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Miscellaneous

During the 2007 legislative session, the General Assembly made changes to several miscellaneous subjects, including administrative procedure, identify theft, wildlife, and boating. These changes are summarized below.

Administrative Procedure Act

S.L. 2007-491 (S 242) changes the administrative and judicial process for protesting tax decisions. The act moves appeals of decisions made by the Department of Revenue into a special class of contested cases under the State Administrative Procedure Act (APA). A new statute, G.S. 150B-31.1, sets out the procedure for contested tax cases. The Chief Administrative Law Judge is authorized to create simple procedures for pro se tax litigants. Venue is set in Wake County unless the parties agree to another location. The proceedings are confidential until the final decision is rendered. Judicial review of final decisions in contested tax cases works as provided for other cases under the APA, although the act requires the taxpayer to pay the amount of tax, penalties, and interest declared by the final decision to be due during the pendency of the appeal. The act also repeals G.S. 150B-28(b), which governs agency responsibility in all contested cases to make records available. Finally, the act provides for hearing constitutional claims by taxpayers, which are not within the jurisdiction of the Office of Administrative Hearings.

Identity Theft Legislation

Two bills enacted by the 2007 General Assembly seek to protect against identity theft. The first is S.L. 2007-534 (H 454), which amends the Identity Theft Protection Act, enacted in 2005 and codified as Article 2A of G.S. Chapter 75. In general the 2005 legislation imposed limitations on how private businesses might use Social Security numbers and set out mandatory notification procedures when a business suffered an unauthorized access into records it held about individuals. S.L. 2007-534 amends Article 2A to prohibit the broadcast or publication of “personal information” when the person whose information is being disclosed has previously objected to such a disclosure. The categories of information protected by this new act are mostly the same list of personal information found in G.S. 14-113.20, which prohibits theft of this information. The

most important sorts of protected information are Social Security and taxpayer identification numbers, driver's license numbers, bank account numbers, and bank card numbers. If the statute is violated, the person whose information is wrongly released is given an action for actual damages, up to \$5,000, against the person or entity broadcasting or publishing the information, plus the possibility of treble damages. The act was effective December 1, 2007.

The second act is S.L. 2007-374 (S 1058), which enacts the Telephone Records Privacy Protection Act as Article 19D of G.S. Chapter 14. In general the act prohibits a person from obtaining or seeking to obtain telephone records about a particular telephone customer through fraudulent means. It appears to have been triggered by the wide publicity given to the use of such tactics by a company investigating certain officers and employees of Hewlett-Packard Corporation. Violation of new Article 19D is a Class H felony; in addition any person whose telephone records are improperly obtained, sold, or solicited is given the right to seek civil damages under G.S. 75-16, which permits treble damages as well as actual damages. This act was effective December 1, 2007.

Wildlife and Boating

Wildlife Emergency Powers

S.L. 2007-401 (S 1464) enacts new G.S. 113-306 to authorize the Wildlife Resources Commission to adopt rules governing the exercise by the commission's executive director of emergency powers necessary to respond to wildlife disease threatening wildlife or the public. The statute specifies the emergency powers that may be granted to the executive director, requires the rules to provide for public notice, and requires the executive director to consult with named commissions and officials before exercising the emergency powers. The emergency powers may be exercised for up to ninety days unless a temporary rule is adopted by the commission.

Hunting

Effective October 1, 2007, S.L. 2007-401 amends G.S. 113-291.2 to remove the restrictions on the use of dogs and on the number of antlerless deer taken during a muzzle-loading-firearm deer season. The act also amends the statute to allow the executive director of the Wildlife Resources Commission, upon application by a landowner, to issue a license and deer tags to the landholder sufficient to meet the landholder's management objectives or correct a deer population imbalance (current law requires a survey of the deer population and allows the license to be issued if as a result of the survey it is determined that there is an overpopulation of deer or an imbalance in the population).

S.L. 2007-401 requires deer hunters to wear hunter orange during deer firearms season, allows the taking of beavers with bow and arrow, and prohibits intentionally feeding alligators outside of captivity. The act also amends G.S. 113-291.1(f) to provide that the authority of the Wildlife Resources Commission to modify the migratory bird provisions of Article 1 of G.S. Chapter 113 to conform with federal law includes allowing the use of electronic calls. Finally, the act directs the Wildlife Resources Commission to study issues related to the retrieval of wildlife wounded by hunters and report its findings to the General Assembly by May 1, 2008.

S.L. 2007-96 (S 1246) enacts new G.S. 113-294(r) effective October 1, 2007, making it a Class 2 misdemeanor to place processed food products as bait anywhere the Wildlife Resources Commission has set an open season for taking black bears.

Boating Fees and Waterfront Access

A study commission on assuring traditional users continued access to the waterfront led to the enactment of a package of recommendations on this topic. S.L. 2007-485 (S 646) increases boating funding effective January 1, 2008, by (1) providing that interest and other investment

income earned on the Boating Account created in G.S. 75A-3(c) accrues to the account and (2) amending G.S. 75A-5 to increase the fees for boat numbering, for renewal, and for a change in ownership from \$10 to \$15 for a one-year period and from \$25 to \$40 for a three-year period.

S.L. 2007-485 also allows use value property taxation of “working waterfront” property (commercial fishing piers and commercial fishing operations and fish houses) beginning with the 2009–10 tax year; creates an Advisory Committee for Coordination of Waterfront Access within the Department of Environment and Natural Resources; directs the Department of Transportation to expand public access to coastal waters in its road planning and construction program; provides for waiving permit fees for emergency permits under the Coastal Area Management Act; and directs the Division of Emergency Management in the Department of Crime Control and Public Safety to study ways to facilitate construction and repair of water dependent structures (such as fish houses) located in flood hazard areas.

Mountain Heritage Trout Waters Program.

S.L. 2007-408 (S 1303) amends G.S. 113-272.3(e) to direct the Wildlife Resources Commission to implement a Mountain Heritage Trout Waters Program to promote trout fishing as a heritage tourism activity. Effective July 1, 2008, the act also amends G.S. 113-272 to create a mountain heritage trout waters three-day fishing license with a fee of \$5.

Wildlife Conservation Account

S.L. 2007-448 (S 1365) provides that interest earned on the Wildlife Conservation Account created in G.S. 143-247.2 is credited to the account.

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