the matter must "take testimony and examine into the facts of the case and determine whether" the person is entitled to a license. Similar requirements are added for issuance of identification cards by DMV.

## **Renewal Cycle**

G.S. 20-7 puts most drivers on a five-year renewal cycle, keyed to birthdays that end in a zero or a five (twenty-five, thirty, etc.). There are exceptions for drivers under eighteen and over sixty-two who are issued their first license at those ages. S.L. 2006-257 (H 267) changes that cycle to an eight-year cycle for drivers between eighteen and fifty-four. Drivers under eighteen receive licenses that expire on their twenty-first birthdays, and drivers fifty-four and older receive licenses valid for only five years. The act is effective January 1, 2007.

S.L. 2006-257 also requires DMV to stop printing licenses in its driver's license offices. Effective July 1, 2008, DMV must produce the licenses in a central location and mail them to residence addresses. Licenses may not be sent to a post office box. To facilitate this change, DMV will issue temporary permits valid for twenty days when a person qualifies for a license. That twenty-day period is intended to cover the time needed for production and mailing of the license. The temporary permit is not valid for identification purposes. The law is unclear as to how a person who needs the driver's license for identification purposes (such as air travel) will satisfy that need during the time covered by the temporary permit.

## **Registration**

S.L. 2006-135 (H 1399) amends G.S. 20-51 to exempt from the annual vehicle registration process any trailer used in tandem with a licensed motor vehicle if the trailer is used by a farmer to transport vegetables, fruits, greenhouse or nursery plants and flowers, or Christmas trees on the farm or from farm to market. There are similar exemptions for many other agricultural trailers already included in the same statute.

S.L. 2006-209 (S 1373) continues what has become an annual event in the General Assembly—the creation of special license plates for charities, causes, and colleges. This year’s version authorizes the creation of plates to honor the following entities and people:

- Carolina Aviation Museum
- Emergency Medical Technician
- Fox Hunting
- Greyhound Friends of North Carolina
- Gold Star Lapel Button
- Kappa Alpha Psi Fraternity
- Leukemia and Lymphoma Society
- Lung Cancer Research
- N.C. Children’s Promise
- Prince Hall Mason
- Support Our Troops
- U.S. Equine Rescue League

There are now well over one hundred special license plates. Nearly all the plates have additional fees, and each has a special logo appropriate to the charity, cause, or college. A few are exempted from the requirement that the license plate contain the phrase “First in Flight.”

## **Equipment**

### **Seat Belts**

In 1981 the General Assembly required children to be placed in child restraint systems while they were being transported in motor vehicles. In 1985 the General Assembly required front seat passengers in motor vehicles to wear set belts (G.S. 20-135A). S.L. 2006-140 (S 774) amends that statute to also require rear seat occupants of a motor vehicle manufactured with seat belts to have the belt fastened when the vehicle is in forward motion on a highway.

The debate on this issue was led by highway safety advocates and the Child Fatality Task Force. As is the case with almost all similar highway safety issues, it required the legislature to balance the need for individual choice with the societal benefits that result from the use of a safety measure. Advocates offered many statistics. For example, unbelted occupants accounted for 554, or 43 percent, of all motor-vehicle-related fatalities (380 drivers and 174 passengers) in the state in 2003; also, a person who is unrestrained is ten times more likely to suffer a severe injury and twenty times more likely to suffer a fatal injury when compared to people who are belted.

Violation of the new law is an infraction punishable by a \$10 penalty, and no court costs are assessed. Only warning tickets may be issued until July 1, 2007. For violations by drivers or front seat passengers, the existing \$25 penalty and \$75 court cost assessment remain in effect. Vehicles may not be stopped solely for a violation of the rear-seat seat-belt law. People with a fear of being restrained or who have a valid medical reason to not use seat belts are exempted from the law if they follow the exemption procedure and they do not drive a commercial vehicle.

Commercial vehicles have previously been exempted from the seat belt law. S.L. 2006-140 eliminates that exemption and limits the current exemption for property-hauling vehicles to intrastate commerce. It also exempts occupants of motor homes from seat belt requirements if they are not in the front seats of vehicles.

### **Cell Phones**

Distracted drivers are a leading cause of motor vehicle crashes. While there are many kinds of distractions that can affect a driver, cell phone use has been the subject of the most legislative activity around the country. In 2005 thirty-eight states considered legislation regulating some

aspect of cell phone use in vehicles and twenty-four states passed laws regulating their use. S.L. 2006-177 (S 1289) is the first North Carolina legislation on this subject.

S.L. 2006-177 prohibits a person under eighteen from using a mobile telephone (or any technology that allows one to use a mobile phone) while the person is operating a motor vehicle that is in motion on a highway or public vehicular area. Violation of the statute (G.S. 20-137.3), standing alone, is not a basis for seizure of the phone. Violation is an infraction punishable by a \$25 penalty. No court costs are allowed and no driver's license or insurance points may be assessed. The law exempts calls to or from the operator's parent, guardian, or spouse and emergency calls to law enforcement, fire departments, or medical personnel.

In addition to the new infraction offense, S.L. 2006-177 also amends the graduated license statute, G.S. 20-11, which requires minors to progress through three stages of restrictions (limiting times and numbers of passengers) as they begin driving. S.L. 2006-177 delays a minor's movement to the next, less restrictive level for at least six months from the date he or she is convicted of the new cell phone offense. (Evidence of the use of a cell phone in violation of the graduated license statute may be introduced in evidence in any proceeding, but is not negligence per se.)

### **All-Terrain Vehicles**

In 2005 the General Assembly enacted a comprehensive set of regulations for all-terrain vehicles that covers their use on and off of streets and highways. S.L. 2006-259 (S 1523) makes a minor change in that law. It allows electric power company workers to be exempt from the requirement that they use federally approved helmet and eye protection gear if they use equipment that is certified by the state labor department for that purpose.

### **Impaired Driving**

Impaired driving is one of the most frequent and publicly debated crimes in North Carolina. In 1983 the General Assembly completely revised the impaired driving statutes in an act known as the Safe Roads Act. Since then, nearly every session has produced changes to the statutes regulating drinking and driving. In the years since 1983, the "per se" level (commonly referred to as the legal limit) has been lowered from .10 to .08; commercial drivers subjected to special, more restrictive rules; and repeat offenders subjected to numerous special restrictions (ignition interlock requirements, lower per se levels, mandatory treatment, forfeiture of vehicles). S.L. 2006-253 (H 1048) is the most comprehensive set of amendments since 1983 to the laws on driving while impaired (DWI).

S.L. 2006-253 originated with a study by the Governor's Task Force on Driving While Impaired. In 2005 the task force reported to the Governor and two bills were introduced incorporating many of its recommendations. Both the House of Representatives (in 2005) and the Senate (in 2006) spent many committee meetings considering the bills. S.L. 2006-253, the result of these efforts, became effective December 1, 2006.

The changes made by S.L. 2006-253 affect impaired driving cases from the point of sale of alcohol (by regulating the sale of kegs of beer) to the restoration of a person's license and his or her parole from prison. They provide specific procedures applicable only to the investigation, prosecution, and trial of impaired driving cases. The overall bill, as described by Sen. Tony Rand, a task force co-chair and sponsor of the Senate version, "goes a long way toward making sure that DWI laws are applied equally around the state" ("Easley Approves Tough New DWI Laws," *Charlotte Observer*, August 22, 2006). Governor Easley, in signing the legislation, stated: "It'll make it more difficult for lawyers to cut deals for clients charged with DWI. There's not going to be a lot of room for wheeling and dealing. We want to send a clear signal that North Carolina is not going to allow people to drink and drive in the state without severe consequences." In task force meetings, in legislative committee discussions, and in press reports, it was frequently

mentioned that the legislation was developed in a context in which conviction statistics, as reported by the *Charlotte Observer* in 2004, varied across the state in 2002 and 2003 from a low of 10 percent in some counties to a high of 90 percent in others.

### Substantive Offenses

**Impaired driving.** While there are numerous offenses concerning drinking and driving, the primary offense is impaired driving, as codified in G.S. 20-138.1. S.L. 2006-253 directly addresses the issue of convictions by specifying that the result of a chemical analysis is “deemed sufficient evidence” to prove a person’s alcohol concentration for purposes of establishing the person’s guilt under the per se laws. The *Charlotte Observer* report found that approximately one-third of all persons charged with impaired driving who had an alcohol concentration (as indicated by a law enforcement breath or blood test) above that amount were not convicted. The task force, and presumably the legislature, wanted that percentage to be reduced. S.L. 2006-253 also adds an additional offense: Driving with any Schedule I controlled substance or its metabolites in one’s blood or urine is a per se violation of the impaired driving offense. It also deletes exemptions currently in the law for lawnmowers and bicycles, which means that driving on either is now covered by the impaired driving offense. It also makes similar changes to the per se provisions of the commercial impaired driving statute, G.S. 20-138.2.

**Habitual impaired driving.** Habitual impaired driving is a felony. It applies to persons convicted of impaired driving who have three previous convictions. For purposes of determining if prior convictions are counted, S.L. 2006-253 extends the look-back period from seven to ten years.

**Death or injury caused by impaired driving.** Previously there have been several statutes that punish vehicular homicides caused by impaired drivers (felony death by vehicle, manslaughter, or second degree murder), but no felony offenses for an impaired driver causing serious injury. S.L. 2006-253 raises the punishment for felony death by vehicle to a Class E felony, adds additional felonies for causing death, and creates new felonies when serious injuries are involved. The new aggravated felony death by vehicle applies when a person causes a death by driving impaired and, at the time, has a previous conviction of DWI or a related offense. It carries a Class D felony punishment. Repeat felony death by vehicle applies if a person commits a second felony death by vehicle offense. It is punished at the same class as second degree murder, which is Class B2. In addition there are two new crimes that make it a felony for an impaired driver to cause serious injury to another. If it is a person’s first offense, it is a Class F felony, and if the person has a previous impaired driving offense, it is a Class E felony.

**Driving after notification or failure to appear.** S.L. 2006-253 adds two offenses to the driving while license revoked statute—G.S. 20-28. The first makes it an offense to drive on a highway with a revoked license for an impaired driving offense after DMV has sent notification in the mail of the revocation. The second makes it an offense to fail to appear for two years from the date of the charge after being charged with an implied-consent offense such as impaired driving. For each offense, a person’s license is revoked.

### Driver’s License Changes

**Commercial DWI.** For several years people convicted of the offense of impaired driving in a commercial vehicle have been under the same license revocation rules as a person convicted in a noncommercial vehicle. S.L. 2006-253 limits DMV’s authority to revoke a driver’s license for conviction of impaired driving in a commercial vehicle to those cases in which the driver’s alcohol concentration is .06 or higher. (Holders of commercial driver’s licenses—which authorize them to drive very large vehicles—are also subject to special rules applicable only to the authority to drive those commercial vehicles. That law is not changed by S.L. 2006-253.) The effect of this change is that commercial drivers who are convicted with alcohol concentrations that are sufficient to trigger the commercial DWI offense (.04), but are well below the regular DWI offense (.08), may continue to drive noncommercial vehicles. In an example of the extent to which the legislature is

seeking to constrain judicial and prosecutorial discretion in these cases, the law specifies that a chemical analysis result is conclusive and the judge may not alter it. Thus, the law enforcement officer's report of the alcohol concentration is conclusive for purposes of establishing the status of the person's license.

**DMV hearings.** G.S. 20-16.2 provides that a person who refuses to take a breath, blood, or urine test to determine alcohol concentration will have his or her driver's license revoked for one year. The person is entitled to a DMV hearing and then to a review of the matter by the superior court. In a significant change in procedure, S.L. 2006-253 alters the standard of review of the DMV decision. Currently, the superior court judge will review the matter *de novo*, which means the matter is heard as though there had been no DMV hearing. S.L. 2006-253 amends G.S. 20-16.2(e) to provide that the hearing in superior court is limited to a determination of whether there is sufficient evidence in the record to support the DMV findings of fact and conclusions and whether the conclusions are consistent with law.

**Interlock procedure.** All drivers convicted of impaired driving lose their driver's license as a result of the conviction. Those with an alcohol concentration of .16 or more or those who are repeat offenders must install ignition interlock devices in any vehicle they drive as a condition of getting their licenses reinstated. Some drivers who are subject to that requirement have been unable to effectively use the interlock device because of medical problems. In *State v. Benbow*, 169 N.C. App. 613, 610 S.E. 2d 297 (2005), the North Carolina Court of Appeals ruled that judges had no authority to exempt persons from this requirement; the court also invited the legislature to consider whether an exemption for legitimate medical reasons was appropriate. S.L. 2006-253 amends G.S. 20-17.8 to add such a medical exception to the interlock reinstatement requirement. The medical condition must make the person incapable of personally activating the interlock and two physicians must certify the existence of the medical condition. DMV decides whether to grant the exemption based on the medical advice it receives. The DMV administrative decision may be reviewed by the DMV Medical Review Board under G.S. 20-9.

**DMV notice of revocation.** G.S. 20-48 specifies the procedure that DMV must follow in notifying people that their licenses are revoked. S.L. 2006-253 simplifies the method of proof required for the prosecutor to prove that the notice was sent. Proof of notice is a common issue in the prosecution of driving while license revoked offenses. As amended, G.S. 20-148 allows DMV to include a notation in its records that the notice was given to a particular address for a specified purpose. DMV no longer has to provide a certificate or affidavit of a DMV employee, and it may send "certified" copies by the state computer system or by fax.

### **Investigation and Detention Changes**

S.L. 2006-253 makes significant changes to the statutes regulating investigation of impaired driving and related offenses.

**Checkpoints.** S.L. 2006-253 rewrites G.S. 20-16.3A, which provides statutory guidance in the conduct of checkpoints used in motor vehicle law enforcement. Checkpoints are useful in detecting impaired drivers and in deterring impaired driving behavior, given their unpredictability. As amended, G.S. 20-16.3A applies to all license and impaired driving checking stations and roadblocks. Previously the statute applied only to impaired driving checks—license checks were not covered by the statute at all. Checking stations operated to determine compliance with motor vehicle law must now be operated pursuant to G.S. 20-16.3A. Checking stations operated for other purposes, such as to gather information about a crime or to apprehend a fugitive are not covered by the statute but must comply with state and federal constitutional provisions regulating governmental searches and seizures.

G.S. 20-16.3A has required agencies conducting checkpoints to have a written policy regulating the use of checkpoints. That policy must now include guidelines for establishing the pattern for a particular checkpoint. The pattern, however, need not be in writing. Locations must be random or statistically indicated, but violation of that requirement is not a basis to suppress evidence. An individual officer is not prevented from patrolling or monitoring a particular location on something other than a random or statistically indicated basis.

**Roadside breath tests.** G.S. 20-16.3 regulates the use of portable breath-testing devices used by law enforcement officers to make screening decisions about the extent to which a driver has been drinking alcohol. S.L. 2006-253 clarifies the rules under which the results may be used. The test results may be used to show that a person had a positive or negative test result, but specific readings may not be used. The results may be used only for the following purposes: to help determine if reasonable grounds exist to believe the driver had committed an implied consent offense and the driver had consumed alcohol; to help determine (by negative results) if the impairment is caused by something other than alcohol; and to establish that a person has been drinking in cases in which a zero tolerance is established (zero tolerance statutes make it a crime to drink any alcohol and then drive while that alcohol is in the driver's body).

**Law enforcement jurisdiction.** S.L. 2006-253 expands law enforcement officers' authority to investigate an implied consent offense to include any location in the state and to authorize officers to seek evidence out of state. This provision will allow officers who serve border counties to seek evidence in impaired driving cases in which the driver lives in another state. It does not give the officer any power in the other state to arrest or to seize property unless the other state confers that power on a North Carolina officer.

**Magistrate procedures.** S.L. 2006-253 provides detailed procedures magistrates must follow in impaired driving cases, in addition to the general rules applicable to criminal cases. The most significant requires the magistrate to notify any person arrested for an implied consent offense that he or she may have others come to the jail to observe his or her condition. (There is a similar requirement when a person's breath is being tested.) The notice must be in writing and must include procedures that the person observing may follow to actually get access to the person arrested. Typically, by the time the observer arrives, the person is in custody in a jail, where access may be difficult to arrange. Finally, the magistrate must require a person unable to make bond to furnish names and phone numbers of people he or she wishes to contact to assist in that process. The chief district judges, district attorneys, sheriffs, and the Department of Health and Human Services must consult with one another to develop the written access procedure.

**Alcohol concentration reports.** S.L. 2006-253 requires law enforcement officers and chemical analysts to report alcohol test results, by affidavit, to DMV when the test indicates that a person charged with impaired driving has an alcohol concentration of .16 or higher. DMV, when it receives such an affidavit, is then authorized to require that persons convicted of impaired driving install an ignition interlock device in their vehicles as a condition of restoration of the driver's license. (Conviction of impaired driving carries a penalty of revocation for at least one year).

### **Trial Procedure and Evidence Changes**

S.L. 2006-253 adds a new Article 2D (20-38.1 through -38.7) to G.S. Chapter 20 to set out special trial procedures for implied consent cases handled in district court. The changes are not applicable to the trial of any other kind of case heard in the district court. They deal primarily with the manner in which defense motions to suppress evidence are handled and with the evidence rules followed in those cases. The evidence rules generally apply in both superior and district courts.

**Motions.** The new law requires that defense motions to suppress or dismiss the charges must generally be made before trial, except for motions to dismiss at the close of the state's or the defendant's case and motions based on new facts not known to the defendant before trial. In a significant departure from the procedure generally followed in implied consent cases, in most cases the district judge cannot render an oral decision. He or she must prepare a written order in each motion. If the judge is inclined to grant the motion, he or she must wait until the state either appeals to superior court or decides not to appeal before making a final ruling. In cases in which that process is followed, the appeal of the motion will also postpone the trial in district court on the charge. If the preliminary ruling on the motion is appealed, the superior court considers the matter de novo. A defendant who loses a pretrial motion may not appeal the decision, but may appeal to superior court if he or she is convicted.

**Sentencing in district court.** S.L. 2006-253 provides that if a convicted defendant appeals to superior court, any judgment is vacated; if the case is eventually remanded back to district court, a

new sentencing hearing must be held, and the sentencing judge must consider any new or pending charges and wait until those charges are disposed of.

**Evidence rules.** In *State v. Helms*, 348 N.C. 578, 504 S.E. 2d 293 (1998), the North Carolina Supreme Court limited, but did not prohibit, the use of Horizontal Gaze Nystagmus (HGN) test results in state courts. The test measures the point at which the eye recognizes light in peripheral vision and the point where this occurs in persons affected by alcohol consumption. As a result of *State v. Helms*, the use of HGN tests has been restricted in North Carolina. S.L. 2006-253 eases the evidentiary burden imposed by *Helms*. It allows introduction of the test results if offered by a person who has been trained in the test's administration and interpretation of the test data, and it allows that person to testify about whether the driver is under the influence of an impairing substance and what category of substance caused the impairment. It also allows Drug Recognition Expert (DRE) testimony by personnel trained in the DRE protocols. (DREs are trained in the detection of the effects of drugs on a person). The witness must still qualify as an expert.

S.L. 2006-253 directs judges to take judicial notice (that is, allow in evidence without going through the formal process of introducing witnesses to testify about the matter taken notice of) of various kinds of evidence of governmental records relevant in impaired driving cases, including records relating to the officer's status as a chemical analyst, preventative maintenance records, and so forth.

S.L. 2006-253 also simplifies the procedures used to introduce test results from blood or urine samples taken in impaired driving cases. The results may generally be admitted without a personal appearance by the lab technician to testify about the lab procedures. Finally, it allows testimony of a chemical analyst by affidavit in district court, unless the defendant provides detailed reasons for requiring the analyst's presence. This rule is in contrast to the general practice in which parties may subpoena witnesses more easily.

### **Sentencing Changes**

Many convicted impaired drivers receive fairly short jail sentences and serve them on weekends. The law has not been specific about the method a jailer should use to determine if the amount of time served satisfies the court's order. S.L. 2006-253 specifies that in impaired driving cases a defendant must serve each hour ordered (in some cases defendants were getting credit for an entire day even if they did not remain in the jail the entire day). If the sentence is for forty-eight hours or more, it must be served in minimum increments of forty-eight hours. S.L. 2006-253 also removes the power of judges to satisfy the mandatory sentencing requirements of the impaired driving statute by imposing a period of nonoperation of a motor vehicle; now the judge must require first offenders to either serve jail time or do community service as a probation condition. Finally defendants convicted of impaired driving who are paroled must be sent to a residential treatment facility, be placed on community service parole, or be subject to electronic monitoring during the parole period.

### **Vehicle Forfeiture**

Under current law, if a repeat impaired driving offender drives with a license revoked for impaired driving conduct, the vehicle is seized and, in most cases, forfeited. S.L. 2006-253 extends the coverage of the forfeiture laws to persons charged with impaired driving and who at the time of the offense had neither a valid driver's license nor insurance.

### **Data Collection Changes**

S.L. 2006-253 proposes to make data about impaired driving prosecutions much more detailed and publicly available. The act requires prosecutors to enter detailed explanations in writing any time they take an action to dismiss or reduce an impaired driving or a related charge. Clerks of court have to keep more detailed information about dismissal by a judge. They must keep related records for at least ten years. And the Administrative Office of the Courts (AOC)

must provide an annual report to the legislature and must maintain a website on vehicle/alcohol case data. That database must include types of dispositions for the whole state and by county, judge, prosecutor, and defense attorney. The database also must include fines and costs imposed and collected and compliance data for community service, jail, and substance abuse assessment, treatment, and education. Several of these requirements become effective only after the AOC rewrites its criminal information system.

## **School Bus Passing Violations**

In 2005 the General Assembly made it a felony to pass a stopped school bus in violation of the law and willfully injure a person in doing so. That formulation of the offense made it very difficult to prove a violation. Typically the violation is willfully committed, but the injury that results is not. S.L. 2006-259 (S 1523) rewrites that offense to require the bus passing violation to be willful, not the injury itself.

S.L. 2006-160 (H 2880) also amends the school bus passing law to prohibit judges from entering prayer for judgment continued orders in those cases. Prayers for judgment continued are entered by judges after a determination that a person is guilty in order to postpone the entry of a judgment and sentence in the case. In some cases the postponement is temporary. In most traffic cases, the postponement is indefinite and effectively resolves the case without the person receiving a conviction. In those cases court costs are assessed, but unless a person receives more than one such order, there are no insurance or driver's license consequences. Impaired driving is the only other motor vehicle offense in which judges are prohibited from issuing prayer for judgment continued orders.

## **Insurance**

Insurance coverage or its equivalent in other kinds of financial responsibility for liability is a requirement for vehicle registration in North Carolina. S.L. 2006-213 (S 881) modifies the rules applicable to people who let that insurance coverage lapse. S.L. 2006-213 replaces a rule that required a mandatory thirty-day suspension of the vehicle registration with a graduated sanctioning procedure. When DMV is notified that the vehicle owner no longer has insurance, DMV must notify the owner by letter. If the owner does not respond within ten days, the vehicle registration is revoked until the owner responds. If the owner responds and demonstrates that there was no lapse in coverage, the DMV rescinds any revocation orders. If the owner responds and demonstrates that he or she now has coverage and that there were no accidents involving the vehicle while it was uninsured, the owner must pay a penalty (ranging from \$50 to \$150, depending on the owner's previous record), but there is no registration revocation. If the owner does not have insurance at the time of the response or if there was an uninsured accident in the vehicle, the owner's registration is revoked, and the same penalty is assessed. The period of revocation is thirty days if there was an uninsured accident or until the owner obtains insurance in all other situations. This new procedure becomes effective July 1, 2008.

S.L. 2006-264 (S 602) waives the normal penalties that apply for lapses in auto liability insurance coverage for any person who was deployed as a member of the United States Armed Forces outside of the continental United States for a total of forty-five or more days at the time of the notice of the lapse in insurance. In addition, no insurance points under the Safe Driver Incentive Plan are assessed for a violation for which the monetary penalty or restoration fee is waived. The law also provides that the person has an affirmative defense to any criminal charge based upon the failure to return any registration card or registration plate to DMV. Upon reregistration the person receives the necessary registration cards or plate without costs and is permitted to transfer the vehicle's registration immediately to his or her spouse, child, or spouse's child.

## Local Acts

Three local acts continued trends from recent years. S.L. 2006-27 (S 1328) and S.L. 2006-149 (H 2027) allow the city of Saluda and the towns of Benson, Bladenboro, Caswell Beach, Chadbourn, Faison, and Tabor City to allow and regulate golf cart use on municipal streets. In recent years several other local governments have received legislative authority to do the same thing. Most of the towns may allow use of golf carts, but the local ordinance may require registration (and charge a fee), require certain equipment (such as seat belts or rear view mirror and reflectors), limit loads and hours of operation, and, in some cases, specify who may operate the golf carts.

S.L. 2006-25 (H 2273) allows the use of all-terrain vehicles by law enforcement officers in the town of Highlands and by law enforcement officers and municipal and county employees in the towns of Cramerton and Dallas and in Currituck County. Legislation passed in 2005 prohibited the operation of all-terrain vehicles on streets and highways, so this exception was necessary to allow law enforcement and other governmental officials to use these vehicles on highways. S.L. 2006-264 (S 602) also amends the local acts authorizing law enforcement officers to use all-terrain vehicles to require that the vehicles be motorized.

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