SUMMARIES OF SUBSTANTIVE RATIFIED LEGISLATION - 2003

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2003

2003 GENERAL ASSEMBLY
2003 REGULAR SESSION

RESEARCH DIVISION
N.C. GENERAL ASSEMBLY
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To the Members of the 2003 Session of the 2003 General Assembly:

This publication contains summaries of all substantive legislation of general applicability and certain local legislation having general import of the 2003 Regular Session. Most local bills are not analyzed in this publication. Significant appropriations matters related to the subject area specified are also included. For an in-depth review of the appropriations and revenue process, please refer to Overview: Fiscal and Budgetary Actions, prepared by the Fiscal Research Division.

The document is organized alphabetically by subject areas. Where feasible, the subject area is further divided into subgroups. Each subject area also includes a listing of legislative, independent, and agency studies. A bill/session law index listing the page number of each summary is at the end of the publication.

This document is the result of a combined effort by the following listing of staff members of the Research Division in alphabetical order: Sandra Alley, Dee Atkinson, Cindy Avrette, Brenda Carter, Drupti Chauhan, Erika Churchill, Karen Cochrane-Brown, Amy Compeau, Judy Collier, Tim Dodge, Bill Gilkeson, George Givens, Kory Goldsmith, Wendy Graf Ray, Tim Hovis, Jeff Hudson, Shirley Iorio, Dianna Jessup, Robin Johnson, Sara Kamprath, Theresa Matula, Jennifer McGinnis, Hal Pell, Giles Perry, Barbara Riley, Walker Reagan, Steve Rose, and Mary Shuping. Also contributing are Martha Harris and Canaan Huie of the Bill Drafting Division, and Martha Walston of the Fiscal Research Division. Trina Griffin is the chief editor of this year's summaries, and Theresa Matula is the co-editor. Dickie Brown and DeAnne Mangum of the Research Division also helped with the editing of this document. The specific staff members contributing to each subject area are listed directly below the Chapter heading for that area. The staff members' initials appear after their names and after each summary they contributed. If you would like further information regarding any legislation in the various summaries, please contact the Research Division Office at (919) 733-2578.

This document is also available on the World Wide Web. Go to the General Assembly's homepage at http://www.ncga.state.nc.us. Click on "Legislative Publications." It is listed under Research. Each summary is hyperlinked to the final bill text, the bill history, and any applicable fiscal note.

It is hoped that this document will provide a useful source of information for the members of the General Assembly and the public in North Carolina.

Yours truly,

Terrence D. Sullivan
Director of Research

Guide to Staff Initials

(SA) Sandra Alley
(DB) Dickie Brown
(AC) Amy Compeau
(BC) Brenda Carter
(BG) Bill Gilkeson
(BR) Barbara Riley
(CA) Cindy Avrette
(CH) Canaan Huie
(DA) Dee Atkinson
(DC) Drupti Chauhan
(DJ) Dianna Jessup
(EC) Erika Churchill
(GG) George Givens
(GSP) Giles S. Perry
(HP) Hal Pell
(JC) Judy Collier
(JH) Jeff Hudson
(JM) Jennifer McGinnis
(KCB) Karen Cochrane-Brown
(KG) Kory Goldsmith
(MH) Martha Harris
(MS) Mary Shuping
(MW) Martha Walston
(RJ) Robin Johnson
(SI) Shirley Iorio
(SK) Sara Kamprath
(SR) Steve Rose
(SS) Susan Sitze
(TD) Tim Dodge
(TH) Tim Hovis
(TG) Trina Griffin
(TM) Theresa Matula
(WGR) Wendy Graf Ray
(WR) Walker Reagan

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Erika Churchill (EC) and Barbara Riley (BR)

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General Discharge Permits/Animal Operations

S.L. 2003-28 (SB 733). See **Environment and Natural Resources**.

Fertilizer Packaging Nutrient Guarantees

S.L. 2003-71 (SB 731) allows the sale of superphosphate containing less than 18% available phosphate and other mixed fertilizers, where the guarantees for nitrogen, available phosphate, or soluble potash are in fractional percentages, to be sold in packages of 32 ounces or less (dry or liquid). The law previously limited such packages to 16 ounces or less.

This act also allows the Board of Agriculture to adopt temporary and permanent rules to establish rental rates for the use of farmers markets and agricultural centers operated by the Department of Agriculture and Consumer Services.

This act became effective May 20, 2003. (BR)

Veterinary Board Agreements/Impaired Vets

S.L. 2003-139 (HB 978). See **Occupational Licensing Boards and Commissions**.

Farm Machinery Law/Notice of Termination

S.L. 2003-195 (HB 116). See **Commercial Law and Consumer Protection**.

Extend Swine Moratoria

S.L. 2003-266 (SB 593). See **Environment and Natural Resources**.

Study Commercial Production of Turtles

S.L. 2003-284, Sec. 10A.1 (HB 397, Sec. 10A.1) directs the Department of Agriculture and Consumer Services, in cooperation with the Agricultural Research Service at North Carolina State University, to investigate the potential for the commercial production of turtles for food and other commercial purposes. The Department shall report its findings to the Appropriations Subcommittees on Natural and Economic Resources for both the House and Senate, and to the Chairs of the Senate Committee on Agriculture, Environment, and Natural Resources and the House Agriculture Committee no later than April 1, 2004.

This section became effective July 1, 2003. (BR)

Clarify Authority/Regulation of Cervids

S.L. 2003-344 (HB 948) has its roots in the controversy over the adoption of rules by the Wildlife Resources Commission (WRC) and the North Carolina Department of Agriculture and Consumer Services to protect the State's white-tailed deer population and farmed deer population from the disease known as Chronic Wasting Disease (CWD). CWD is a fatal neurological disease of farmed and wild deer and elk.

The act makes the following changes:

- Amends the definition of "big game" animals to include only white-tailed deer. It removes the language exempting red deer and fallow deer.
- Amends the definition of "cervid" to mean all animals in the Cervidae family (elk and deer).
- Defines "deer" to mean white-tailed deer and defines "farmed cervid" to mean any member of the cervidae family other than white-tailed deer, elk, mule deer, or black-tailed deer, that is bought and sold for commercial purposes.
- Requires the WRC to regulate the transportation of cervids and licensing of captive cervid facilities. This includes the transportation, importation, exportation, and possession of cervids, including game carcasses and parts of game carcasses. The WRC is to adopt rules for the licensing of captive cervid facilities including rules on fencing, tagging, record keeping, and inspections of captive cervid facilities. The WRC is given the authority to charge a fee of up to $50 to process applications for captivity licenses, captivity permits, and transportation permits, and the renewal or modification of those licenses and permits. The fees collected are to be applied to the costs of administering the regulation of transporting and licensing cervids.
- Provides that the WRC may issue captivity licenses to persons with cervids held prior to May 17, 2002, if the Executive Director finds that the person has complied with all rules applicable to the holding of cervids in captivity by January 1, 2004, and that the issuance of the captivity license does not present a unreasonable risk to the State's wildlife.
- Provides for the forfeiture and disposition of any cervids held contrary to the regulatory provisions of this act.
- Amends G.S. 113-276.2 to make that section applicable to transportation permits and licensing of captive cervid facilities. G.S. 113-276.2 requires the Executive Director of the WRC to satisfy himself that the qualifications for licenses and permits are met by the applicant and provides for license revocations and refusals to reissue permits or licenses based upon failure to meet the qualifications requirements or the commission of a substantial violation of the wildlife statutes or rules governing the permit or license.
- Provides for regulation of the importation, possession, or transportation of game carcasses that are suspected of carrying an infectious or contagious disease that presents an imminent threat to wildlife in the State.
- Expands the authority of the WRC to regulate the import, possession, transportation, disposition, or release of plant and animal species that may create a danger to or imbalance in the environment that would be harmful to the conservation of wildlife resources, to include those species that may threaten the introduction of an epizootic disease.
- Makes the importation or possession of black-tailed or mule deer a Class 1 misdemeanor.
- Amends the statute regulating the production and sale of red deer and fallow deer by the Department of Agriculture and Consumer Services, to make it consistent with the definitions regarding farmed cervids. It also requires the Department to notify persons subject to its rules on farmed cervids that their activity is also subject to compliance with the WRC rules.

The criminal provision regarding the importation or possession of black-tailed or mule deer becomes effective October 1, 2003 and applies to acts committed on or after that date. The remainder of the act became effective July 27, 2003. (BR)

Prohibit State Purchase of Reconstituted Milk

S.L. 2003-367 (HB 974). See **State Government**.

Civil Penalties/Food, Drug and Cosmetics

S.L. 2003-389 (SB 751) gives the Commissioner of Agriculture the authority to impose a civil penalty of up to $2,000 for a violation of the Food, Drug and Cosmetic Act. Except in circumstances where the violation is likely to cause physical injury or illness, a person violating the Act must first be given written notice of the violation and an opportunity to correct the problem.

In setting the amount of a penalty, the Commissioner is required to consider the degree and extent of harm caused by the violation. Training and management practices implemented for the purpose of complying with the Food, Drug and Cosmetic Act shall be a mitigating factor in determining the amount of the civil penalty.

The clear proceeds of any civil penalties assessed under this section go to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

The act becomes effective December 1, 2003, and applies to violations occurring on or after that date. (BR)

Chapter 2
Alcoholic Beverage Control

Brenda Carter (BC), Hal Pell (HP), and Susan Sitze (SS)

Enacted Legislation

Restaurant ABC Permits

S.L. 2003-135 (HB 900) amends the definition of "restaurant" for purposes of obtaining ABC permits to reduce the percentage of gross receipts required from food and nonalcoholic beverages from 40% to 30%.

This act became effective June 4, 2003. (SS)

Township ABC Elections

S.L. 2003-218 (SB 19) allows ABC elections to occur in any township within the State, if the population of all cities in the county that have previously approved the sale of any kind of alcoholic beverages comprises more than 20% of the total county population.

This act became effective June 19, 2003. (SS)

Display Fetal Alcohol Syndrome Warning Signs

S.L. 2003-339 (HB 1118) requires the ABC Commission to develop and distribute warning signs regarding the dangers of alcohol consumption during pregnancy. The act outlines the size, composition, and message for the sign, specifically requiring that the message be presented in English, Spanish, and a graphic depiction. The Commission may charge no more than $25 for each sign and each ABC store is required to display the signs in a prominent location.

This act became effective July 20, 2003. The Commission and each local ABC board must be in compliance with this act within six months of the effective date. (SS)

ABC – Sexually Explicit Conduct Banned

S.L. 2003-382 (SB 996) rewrites the statutory prohibitions against sexually explicit conduct on premises licensed by the Alcoholic Beverage Commission (ABC). The purpose of the act was to address issues raised when a federal court enjoined the State from enforcing statutory and regulatory prohibitions against sexually explicit conduct on ABC licensees' premises. The court held that the existing statute and regulations were overbroad, in that they were applicable to performances at establishments that present mainstream entertainment events, including popular and award-winning musicals. The court also noted that there was insufficient evidence that the intent of the regulations was to avoid the negative collateral effects of sexually oriented businesses. The act deletes provisions from the law that were the subject of the federal litigation, and includes a statement of intent to address the harmful secondary effects of sexually explicit conduct at premises licensed by the Alcoholic Beverage Commission, including higher crime rates, public sexual conduct, sexual assault, and prostitution.

The act makes it unlawful to allow or engage in any of the following conduct on licensed premises:

- Any conduct or entertainment by a person whose genitals are exposed or who is wearing transparent clothing that reveals the genitals.

- Any conduct or entertainment that includes or simulates sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any act that includes or simulates the penetration, however slight, by any object into the genital or anal opening of a person's body.
- Any conduct or entertainment that includes the fondling of the breasts, buttocks, anus, vulva, or genitals.

The act provides an exception to persons operating theaters, concert halls, art centers, museums, or similar establishments when the performances presented are expressing matters with serious literary, artistic, scientific, or political value.

This act became effective August 1, 2003. (HP)

Wine Shippers Permits

S.L. 2003-402 (SB 668) authorizes the Alcoholic Beverage Control Commission to issue wine shipper permits that allow the direct shipment of wines to North Carolina residents.

A wine shipper permit is issuable to any winery holding a federal basic wine manufacturing permit, whether located within or outside this State. The fee for the permit is $100. A wine shipper permittee may sell and ship up to two cases of wine per month to any person in North Carolina to whom alcoholic beverages may lawfully be sold. A case is any combination of packages containing not more than nine liters of wine. Direct shipments must be by common carrier, and must require the recipient to show proof of age, and require the recipient to sign an acknowledgement of receipt. A notice specifying that the package contains alcoholic beverages and requires the signature of a person aged 21 or older for delivery, must be affixed to the outside of each package. All sales and shipments pursuant to a wine shipper permit must be for personal use only and not for resale. A wine shipper permit is not required if a person personally ships or authorizes the shipment of wines purchased while visiting the premises of a winery. A wine shipper permittee that ships more than 1,000 cases of wine per calendar year to addresses in this State must, if contacted by a wholesaler in this State that wishes to sell the wine shipper's products, appoint at least one wholesaler to offer the products for sale in this State.

The act also establishes a mechanism for collecting taxes due on wine shipped to North Carolina. Wine shipper permittees are required to pay the excise tax due on the wine and to collect the use tax due on the wine.

This act becomes effective October 1, 2003. (BC)

Permit Limit for Breweries

S.L. 2003-430 (SB 750) increases the ceiling on the amount a small brewery may produce without being required to go through a malt beverage distributor. The act specifically provides that areas where the sale is legal, the holder of a brewery permit may obtain a malt beverage wholesaler permit to sell malt beverages manufactured by the brewery provided its sales do not meet or exceed 25,000 barrels per year (formerly approximately 10,000 barrels).

This act became effective August 19, 2003. (BC)

Chapter 3
Animals and Wildlife

Wendy Graf Ray (WGR), Trina Griffin (TG), and Barbara Riley (BR)

Enacted Legislation

Contagious Animal Diseases/Extend Sunset

S.L. 2003-6 (SB 307) extends to October 1, 2005 the sunset on S.L. 2001-12, which was set to expire April 1, 2003. That act authorized the State Veterinarian, in consultation with the Commissioner of Agriculture and with the approval of the Governor, to develop and implement emergency procedures to prevent an outbreak of an infectious animal disease having the potential for very serious and rapid spread of serious socio-economic and public health consequence, or of major importance in the international trade of animals and animal products. Authorized emergency measures to include: restrictions on the transportation of potentially infected animals; emergency disinfectant procedures at portals of entry into the State; entry onto property to examine animals believed to be infected or exposed to disease; inspections without warrants of individuals and motor vehicles; quarantine of animals; and destruction of animals where necessary to control a contagious disease.

This act became effective April 1, 2003. (BR)

General Nondischarge Permits/Animal Operations

S.L. 2003-28 (SB 733). See **Environment and Natural Resources**.

Controlled Hunting/No Importation of Coyotes

S.L. 2003-96 (SB 245) amends G.S. 113-273, which allows the hunting of foxes with dogs on controlled preserves, to include the hunting of coyotes in the same manner.

The act also makes it a Class 1 misdemeanor to import a live coyote into the State. Controlled hunting preserve operators who are convicted of importing coyotes shall also have their operator's license suspended for two years.

This act becomes effective October 1, 2003. (BR)

Protect Certain Reptiles and Amphibians

S.L. 2003-100 (SB 825) authorizes the Wildlife Resources Commission (Commission) to adopt rules limiting, regulating, or prohibiting the taking, possession, transportation, collection, purchase and sale of species of Amphibia and Reptilia that do not meet the criteria for listing as a protected species, but that the Commission has determined require conservation measures to prevent the species from becoming listed. The Commission may not adopt rules to prohibit the taking of species solely to protect persons, property, or habitat. The rules must allow for the possession of 4 or fewer reptiles and 24 or fewer amphibians.

The act also prohibits the commercial taking of all species of turtles or terrapins in the families Emydidae and Trionychidae until the Commission adopts rules to regulate their taking. The turtles covered include the large basking turtles and sliding turtles. Commercial taking is defined as the taking, possession, collection, transportation, purchase or sale of five or more individual turtles from either of the two families. Persons who violate the turtle or terrapin provisions are guilty of a misdemeanor punishable as set forth in G.S. 113-135; however, this

does not apply to licensed veterinarians, bona fide zoos operated by the federal government, the State or a local government, or to bona fide scientific, biological, medical, or veterinary education or research.

The provision relating to Amphibia and Reptilia became effective May 31, 2003. The provision relating to turtles or terrapins became effective July 1, 2003, and applies to offenses committed on or after that date. (BR)

Veterinary Board Agreements/Impaired Vets

S.L. 2003-139 (HB 978). See **Occupational Boards and Licensing**.

Hunting with Pistols

S.L. 2003-160 (HB 1158) amends G.S. 113-291.1(g) to allow the taking of rabbits, squirrels, possums, raccoons and other fur-bearing animals with .22 caliber pistols having a barrel length of not less than 5 1/2 inches. Under prior law, the barrel length was required to be not less than six inches.

This act becomes effective October 1, 2003. (BR)

Civil Remedy for Animal Cruelty

S.L. 2003-208 (SB 669), which was a recommendation of the General Statutes Commission, makes the following amendments to the statutes governing civil remedies for the protection of animals:

- It provides a new definition of animals to include every living vertebrate in the classes Amphibia, Reptilia, Aves, and Mammalia, except humans.
- It revises the definition of cruelty and cruel treatment by moving the exceptions to a new section, and clarifying that the exception for animals under the regulation of the Wildlife Resource Commission does not include wild birds that are exempted from the Commission's definition of wild birds.
- It authorizes the court to terminate an animal owner's right of ownership and possession of an animal if the court finds by a preponderance of the evidence that a substantial risk of further cruelty exists even if a permanent injunction were issued.

Section 2 of this act authorizes a study regarding "puppy mills." For more information, see **Studies** in this chapter.

This act became effective June 19, 2003. (TG)

Permit Weapons at Johnston Community College Nature Center

S.L. 2003-217 (SB 167) amends G.S. 14-269.2(g) to add an exemption to the prohibition against possessing a gun on educational property to allow hunting at Howell Woods Nature Center when the person has the written permission of Johnston Community College.

This act became effective June 19, 2003. (BR)

Extend Swine Moratoria

S.L. 2003-266 (SB 593). See **Environment and Natural Resources**.

Horse Trailer/Weigh Stations

S.L. 2003-338 (HB 425). See **Transportation**.

Clarify Authority/Regulation of Cervids

S.L. 2003-344 (HB 948). See **Agriculture**.

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S.L. 2003-398 (HB 860). See **Health and Human Services**.

Studies

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Civil Remedy for Animal Cruelty

S.L. 2003-208, Sec. 2 (SB 669, Sec. 2) authorizes the General Statutes Commission, in consultation with the Department of Agriculture and Consumer Services, to study the need to regulate the unlimited breeding of dogs and cats and the animal cruelty resulting from the operations commonly referred to as "puppy mills." The General Statutes Commission may make an interim report to the 2003 General Assembly, Regular Session 2004, and must make its final report to the 2005 General Assembly.

This section became effective June 19, 2003. (TG)

Chapter 4
Children and Families

Sandra Alley (SA), Drupti Chauhan (DC), Erika Churchill (EC),
Dianna Jessup (DJ), and Wendy Graf Ray (WGR)

Enacted Legislation

Clarifying Change/Family Law Arbitration Act

S.L. 2003-61 (HB 952). See **Civil Law and Procedure**.

Clarify Definition of Protective Order

S.L. 2003-107 (SB 630). See **Civil Law and Procedure**.

Child Lead Poisoning Prevention Program Amendments

S.L. 2003-150 (SB 519) amends the law governing the North Carolina Childhood Lead Poisoning Prevention Program located within the Division of Environmental Health, Department of Environment and Natural Resources (Department). The Department proposed the act in response to more stringent environmental standards adopted by the federal Environmental Protection Agency in 2001. The act revises the Program's environmental lead hazard and clean-up standards and codifies programmatic procedures currently in place with respect to investigations and remedial actions when a child is suspected or confirmed to have been exposed to an environmental lead hazard.

The act codifies current environmental intervention policies in place pursuant to recommendations issued by the State Health Director in 1999. These policies include:

- All blood lead level test results from screenings conducted on children less than six years old must be reported to the Department, including tests that are negative for lead.
- A reasonable suspicion that a child has a blood lead level of 10 μg/dL or greater will trigger an intervention by the Department. The previous threshold was 15 μg/dL.
- The Department is given new authority to investigate the residential housing unit where a child with a blood lead level of 10 μg/dL or greater lives if the Department obtains informed consent of the owner or tenant of the property.

The act also:

- Updates the law to conform to revised environmental lead hazard standards.
- Requires the removal of vinyl miniblinds that constitute a lead hazard and any substances containing lead that is intended for use by children less than six years old.
- Provides that remediation is only necessary so long as the property continues to be used as a residential housing unit or child occupied facility.
- Changes the definition of "lead poisoning hazard."

This act became effective July 1, 2003. (SA)

Equitable Distribution Claim Survive Death of Spouse/Limit

S.L. 2003-168 (SB 394). See **Property, Trusts, and Estates**.

County Appeals of Certain Juvenile Orders

S.L. 2003-171 (HB 925). See **Local Government**.

AMBER Alert

S.L. 2003-191 (HB 478) makes changes to the North Carolina Child Alert Notification System (renamed in the act as the AMBER Alert System). The act requires law enforcement to send notice of missing children to the National Center for Missing and Exploited Children in addition to the North Carolina Center for Missing Persons. It also amends the criteria for an AMBER Alert by raising the age limit of children who may be subject to the alert from 12 to 17 years and eliminating the language that provides that information regarding children age 13 to 17 may be disseminated through the system as determined on a case-by-case basis. Under the act, the AMBER alert system now will broadcast information on missing children age 17 and younger, if the remaining criteria in the statute are met.

This act became effective June 12, 2003. (DJ)

Child Care Facilities/Penalties

S.L. 2003-192 (SB 877) enhances penalties for violations of the Child Care Facilities Act by providing the following:

- Violations by child care facilities, except for the noted exclusions, remain Class 1 misdemeanors. Violations by family child care homes, which were previously classified as Class 3 misdemeanors, also become Class 1 misdemeanors.
- Persons who operate without a license, in willful violation of the act's requirement to have a license, are subject to conviction of a Class I felony.
- Persons who provide child care to three or more children, for more than four hours a day on two consecutive days, and who willfully violate the act's provisions, are subject to conviction of a Class I felony.
- A person who violates the act and, as a result, causes serious injury to a child attending the child care facility, is subject to conviction of a Class H felony.
- A person who violates the act, and has a prior misdemeanor conviction for violating the act, is subject to conviction of a Class H felony.

The act also provides that it is unlawful to operate a child care facility without a license.

This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. (EC)

Summary Requirements/Child Care Facilities

S.L. 2003-196 (HB 1063) requires operators of child care facilities to provide the North Carolina Division of Child Development's (Division) summary of child care laws to parents and to post the summary in a prominent place in the facility.

Article 7 of Chapter 110 of the General Statutes sets out the requirements for the provision of child care by child care facilities. Child care facilities must meet certain minimum requirements to be licensed to operate in North Carolina. G.S. 110-102 requires the Secretary of the Department of Health and Human Services to provide operators of child care facilities with a summary of the requirements for child care under Article 7. Current law provides that the summary is to be distributed to parents, guardians, and full-time custodians of children receiving child care in the facility.

This act requires operators of child care facilities to provide the summary to a child's parent before the child is enrolled in the facility, and the parent is required to sign a statement attesting that he or she received a copy of the summary and that the summary was discussed

with him or her. The summary must include a statement on how parents can obtain information on individual child care facilities from the Division. The act also requires that the summary be posted in the same manner as the facility's license, as required by G.S. 110-99. Religious-sponsored child care facilities are also required to post the summary in a prominent place.

This act becomes effective October 1, 2003. (WGR)

Weatherization Assistance Program

S.L. 2003-284, Sec. 10.3 (HB 397, Sec. 10.3) authorizes the Department of Health and Human Services to administer the Weatherization Assistance Program for Low-Income Families and the Heating/Air Repair and Replacement Program, but it does not obligate the General Assembly to appropriate funds for those programs or entitle any person to services.

This section became effective July 1, 2003. (WGR)

Education and Awareness of Infant Homicide Prevention Act

S.L. 2003-284, Sec. 10.8B (HB 397, Sec. 10.8B) requires the Department of Health and Human Services, Division of Public Health and Division of Social Services, to incorporate education and awareness of the Infant Homicide Prevention Act into other State-funded programs at the local level. The Infant Homicide Prevention Act was passed in 2001 and decriminalized the abandonment of infants under certain circumstances. The Act required the Department of Health and Human Services, Division of Public Health, to develop recommendations for a plan to inform the public as to the provisions of the Act. This section requires the Department to report on its activities to the House Appropriations Committee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division no later than April 1, 2004.

This section became effective July 1, 2003. (WGR)

Health Choice

S.L. 2003-284, Sec. 10.29 (HB 397, Sec. 10.29). See **Health and Human Services**.

Early Childhood Education and Development Initiative Enhancements

S.L. 2003-284, Sec. 10.38 (HB 397, Sec. 10.38) provides that on an average statewide basis for local partnerships, the administrative costs shall be equal to not more than 8% of the total statewide allocation to all local partnerships. Administrative costs include: costs concerning partnership oversight; business and financial management; general accounting; human resources; budgeting; purchasing; contracting; and information systems management.

The North Carolina Partnership for Children and all local partnerships are required to use competitive bidding practices in contracting for goods and services based on the following contract amounts:

- For amounts of $5,000 or less, the written policy procedures developed by the Board of Directors of the North Carolina Partnership for Children must be followed.
- For amounts greater than $5,000 but less than $15,000, three written quotes must be obtained.
- For amounts of $15,000 or more but less than $40,000, there must be a request for proposal process.
- For amounts of $40,000 or more, there must be a request for proposal process and advertising in a major newspaper.

The local partnerships and the North Carolina Partnership for Children together are required to match no less than 50% of the total amount budgeted for the program in both years of the biennium. The match shall be as follows:

- Contributions of cash equal to at least 15%.
- In-kind donated resources equal to no more than 5%.

The North Carolina Partnership for Children may carry forward any amount above the required match in a fiscal year in order to meet the match requirements of the succeeding fiscal year, but only quantifiable in-kind contributions may be applied to the in-kind match requirement. Volunteer services can be considered as in-kind contributions for match requirement purposes. Expenses that are paid by cash and in-kind contributions incurred by other participating non-State entities that are contracting with the North Carolina Partnership for Children or the local partnerships also may be considered to be resources that are available to meet the required private match if the expenses meet the following conditions:

- Are verifiable from the contractor's records.
- If in-kind and not volunteer services, the expenses are quantifiable in accordance with generally accepted accounting principles for nonprofit organizations.
- Are not expenses that are funded by the State.
- Are supplemental to and do not supplant preexisting resources for related program activities.
- Are incurred as a direct result of the Early Childhood Initiatives Program and are necessary and reasonable to accomplish the Program's objectives.
- Are allowable under federal and State law.
- Are required and described in the contractual agreements approved by the North Carolina Partnership for Children or the local partnership.
- Are reported to the North Carolina Partnership for Children or the local partnership by the contractor in the same way as reimbursable expenses.

If a 20% match is not obtained by June 30 of each fiscal year, then there will be a dollar-for-dollar reduction in the appropriation for the Program in the next fiscal year. The North Carolina Partnership for Children is responsible for compiling the information on the private cash and in-kind contributions and submitting a report to the Joint Legislative Commission on Governmental Operations.

The Department of Health and Human Services and The North Carolina Partnership for Children must allocate, administer, and distribute funds for fiscal years 2003-2004 and 2004-2005 as follows:

- The North Carolina Partnership for Children must develop a policy to allocate the reduction of funds for Early Childhood Education and Development Initiatives for 2003-2004.
- Capital and playground equipment expenditures are prohibited for 2003-2004 and 2004-2005.
- Expenditures of State funds for advertising and promotional activities are prohibited for 2003-2004 and 2004-2005.

The North Carolina Partnership for Children cannot approve local partnership plans that distribute State funds to child care providers for one-time quality improvement projects if the child care facility has a licensure of four or five stars unless the expenditure of funds is to expand the capacity for low-income children and if the child care facility does not accept child care subsidy funds.

In 2003-2004, the local partnerships are directed to spend enough funds for child care subsidies to provide at least $52,000,000 for the TANF maintenance of effort requirement and the Child Care Development Fund and Block Grant match requirement.

Counties may use their own allocations of State and federal child care funds to subsidize child care according to their approved Early Childhood Education and Development Initiatives Plan.

The North Carolina Partnership for Children is required to develop a plan to focus on quality child care initiatives and child care subsidies and study duplications of health services, family support, and program support activities. The findings must be reported to the House of Representatives and Senate Appropriations chairs. It shall also develop a plan to incorporate a penalty into a local partnership's allocation if the local partnership's audit results in a "needs improvement performance assessment." The North Carolina Partnership for Children shall make a report on these directives by March 1, 2004 to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division of the General Assembly.

This section provides that the North Carolina Partnership for Children's policy on local board membership does not require that local board members must be residents of the county or the partnership region they are representing.

This section revises the membership requirements for the local partnership advisory committee established by the North Carolina Partnership. Eight of the members must be chosen from past board chairs or from duly elected officers currently serving on the boards of directors of local partnerships at the time of the appointment. These eight members will serve three-year terms. Seven of the members must be staff of local partnerships.

This section also requires the North Carolina Partnership for Children to establish uniform guidelines and a reporting format for local partnerships to document any qualifying expenses that occur at the contractor level. The local partnerships must monitor qualifying expenses to ensure that they have occurred and must report them.

This section became effective July 1, 2003. (DC)

Early Childhood Education and Development Initiatives Evaluation

S.L. 2003-284, Sec. 10.39 (HB 397, Sec. 10.39) provides that the Department of Health and Human Services, Division of Child Development, may evaluate the Early Childhood Education and Development Initiatives. The evaluation may include the ongoing review of quality child care efforts and the progress of child care providers in preparing children to start school and be successful in school. The evaluation may also include the continuation of technical assistance to local partnerships in data collection and evaluation.

This section became effective July 1, 2003. (DC)

Department Plan for Family Child Care Home Fees

S.L. 2003-284, Sec. 10.39A (HB 397, Sec. 10.39A) directs the Department of Health and Human Services to develop a plan proposing fees for the licensing of family child care homes. The plan shall be reported to the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than April 1, 2004.

This section became effective July 1, 2003. (SA)

More At Four Program

S.L. 2003-284, Sec. 10.40 (HB 397, Sec. 10.40) requires the Department of Health and Human Services (DHHS) and the Department of Public Instruction (DPI) to establish the "More At Four" Pre-K Task Force to oversee the development and implementation of the pilot program. The membership of the Task Force shall include the following:

- Parents of at-risk children.
- Representatives with expertise in early childhood development.
- Classroom teachers who are certified in early childhood education.

- Representatives of the private not-for-profit and for-profit child care providers in North Carolina.
- Employees of DHHS who are knowledgeable in the areas of early childhood development, State and federally funded efforts in child development and providing child care.
- Representatives of local Smart Start partnerships.
- Representatives of local school administrative units.
- Representatives of Head Start prekindergarten programs in North Carolina.
- Employees of DPI.

DHHS and DPI are directed to continue the implementation of the More At Four prekindergarten program for at-risk four year olds. The program is to be consistent with standards and assessments established jointly by DHHS, DPI, and the More At Four Task Force and can consider recommendations made by the Task Force. The program must include the following:

- A process for identifying children at risk of academic failure.
- A process for identifying children who demonstrate educational needs and are eligible to enter kindergarten in the next school year but who do not have first priority in formal early education programs.
- A curriculum recommended by the Task Force that focuses on:
- Oral language and emergent literacy.
    - Engaging children through key experiences and background experiences needed for formal learning and successful reading.
    - Active learning.
    - Promoting measurable kindergarten language readiness skills with an emphasis on emergent literacy and math skills.
    - Developing emotional and social skills.
- An emphasis on ongoing family involvement.
- Evaluation of child progress through pre- and post-assessment.
- Guidelines to reimburse local school systems, private child care providers, and other entities willing to establish prekindergarten programs to serve at-risk children.
- A system built on existing local school systems, private child care providers, and other entities that show the ability to establish or expand prekindergarten capacity.
- A quality control system.
- Standards for minimum teacher qualifications.
- A local contribution.
- A system of accountability.
- Collaboration with State agencies and other organizations such as the North Carolina Partnership for Children in the design and implementation of the program.
- Consideration of the reallocation of existing funds.
- Recommendations for the long-term organizational placement and administration of the program.

DHHS is further directed to plan for the expansion of the More At Four program within the existing resources and develop guidelines for the program, analyze guidelines for use of More At Four funds, State subsidy funds, and Smart Start subsidy funds. Four and five star centers that choose to become More At Four programs shall receive curricula and access to training and be considered for TEACH funding.

DHHS is authorized to use nonobligated More At Four funds for the 2003-2004 fiscal year in order to reduce the waiting list for the subsidy with priority given to children attending three star or better centers.

DHHS, DPI, and the Task Force must submit a progress report by January 1, 2004 and May 1, 2004 to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Education Oversight Committee, the Senate Appropriations Committee on Health and

Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division. The final report shall include:

- The number of children participating in the program.
- The number of children participating in the program who have never been served in other early education programs.
- The expected expenditures for the program and the source of local matches.
- Location of program sites and the number of children in the program at each site.
- Activities involving Child Find.
- A comprehensive cost analysis of the program including the cost per child in the program.
- The plan for expansion through existing resources.

This section became effective July 1, 2003. (DC)

Child Support Program/Enhanced Standards

S.L. 2003-284, Sec. 10.44 (HB 397, Sec. 10.44) requires the Department of Health and Human Services to develop and implement performance standards for each of the State and county child support enforcement offices. The Department is to monitor the performance of each office and implement a system that allows each local office to review its performance and the performance of other local offices. An annual performance report is to be published by the Department.

This section became effective July 1, 2003. (EC)

Special Needs Adoptions Incentive Fund

S.L. 2003-284, Sec. 10.45 (HB 397, Sec. 10.45) creates a Special Needs Adoptions Incentive Fund to provide financial assistance encourage the adoption of certain children living in licensed foster care homes. The funds are to be available to foster care families who wish to adopt children with special needs but do not have the financial means to do so. These funds have to be matched by county funds. The Social Services Commission is directed to adopt rules to implement the provisions of this section. The program does not constitute an entitlement and is subject to the availability of funds.

This section became effective July 1, 2003. (DC)

Intensive Family Preservation Services Funding and Performance Enhancements

S.L. 2003-284, Sec. 10.48 (HB 397, Sec. 10.48) directs the Department of Health and Human Services to review the Intensive Family Preservation Services Program (IFPS) to enhance and implement initiatives that focus on increasing the sustainability and effectiveness of the Program. IFPS will provide services to children and families in cases of abuse, neglect, and dependency where a child is at imminent risk of removal from the home and in cases of abuse where a child is not at imminent risk of removal from the home. IFPS will be implemented on a statewide basis. Any program or entity that receives State, federal, or other funding for IFPS must provide information and data to the Department regarding follow-up systems, cost-benefit data, long-term benefits of the program, the number of families remaining intact after IFPS involvement, and racial data with respect to children served by IFPS. The Department will establish performance-based funding protocol and provide funding based on individual IFPS program or entity performance. The Department will report on IFPS to the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division no later than April 1, 2004.

This section became effective July 1, 2003. (SA)

Child Welfare System Pilots System

S.L. 2003-284, Sec. 10.56 (HB 397, Sec. 10.56) directs the Department of Health and Human Services, Division of Social Services, to continue working to implement an alternative response system of child protection in demonstration areas in the State. The Department will evaluate pilot demonstration areas to determine the impact the alternative response system has had in the areas of child safety, timeliness of response, timeliness of service, and coordination of local human services. It will expand the pilot demonstration if non-State funds are identified. The Department will report on the pilot demonstration and make recommendations for statewide implementation of an alternative response system to the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division not later than April 1, 2004.

This section became effective July 1, 2003. (SA)

Eliminate Reporting Requirements for Work First Program

S.L. 2003-284, Sec. 10.57 (HB 397, Sec. 10.57) makes the following changes to the reporting requirements of the Department of Health and Human Services in the Work First Program:

- The Department will no longer have to submit county progress reports each month.
- While continuing to monitor the performance of counties relative to County Plans and the overall goals of Work First, the Department will no longer have to submit a report every six months concerning counties' attainment of outcomes and goals.
- Electing County plans will only be provided to the Appropriations Subcommittees on Health and Human Services when requested.

This section became effective July 1, 2003. (DJ)

Juvenile Justice Compliance with Audit Report

S.L. 2003-284, Sec. 15.9 (HB 397, Sec. 15.9). See **Courts, Justice, and Corrections**.

Low-Income Residential Energy Program

S.L. 2003-284, Sec. 18.3 (HB 397, Sec. 18.3) amends the duties and responsibilities of the Energy Policy Council. The Energy Policy Council was created to advise and make recommendations on energy policy to the Governor and the General Assembly. This section directs the Council to develop and administer the Low-Income Residential Energy Program.

This section became effective July 1, 2003. (DJ)

Smart Start Audits

S.L. 2003-284, Sec. 19.1 (HB 397, Sec. 19.1) clarifies that the State Auditor is required to conduct annual financial and compliance audits of local partnerships that are rated "needs improvement" in the authorized performance assessments. The State Auditor must conduct biennial financial and compliance audits of local partnerships that are rated "superior" or "satisfactory" in the authorized performance assessments.

This section became effective July 1, 2003. (DC)

Amend Child Support Enforcement Laws

S.L. 2003-288 (SB 423) amends the child support laws regarding payment of arrears after support obligations terminate, reporting the revocation of licenses to the Department of Health and Human Services (DHHS) for those who do not pay ordered child support, allowing child support payment information to be released prior to establishing or modifying support orders, and allowing DHHS to require financial institutions to levy the bank accounts of those who have delinquent child support obligations.

Liquidation. – Courts are required to order child support payments in an amount to meet the reasonable needs of the child for health, education, and maintenance with regard to the estates, earnings, conditions and accustomed standard of living for the child and the parties involved. As a general rule, payments continue until the child reaches 18. The act adds a requirement that if there are any arrearages for child support or fees due when the child support obligation terminates, payments must continue in the same total amount that was due under the terms of the court order or incoming withholding that is in effect at the time of the support obligation. The payments are to continue until all the arrearages and fees are satisfied or the court orders otherwise. The act also adds the requirement that in the event of the death of an obligor, DHHS must determine if the estate of the obligor has sufficient assets and attempt to collect the arrearages.

Licensing Boards. – Under G.S. 50-13.12, a court may revoke some or all licensing privileges of a person if a court finds that the person is willfully delinquent in child support payments. G.S. 93B-13 requires that when an occupational licensing board receives a court order pursuant to G.S. 50-13.12 that revokes an occupational license, the occupational licensing board must note that revocation in its records and follow the postrevocation rules and procedures that the board has in place just as if the board had ordered the revocation. The revocation is in effect until the board gets certification from the court clerk that the licensee is no longer delinquent or is in compliance with or no longer subject to the court's orders.

G.S. 110-142.1 authorizes a court to revoke occupational licenses for IV-D cases. (IV-D cases are child support cases where the custodial parent is receiving some sort of benefit and DHHS is therefore required by law to seek child support and establish parentage.) This act requires an occupational licensing board to note a revocation in its file when it receives an order pursuant to G.S. 110-142.1 and report that notation to DHHS within 30 days of the notation. The revocation is to remain in effect for IV-D cases until either the clerk of court or DHHS certifies that the licensee is no longer delinquent or is in compliance with or is no longer subject to the court's order.

Pay Records. – DHHS is charged with attempting to locate absent parents for the purposes of establishing paternity and/or securing child support. In carrying out its responsibilities, DHHS can request information and assistance from any governmental agency or board; all State, county, and local agencies must cooperate with DHHS and provide pertinent information. All nonjudicial records maintained by DHHS relating to child support enforcement are confidential. Only duly authorized representatives of agencies that have child-support enforcement and related duties and members of legislative committees have access to these records. This act authorizes the release of an obligor's payment history pursuant to a child support order so that it may be examined by a court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee. Income and expense information of one parent may be released to the other parent for the purpose of establishing or modifying a support order.

Financial Institutions. – North Carolina law permits wage garnishment and income withholding from delinquent parents. This act adds a provision to the law to permit DHHS to place a lien on and levy the bank account of a person who has delinquent child support obligations. DHHS may notify any financial institution doing business in the State that a person with an account at that institution has delinquent child support obligations, and that person's account may be subject to a levy. An account is subject to levy if the person who maintains the

account has either a six-month arrearage or an arrearage amount of $1,000, whichever is less. After the arrearage is certified, the Child Support Agency must serve the obligor and the bank notice of its intent to levy on the account. The notice must contain certain information, including how the obligor can contest the lien. Upon service of the notice, the bank must:

- Attach a lien to the account.
- Notify the Child Support Agency of the balance on the account and the date of the attachment or that the account does not have the money for the attachment.

In order to contest the lien, the obligor must, within 10 days of service of the notice, send written notice of the reason for the contest and request a hearing. The only reasons that can be the basis of the contest are that the obligor is not the right person, the obligor is not six months in arrears, or that the arrearage amount is less than $1,000. The contest would be heard before the district court in the county where the original child support order was entered, and the court is given discretion to assess court costs against the losing party. If no response is received within the 10 days, the Child Support Agency must notify the bank to submit payment up to the total amount of the arrears, if available. Banks are to be held harmless for complying with this section.

The part of this act dealing with pay records became effective July 1, 2003. The remainder of the act became effective July 4, 2003, except for the part dealing with financial institutions, which becomes effective 90 days after that date. (DJ)

Clarify Group Homes Licensure and LEA Reimbursement

S.L. 2003-294, Sec. 6 (SB 926, Sec. 6) requires the Department of Health and Human Services, in conjunction with the Department of Juvenile Justice and Delinquency Prevention and the Department of Public Instruction, to report to the Appropriations Subcommittees on or before April 1, 2004, on the following information regarding the Comprehensive Treatment Services program (Program):

- The number and other demographic information of children served utilizing the Program.
- The amount and source of funds expended to implement the Program.
- Information regarding the number of children screened, specific placement of children including the placement of children in programs or facilities outside of the child's home county, and treatment needs of children served.
- The average lengths of stay in residential treatment, transition, and return to home.
- The number of children diverted from institutions or other out-of-home placements such as training schools and State psychiatric hospitals and a description of the services provided.
- Recommendations on other areas of the Program that need to be improved.
- Other information relevant to successful implementation of the Program.
- A method of identifying and tracking children placed outside of the family unit in group homes or therapeutic foster care home settings.

This section became effective July 4, 2003. (EC)

Amend Child Welfare Laws

S.L. 2003-304 (SB 421), which was requested by the Department of Health and Human Services, does the following:

- Makes permissible any method of service allowed in any civil action in an action for abuse, neglect, or dependency.
- Requires a termination of parental rights hearing be conducted within 90 days unless the court finds that extraordinary circumstances make it necessary for the proper

administration of justice. The change is intended to comply with the provisions of the Adoption and Safe Families Act.

- Specifies when schools must notify county social services that a student has 10 accumulated unexcused absences.
- Creates a register, which will be a public record, of applicants for family foster and therapeutic foster homes.
- Creates a procedure by which a State Child Fatality Review Team may compel the disclosure of records.
- Creates a statutory mechanism for resolving disagreements between counties regarding the provision of social services to children.
- Requires that child welfare services staff receive training on family centered practices and State and federal law regarding the basic rights of individuals relevant to the provision of child welfare services.
- Specifies the circumstances under which a social services director, or the director's representative, may enter a private residence during an investigation into abuse, neglect or dependency.

This act became effective July 4, 2003. (SA)

Display Fetal Alcohol Syndrome Warning Signs

S.L. 2003-339 (HB 1118). See **Alcoholic Beverage Control**.

Collaborative Law Procedures/Family Law

S.L. 2003-371 (HB 1126). See **Civil Law and Procedure**.

Juvenile Custody Pilot

S.L. 2003-381, Sec. 2 (SB 753, Sec. 2) directs the Administrative Office of the Courts, in consultation with the Department of Health and Human Services, to establish a pilot program in the Twelfth Judicial District (Cumberland County) that addresses the issue of conflicting child custody orders. Under the program, when a court obtains jurisdiction over a juvenile in an abuse, neglect, or dependency case:

- The court in the juvenile proceeding may stay any other civil action in this State in which the custody of the juvenile is an issue.
- If an order entered in the juvenile proceeding and an order entered in another civil custody action conflict, the order in the juvenile proceeding controls as long as the court continues to retain jurisdiction in the juvenile proceeding.
- The court in the juvenile proceeding may order that any civil action or claim for custody filed in the pilot judicial district be consolidated with the juvenile proceeding.
- If a civil action or claim for custody has been filed in a district other than the pilot judicial district, then the court in the juvenile proceeding may, after consulting with the court in the other district, order that the civil action or claim for custody be transferred to the pilot judicial district or may order a change of venue in the juvenile proceeding and transfer the juvenile proceeding to the other district.
- The court may establish a mechanism for determining the legal status of a juvenile after jurisdiction of the juvenile court terminates, including a determination as to who has custody of the juvenile and under what circumstances custody may subsequently be changed.

The Administrative Office of the Courts must evaluate the pilot program and report its findings and recommendations to the 2005 General Assembly prior to its convening.

This section became effective August 1, 2003 and expires June 30, 2005. (DJ)

Establish Regional Interagency Coordinating Council

S.L. 2003-391 (HB 932) establishes Regional Interagency Coordinating Councils for Children from Birth to Five with Disabilities and Their Families (Regional Council). In total, there are 18 Regional Councils, each corresponding with the catchment areas for the Children's Developmental Services Agency of the Division of Public Health. Each Regional Council must have no more than 30 members, and at least 20% of the members are to be parents or families of children ages birth to five with disabilities.

Each Regional Council must develop an early intervention plan that addresses all of the following:

- Implementing Child Find through public awareness activities.
- Ensuring the availability of early intervention required services through the assessment of service delivery capacity, the identification of needs, and the development or revision of plans to address gaps or inadequacies.
- Implementing policies for interagency professional development.
- Establishing methods for compliance monitoring and qualitative evaluation of services.
- Developing a plan of coordination and integration with other early childhood special education and related human service planning, such as that carried out by Mental Health Local Management Entities (LMEs), Smart Start, and Local Education Agencies (LEAs).

This act became effective August 7, 2003. (EC)

Unauthorized Administration of Medications By Child Care Facilities

S.L. 2003-406 (SB 226). See **Criminal Law and Procedure**.

Prevent SIDS/Child Care/Investigations

S.L. 2003-407 (HB 152) requires operators of child care facilities that care for infants to develop and maintain a safe sleep policy and requires cooperation between various agencies and the medical community in investigations of child abuse or neglect in child care facilities.

The act requires child care facilities that care for children age 12 months or younger to develop and maintain a written safe sleep policy, in accordance with rules adopted by the North Carolina Child Care Commission. The policy must include the following requirements:

- Caregivers must place children age 12 months or younger on their backs for sleeping, unless:
  - For a child age six months or younger, the operator of the child care facility obtains a written waiver from a health care provider.
  - For a child older than six months, the operator of the child care facility obtains a written waiver from a health care provider, a parent, or a legal guardian.
- The policy must be discussed with a child's parent or guardian before the child is enrolled. The child's parent or guardian is required to sign a statement attesting that he or she received a copy of the policy and that the policy was discussed prior to enrollment.
- Any caregiver responsible for the care of children age 12 months or younger is required to receive training in safe sleep practices.

The act also directs the Division of Child Development, local departments of social services, and local law enforcement personnel to cooperate with the medical community to ensure that reports of abuse or neglect in child care facilities are properly investigated.

This act becomes effective December 1, 2003. (WGR)

An Act to Safeguard Children

S.L. 2003-408 (SB 993). See **Education**.

Assault in Presence of Minor/Enhance Penalty

S.L. 2003-409 (HB 926). See **Criminal Law and Procedure**.

Homicide Prevention Act/Domestic Violence

S.L. 2003-410 (SB 919) adds a new section to the domestic violence statutes, which provides for the following:

- Upon the issuance of a domestic violence restraining order, the court is required to order the defendant to surrender to the sheriff all firearms, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the defendant's care, custody, possession, ownership or control if the court finds any of the following factors:
  - The use or threatened use of a deadly weapon by the defendant or a pattern of prior conduct by the defendant involving violence with a firearm against persons.
  - Threats to seriously injure or kill the aggrieved party or minor child by the defendant.
  - Threats to commit suicide by the defendant.
  - Serious injuries inflicted upon the aggrieved party or minor child by the defendant.
- The court is required to question the defendant as to the defendant's ownership or access to firearms, permits, and ammunition, as well as the identifying information of the same.
- The defendant is required to surrender to the sheriff all items listed in the order.
- By motion, the defendant may request the return of the items at the expiration of the order.
- A third party owner of the firearms may file a motion for return of the seized firearms.
- It is a Class H felony to violate the court order, to fail to surrender the firearms, ammunition or permits, or to provide false information to the court.

This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. (WGR)

Major Pending Legislation

Amend Domestic Violence Laws/Temporary Custody

SB 718 (Second Edition) would remove the current limitations under which a court may address the issue of custody ex parte and would require the court to consider, if requested by either party, a temporary custody order as part of an ex parte order hearing or at any time during a domestic violence case. The bill would also create a rebuttable presumption that it is in the child's best interest to be placed in the custody of the nonoffending primary caregiver when the court is considering (i) temporary custody of a minor child as part of a domestic violence case or (ii) permanent or temporary custody when there is evidence of domestic violence. The bill has passed the Senate and is pending in the House Judiciary I Committee. (WGR)

Post-Adoption Privileges

SB 721 (Second Edition) would allow adoptive parents and members of an adoptee's biological family to enter into an enforceable written agreement that allows specifically authorized post-adoption privileges, including visitation, communication, or other contact regarding the adoptee. The parties must enter into the agreement before or at the time the decree of adoption is granted, and the agreement must satisfy enumerated conditions and be approved by the court. The bill has passed the Senate and is pending in the House Judiciary II Committee. (WGR)

Abolish Alienation of Affection/Criminal Conversation

HB 1047 (First Edition) would abolish the common law torts of alienation of affections and criminal conversation. The common law of North Carolina recognizes the civil action of alienation of affection, which is designed to protect the marital right of the affection, society, companionship, and assistance of the other spouse. The common law of North Carolina also recognizes the civil action of criminal conversation, which is a tort action for adultery based on the violation of the fundamental right of exclusive sexual intercourse between spouses. The bill has passed the House and is pending in the Senate Rules Committee. (WGR)

Clarify Definition of Divisible Property/Equitable Distribution

HB 1219 (First Edition) would amend the definition of 'divisible property', as it pertains to actions for equitable distribution of property, to provide that increases in the net value of marital property that result from post separation payment of marital debt are divisible property and should be credited to the spouse making the payment regardless of whether the payment is made by one spouse alone. The bill has passed the House and is pending in the Senate Judiciary II Committee. (WGR)

Chapter 5
Civil Law and Procedure

Brenda Carter (BC), Karen Cochrane-Brown (KCB), Bill Gilkeson (BG), Kory Goldsmith (KG), Trina Griffin (TG), Tim Hovis (TH), Robin Johnson (RJ), Hal Pell (HP), Wendy Graf Ray (WGR), Walker Reagan (WR), Steve Rose (SR), and Susan Sitze (SS)

Enacted Legislation

Judgment Bonding Legislation

S.L. 2003-19 (SB 784) allows an unsuccessful party ("judgment debtor") in an out-of-state civil action to post a bond in North Carolina to stay or postpone the execution of a judgment for monetary damages rendered by an out-of-state court.

The act repeals Article 17A of Chapter 1C of the General Statutes, Enforcement of Foreign Judgments for Noncompensatory Damages. Adopted in 2000, Article 17A was an exception to North Carolina's Uniform Enforcement of Foreign Judgments Acts (Uniform Act). Article 17A had provided that a North Carolina court could stay enforcement of a judgment pending appeal upon the posting of a bond by the judgment debtor under G.S. 1-289, but only if the judgment was for noncompensatory damages.

The act amends the Uniform Act to provide that a North Carolina court shall stay enforcement of the foreign judgment if:

- The judgment has been stayed by the court that rendered it; or
- The appeal is pending or the time for appeal has not expired and the judgment debtor posted a bond in the amount required under G.S. 1-289.

Finally, the act amends G.S. 1-289 to provide that a party may stay execution of a judgment of any sort that is in excess of $25 million dollars (including a foreign judgment) by posting a bond in an amount not to exceed $25 million.

This act became effective April 23, 2003, and applies to judgments filed or entered in North Carolina on or after that date, without regard to the date on which the foreign judgment was rendered in the foreign state. (KG)

Modernize Judgment Docketing Laws

S.L. 2003-59 (HB 636). See **Courts, Justice, and Corrections**.

Clarifying Change/Family Law Arbitration Act

S.L. 2003-61 (HB 952) amends the Family Law Arbitration Act to allow the parties involved in a family law arbitration to agree that they do not wish to have the arbitrator's award confirmed by the court. This allows parties to agree that they wish the award to remain a contract and therefore capable of being modified as a contract, rather than returning to court for modifications, and also makes the award enforceable under contract law.

This act became effective May 20, 2003. (SS)

Appellate Procedure/State Banking Commission

S.L. 2003-63 (SB 658) amends the law relating to appellate procedure before the State Banking Commission (Commission) to resolve a conflict in the statute. It also authorizes the Chair of the Commission to appoint review panels to hear appeals from determinations of the Banking Commissioner and to make recommendations to the full Commission.

Prior law relating to appeals to the Court of Appeals from certain administrative agencies, allowed an appeal as of right from a decision of the Commissioner of Banks if the case involved several Articles of Chapter 53, the Banking Law. Another provision in Chapter 53 provides that any party may appeal to Superior Court of Wake County from a final order of the Commission. Since the Commission is authorized to review decisions of the Commissioner of Banks, these two provisions raised an apparent conflict.

This act resolves the conflict in the laws relating to judicial review of Commission orders. It removes the Commissioner of Banks from the provision authorizing appeals directly to the Court of Appeals, so that appeals from the Commission will be heard in Superior Court of Wake County.

The act also authorizes the Chair of the Commission to appoint a review panel of not less than five members to hear arguments and make a recommended decision to the full Commission. The Commission is composed of 22 members and is chaired by the State Treasurer. Appeals from orders of the Commissioner must be taken within 20 days after the order. The act limits the 20-day requirement to cases where no other time period is provided in the Banking Law. In Articles 17 and 18 of the Banking Law, a 30-day period for appeal is authorized.

The act also authorizes the Commissioner of Banks to appoint and assign a member of the Commissioner's staff to preside at administrative hearings and make a recommended decision to the Commission.

This act became effective May 20, 2003. (SR)

General Contractors/Protect Information/Clarify Injunctive Relief

S.L. 2003-97 (SB 323). See **Commercial Law and Consumer Protection**.

Conform Evidence Rule 103

S.L. 2003-101 (HB 689) conforms Rule 103 of the North Carolina Rules of Evidence to the recently revised corresponding federal rule by providing that once a court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

This act becomes effective October 1, 2003, and applies to evidentiary rulings made on or after that date. (RJ)

Clarify Definition of Protective Order

S.L. 2003-107 (SB 630) amends the domestic violence statutes to define 'protective order' as any order entered pursuant to Chapter 50B (Domestic Violence) whether it is upon hearing by the court or by consent of the parties. The act also clarifies that a judge can renew a protective order, one year at a time, without any limit on the number of times the order is renewed. The motion to renew an order must be made before the expiration of the existing order. The court may renew the order for good cause whether or not the defendant has committed an act of domestic violence after the issuance of the existing order.

This act became effective May 31, 2003. (SS)

Fair Housing Complaints

S.L. 2003-136 (HB 1175) amends North Carolina's Fair Housing Act to permit a "fair housing enforcement organization" to file a complaint with the North Carolina Human Relations Commission on behalf of persons who believe they have been injured by a discriminatory housing practice or believe they will be irrevocably injured by an unlawful discriminatory housing practice. A "fair housing enforcement organization" is defined in federal regulations as any organization, whether or not it is solely engaged in fair housing enforcement activities, that:

- Is organized as a private, tax-exempt, nonprofit, charitable organization;
- Is currently engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and
- Upon the receipt of federal funds, will continue to be engaged in complaint intake, complaint investigation, testing for fair housing violations, and enforcement of meritorious claims.

This act became effective May 29, 2003 (KG)

Equitable Distribution Claim Survive Death Spouse/Limit

S.L. 2003-168 (SB 394). See **Property, Trusts, and Estates**.

Adverse Reaction to Small Pox Vaccination

S.L. 2003-169 (HB 273). See **Labor and Employment.**

Minor's Entertainment and Sports Contracts

S.L. 2003-207 (SB 315) requires that 15% of the earnings of a performer or athlete who is a minor be placed in a trust for the benefit of the minor. The new law also establishes a mechanism by which a superior court may approve a contract entered into by a performer or athlete who is a minor; the minor will not be able to disaffirm the court-approved contract.

Prior North Carolina law had no specific protections for performers or athletes who were minors. Under general North Carolina law, a minor could void a contract made by the minor. This means that the contract cannot be enforced against the minor, but the minor may enforce the contract against the other contracting party. For purposes of contract law, a minor is an unemancipated person under the age of 18.

The act was closely modeled on California's recently amended "Jackie Coogan Law," which is designed to protect the earnings of performers and athletes who are minors.

The new North Carolina law has the following provisions:

15% of Earnings Held in Trust. – The act requires that the earnings of performers and athletes who are minors be protected by a mandatory set-aside of 15% of earnings to go into a trust account to be held until the minor reaches 18 years of age.

Court Approval of Contracts. – The act provides for superior court approval of certain contracts entered into by a performer or athlete who is a minor. If the contract is approved, the minor will not be able to disaffirm the contract.

Applicability. - The 15%-in-trust requirement and the court approval provisions of the act apply to the following types of contracts entered into by a performer or athlete who is a minor:

- Contracts in which the minor is employed to perform one of several artistic or creative services.
- Contracts in which the artistic property of the minor, including the minor's likeness, is purchased, leased, or otherwise acquired.
- Contracts in which the minor is employed as a participant or player in a sport.

- Contracts in which the minor renders services as an extra through an agency which provides such performers for a fee.

Talent Agency Contracts. – The act provides for superior court approval of contracts between an artist who is a minor and a talent agency. If the contract is approved, the minor would not be able to disaffirm the contract.

The act became effective June 19, 2003 and applies to contracts entered into on or after January 1, 2004. (BG)

Civil Remedy for Animal Cruelty

S.L. 2003-208 (SB 669). See **Animals and Wildlife**.

Guardianship Amendments

S.L. 2003-236 (HB 1123) amends the law governing the appointment of guardians for incompetent persons as follows:

- Specifically authorizes the clerk of court (clerk) to order a limited guardianship if the nature and extent of the ward's capacities justify doing so.
- Amends the law relating to the issuance of the clerk's order appointing a guardian to provide that if the clerk orders a limited guardianship, the ward may retain certain legal rights and privileges. The order must include findings as to the nature and extent of the ward's incompetence as it relates to the ward's need for a guardian or guardians.
- Amends the law relating to the appointment of a guardian ad litem (GAL) to represent the respondent in the proceeding to determine incompetency. The GAL must represent the respondent until the proceeding is dismissed or an attorney is appointed to represent the respondent. The GAL must meet personally with the respondent as soon as possible after the GAL is appointed and attempt to understand the respondent's wishes and communicate those wishes to the clerk. The GAR must also consider whether a limited guardianship is appropriate and if it is, communicate to the clerk those rights, powers and privileges the respondent should retain.
- Amends the procedural rules regarding incompetency proceedings to clarify that a GAL may still be appointed under Rule 17(b) of the Rules of Civil Procedure for a party to litigation.

This act becomes effective December 1, 2003. (KG)

Rules of Civil Procedure/Rewrite Rule 45

S.L. 2003-276 (HB 785), which was a recommendation of the Litigation Section of the North Carolina Bar Association, amends Rule 45 of the North Carolina Rules of Civil Procedure by reorganizing the rule, making technical changes, and adding several new provisions. These changes are designed to adopt the format of the corresponding federal rule while retaining features of the current Rule 45 that are specific to North Carolina practice.

Rule 45 of the North Carolina Rules of Civil Procedure governs the form, issuance, service of, objections to, and failure to comply with subpoenas. There are three different types of subpoenas: (1) subpoenas for the attendance of witnesses; (2) subpoenas for the production of documentary evidence; and (3) subpoenas for taking depositions. A subpoena for the attendance of witnesses commands each person to whom it is directed to attend and give testimony at a trial or hearing at a time and place specified therein. A subpoena for the production of documentary evidence may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein. A subpoena for

taking depositions command the person to whom it is directed to attend and give testimony at a deposition and may also require the person to produce evidentiary materials at the time and place specified therein.

The act makes the following substantive changes to the rule:

Form. – While the act maintains the distinction between the three types of subpoenas, the act clarifies that a subpoena to produce evidence may be combined with a command to appear at trial or deposition, or may be issued separately. It also adds the requirement that the subpoena include the name of the court in which the action is pending, the civil action number, the name of the party at whose instance the witness is summoned, and notice of protections available to the recipient and the requirements for responses.

Issuance. – The act requires that a subpoena be issued from the court in which the action is pending. Just as under current law, all of the following individuals may sign and issue a subpoena: a clerk of superior court, a judge of the superior court, a judge of the district court, a magistrate, or an attorney.

Service. – The act does not change the substantive manner in which service of a subpoena must be made. However, the revised rule would require a copy of the subpoena to be served upon each party in a civil action. The act exempts from this requirement subpoenas that are served in criminal proceedings.

Protection of Persons Subject to Subpoenas. – The act adds a new subsection that provides protections to persons who are subject to a subpoena and requires every subpoena issued to set out the text of these protections. The protections available are as follows:

- *Avoiding Undue Burden or Expense.* The issuing party must take measures to avoid imposing an undue burden or expense on the subpoena recipient. The court may impose sanctions, including reasonable attorney's fees and compensation for lost earnings, for violation of this requirement.
- *Objections.* The act outlines the procedure and grounds for making written objections to subpoenas commanding appearance at a deposition or commanding production of documentary evidence. Objections to subpoenas must include the nature of the objection and a general description of the responsive materials sufficient for requesting party to contest the objection. Each of the following grounds may be sufficient for objecting to a subpoena:
    - The subpoena fails to allow reasonable time for compliance.
    - The subpoena requires disclosure of privileged or other protected matter, and no exception or waiver applies to the privilege or protection.
    - The subpoena subjects a person to an undue burden.
    - The subpoena is otherwise unreasonable or oppressive.
    - The subpoena is procedurally defective.
- *Motion & Order to Compel.* If an objection is made to a subpoena, the issuing party may, upon notice to the subpoenaed party, move for an order compelling the subpoenaed party to appear at the deposition or to produce materials. The act clarifies that the motion to compel must be filed in the court in the county in which the deposition or production of materials is to occur. The act further provides that if the court enters an order compelling a deposition or the production of materials, the order must protect any person who is not a party from significant expense resulting from compliance with the subpoena. The court may order reasonable compensation for the person to whom the subpoena is addressed.
- *Motion to Quash or Modify Subpoena.* The act adds a provision outlining the procedure for filing a motion to quash or modify subpoena within 10 days after service and authorizes the court to award reasonable expenses, including attorney's fees, upon granting a motion to quash.
- *Trade Secrets; Confidential Information.* The act provides that a court may quash or modify issuance of a subpoena where it requests disclosure of trade secrets or other

confidential information, or impose conditions on production of materials if issuing party demonstrates a substantial need for the information.

Punishment for Failure to Obey. – The act authorizes the court to award costs and attorney's fees to the issuing party if the court determines the person objected to the subpoena or filed a motion to quash or modify for an unreasonable or improper purpose.

This act becomes effective October 1, 2003, and applies to actions pending or filed on or after that date. (TG)

State Institution Resident Damage Claims

S.L. 2003-285 (SB 786) permits an institution under the Department of Health and Human Services, such as a mental institution, if it loses, destroys, or otherwise damages, through negligence, a resident's property, to replace the property or reimburse the resident without going through the State Tort Claims process, if the damages are less than $500.

This act became effective July 4, 2003. (KCB)

Prelitigation Mediation of Insurance Claims

S.L. 2003-307 (SB 775). See **Insurance**.

Health Care Provider Liens

S.L. 2003-309 (SB 1011) requires any person distributing funds to a lienholder pursuant to a personal injury settlement agreement, and in an amount less than the amount claimed, to provide a certification to the lienholder demonstrating that the distribution was pro rata. The act applies only to liens held in favor of health care providers, including liens held for any drugs, medical supplies, ambulance services, and liens held for services rendered by a physician, dentist, nurse, or hospital. To receive the accounting, the lienholder must make a written request and agree to abide by the terms of any confidentiality agreement entered into between the parties. The certification must include:

- A statement of the total amount of the settlement;
- The total distribution to lienholders, including the amount of each lien claimed and the percentage of each lien paid; and
- The total attorney's fees.

The act clarifies that a certification provided in accordance with this section is not a breach of attorney-client privilege.

This act becomes effective October 1, 2003 and applies to any liens perfected on or after that date. (TH)

Liability at Public Skateboard Parks

S.L. 2003-334 (SB 774) provides limited immunity from liability for governmental entities (including the State, any county or municipality, or school board) that make land available or designate public property for activities defined by the act as 'hazardous recreational activities'. The act defines 'hazardous recreational activities' as skateboarding, inline skating, and freestyle bicycling. Under the act, no governmental entity or public employee will be liable for personal injury or property damage arising out of a person's participation in a hazardous recreational activity at a location or area that has been specifically designated for the activity.

The immunity from liability does not attach if the governmental entity or employee fails to warn the participants of a dangerous condition existing in the skateboard park that the participant does not know about and cannot reasonably be expected to know about. Nor does the act shield governmental entities or employees from gross negligence. The fact that the

governmental entity carries liability insurance does not constitute a waiver of the liability limits provided under the act. The act also does not limit the liability of an independent concessionaire or any person or organization other than a governmental entity or public employee.

The act provides that all persons who engage in hazardous recreational activities (irrespective of age) are legally responsible for all damages, injuries or death to themselves or to others. Participants have certain responsibilities while engaged in hazardous recreational activities, regardless of where the activities occur. Those who fail to comply are negligent as a matter of law. These responsibilities include the following:

- To act within the limits of his or her ability and the purpose and design of the equipment.
- To maintain control of the equipment and his or her person.
- To refrain from acting "in any manner that may cause or contribute to death or injury of himself, herself, or other persons."

Operators of skateboard parks are required to prohibit skateboarders from using the skateboard park unless the skateboarder is wearing a helmet, elbow pads, and kneepads. However, if the skateboard park is owned or operated by a governmental entity, then this requirement is met if the governmental entity:

- Adopts an ordinance requiring skateboarders to wear helmets and pads; and
- Posts signs that provide reasonable notice to skateboarders of the aforementioned ordinance and the penalty for failure to comply with the ordinance.

This provision does not appear to apply to other hazardous recreational activities.

This act becomes effective October 1, 2003, and applies to activities engaged in on or after that date and to actions that arise on or after that date. (KCB)

Clarify Legal Filing Law

S.L. 2003-337 (HB 394) amends several provisions in the General Statutes that set deadlines for various acts to be performed at the courthouse that might fall on days that are legal holidays. The amendment clarifies the law to provide that an extension of time to perform the act applies only to legal holidays on which the courthouse is actually closed for transactions, not all legal holidays. The changes are made to the Rules of Civil Procedure, deadlines in foreclosures, execution sales, judicial sales, tax lien foreclosure sales, drainage assessment lien sales, and secured custody hearings for juveniles.

This act becomes effective October 1, 2003. (WR)

Nurse Testimonial Privilege

S.L. 2003-342 (HB 743) amends the North Carolina Rules of Evidence to provide that no person licensed under the Nursing Practice Act shall be required to disclose information acquired in rendering professional nursing services, and necessary to enable the person to render professional nursing services. The privilege given in this act to information acquired while rendering professional nursing services is qualified to the extent that the presiding judge may compel disclosure if the judge determines that disclosure is necessary to a proper administration of justice and disclosure is not prohibited by other statute or rule.

This act becomes effective October 1, 2003. (WR)

Revised Uniform Arbitration Act

S.L. 2003-345 (SB 716) repeals North Carolina's existing law governing arbitration agreements and proceedings and replaces it with a new Article 45C of Chapter 1 of the General Statutes, the Revised Uniform Arbitration Act (RUAA). As with the previous law, under the RUAA persons can agree to arbitrate their disputes, and a court determines whether a dispute is subject to an agreement to arbitrate. The court appoints arbitrators, who conduct a hearing and determine an appropriate award by majority vote. Awards are confirmed, vacated, modified, or corrected by the court, and orders confirming, modifying, or correcting awards become judgments. The RUAA differs from North Carolina's prior arbitration statute by:

- Permitting a court and an arbitrator to issue provisional remedies, depending upon when the application for a provisional remedy is requested.
- Specifying that arbitration is initiated when a party gives written notice to the other party of the nature of the controversy and the remedy sought. Notice must be as provided in the agreement, or if the agreement is silent, by registered or certified mail or by service otherwise authorized in a civil action.
- Allowing a court to consolidate arbitration proceedings.
- Requiring arbitrators to disclose facts reasonably likely to affect their impartiality.
- Making an arbitrator or arbitration organizations immune from civil actions to the same extent as a judge. However, if an arbitrator failed to disclose facts reasonably likely to affect the arbitrator's impartiality, the award could be vacated.
- Making arbitrators or representatives of arbitration organizations incompetent to testify in another proceeding.
- Granting arbitrators or representatives of arbitration organizations discretion to order discovery, issue protective orders, decide motions for summary dispositions, hold prehearing conferences and otherwise manage the arbitration process.
- Allowing a court to enforce a preaward ruling by an arbitrator unless the court vacates, modifies, or corrects the award for statutory reasons such as corruption, fraud, undue duress, mathematical miscalculation or evident mistake.
- Specifying the remedies an arbitrator may award. Attorney fees and punitive damages are allowed if provided for in the arbitration agreement, if the evidence justifies a claim for the award, and if the award would be allowed in a civil action involving the same claim.
- Allowing a court to award attorney's fees and costs to a prevailing party in court review of an arbitrator's award.
- Making many sections of the RUAA not waivable.

This act becomes effective January 1, 2004 and applies to agreements to arbitrate entered into on or after January 1, 2004. (KG)

Collaborative Law Procedures/Family Law

S.L. 2003-371 (HB 1126) creates a new article in Chapter 50 of the General Statutes establishing collaborative law procedures whereby parties seeking a divorce, and their attorneys, may settle their disputes by written agreement with limited judicial intervention.

The act authorizes the use of collaborative law procedures to settle issues arising from the dissolution of a marital relationship, with the exception of claims for absolute divorce. The parties and their attorneys agree in writing to use their best efforts and make a good faith attempt to resolve disputes on an agreed basis without resorting to judicial intervention, except to have the court approve a settlement agreement. The collaborative law agreement must be in writing, must be signed by all the parties, and must include provisions for the withdrawal of all attorneys involved in the procedure if it does not result in a settlement.

A validly executed collaborative law agreement tolls all legal time periods that would otherwise be applicable to legal rights and issues under the law for the amount of time the agreement is in effect. In addition, all statements, communications, and work products arising from a collaborative law procedure are confidential and inadmissible in any court proceeding. Communications and work products of attorneys and experts are privileged and inadmissible in any court proceeding, except by agreement of the parties.

The act provides that if a civil action is pending when the parties enter into a collaborative law agreement, a notice of the agreement shall be filed with the court, and the court shall take no action in the case unless the court is notified in writing that one of the following has occurred:

- The parties have failed to reach a settlement agreement.
- The parties voluntarily dismiss the action.
- The parties ask the court to approve a settlement agreement.

If a settlement agreement is reached through collaborative law procedures, a party is entitled to judgment on the agreement if each party signs it.

The act allows the parties to file a civil action if they fail to reach a settlement. If a civil action is already pending and no settlement is reached, upon notice to the court, the court may enter orders as appropriate. As noted above, the attorneys representing the parties in the collaborative law procedures are required to withdraw as counsel if a civil action is filed or set for trial.

This act becomes effective October 1, 2003. (WGR)

Civil Penalties/Food, Drug and Cosmetics

S.L. 2003-389 (SB 751). See **Agriculture**.

Homicide Prevention Act/Domestic Violence

S.L. 2003-410 (SB 919). See **Children and Families**.

Major Pending Legislation

Medical Provider Insurance/Civil Justice Reform Act

SB 802 (Second Edition) addresses issues related to the quality of patient care, litigation reforms in medical malpractice actions, and creates an excess liability insurance fund to provide additional liability insurance for health care providers.

Patient Care/Protection of Patient-Physician Relationship/Disciplinary Procedures. – The bill extends certain confidentiality provisions to medical providers to allow them to examine the causes of medical errors and ways to improve medical care to prevent future medical errors. It would allow health care providers to apologize and offer remedial medical treatments without those statements being used as admissions of liability. It would also reduce frivolous lawsuits by requiring that the State Bar take disciplinary action against attorneys who repeatedly file medical malpractice lawsuits that are dismissed. Similarly, it requires the Medical Board to investigate physicians who are repeatedly the subject of medical malpractice claims.

Litigation Reforms. – The bill requires that after discovery is completed in a medical malpractice action, a panel of three referees must review evidence presented by both parties on the issue of negligence and issue a report. At trail, if plaintiff prevails on the negligence issue, the jury will be limited to choosing either the amount submitted by plaintiff as damages or the amount submitted by the defendant. Costs and reasonable attorney fees for the trial will be

assessed against the losing party, if that party requested the trial after receiving an adverse finding from the referees. The bill also limits evidence of recoverable medical expenses in medical negligence cases to the amount necessary to discharge the liability of the patient or paid on behalf of the patient, not the amount charged by the health care provider.

Professional Liability Insurance Changes. - The bill would establish excess liability coverage for health care providers up to $4 million ($8 million for hospitals) above primary coverage of $500,000 for ob-gyn/emergency room doctors, and $1 million for all other health care providers ($2 million for hospitals with 500 or fewer beds, $3 million for hospitals with more than 500 beds). It would also create a specific review process by the Commissioner of Insurance for all requests for rate increases of medical malpractice premiums by insurance companies.

The bill has passed second and third reading in the Senate.

Chapter 6
Commercial Law and Consumer Protection

Karen Cochrane Brown (KCB), Wendy Graf Ray (WGR),
Tim Hovis (TH), Walker Reagan (WR), and Steve Rose (SR)

Enacted Legislation

Clarify Certain Plumbing and HVAC Laws

S.L. 2003-31 (SB 772) clarifies a law enacted in October 2002, effective May 1, 2003, that permitted certain retailers of water heaters and heating and air conditioning systems to provide for installation services of the goods sold by a licensed plumber or heating and air conditioning contractor, without the retailer being licensed as such. Specifically, the act:

- Clarifies what constitutes a minor repair or replacement that is exempt from the licensing law. This allows any repair or replacement that does not require changing an energy source, fuel type, or routing or sizing of venting or piping to be performed by a non-licensee.
- Amends the law relative to the retail sale of goods and the sale of installation services. G.S. 87-21(i) is amended to limit the law to just the sale and installation of water heaters for one- or two-family residential dwellings. It further clarifies that licensees rendering installation services must comply with all building code requirements.
- Clarifies the law to define when a retailer can contract or arrange financing for the sale and installation of heating or cooling systems in single-family dwellings without the retailer having to be licensed. This exception applies when:
  - The specifications and design of the system have been reviewed by an employee of a licensed retail seller or reviewed by a licensee who will install the system.
  - The person installing the system is a licensee.
  - The contract is signed by the buyer, retailer, and licensee of the contractor and contains the contractor's name, license number, and telephone number and the license number of the person approving the system design specifications.
  - Installation is performed in accordance with all building codes, manufacturer's instructions, and permit and inspection requirements.
  - The retailer provides at least a one-year warranty on the installation.

These exceptions to the licensing statute do not apply to fire sprinkler systems.

The act became effective July 1, 2003. (TH)

General Contractors/Protect Information/Clarify Injunctive Relief

S.L. 2003-97 (SB 323) amends the law governing persons engaged in the business of general contracting. The act includes the following provisions:

- Adds a new provision to the general contracting statutes to provide that the Board may, in its discretion, keep the identity of a complaining party confidential and not a public record until a time no later than the receipt of the complaint by the full Board for a disciplinary hearing or injunctive action.
- Provides the Board with standing to seek an injunction or restraining order when the Board *determines* that any person, firm or corporation, (licensed or unlicensed), is presently violating, or has violated, a provision of the licensing laws or rules adopted

by the Board. Under prior law, the Board had to show that it *appeared* that a person, firm, or corporation was in violation of the licensing laws to seek injunctive remedies.

This act became effective May 30, 2003. (TH)

Clarify Motor Vehicle Dealer Franchise Laws

S.L. 2003-113 (SB 559) amends Article 12 of Chapter 20 of the General Statutes, which regulates motor vehicle distribution in North Carolina, in the following ways:

Temporary license for sale of antique and specialty vehicles. – The act allows a licensed motor vehicle dealer to get a supplemental temporary license authorizing the off-premises sale of antique and specialty vehicles for a period not to exceed ten days. "Antique motor vehicle" is defined as a vehicle for private use manufactured at least 25 years prior to the current model year, and "specialty motor vehicle" is defined as any model or series of motor vehicle for private use manufactured at least three years prior to the current model year of which no more than 5,000 were sold in the United States during the model year it was manufactured.

Changes in area of responsibility under franchise. – G.S. 20-305(38) makes it unlawful for a manufacturer to arbitrarily change a dealer's area of responsibility under a franchise. If a dealer believes the manufacturer has violated this subdivision, the dealer may file a petition for a hearing before the Commissioner. This act requires the manufacturer to provide the dealer with written notice of the proposed change by registered or certified mail.

Financing through sources designated by manufacturer. – The act makes it unlawful for a manufacturer to require a dealer to floor plan inventory or finance the acquisition, construction, or renovation of the dealer's facilities, by or through any financial sources designated by the manufacturer.

Payments of claims charged back to dealer. – G.S. 20-305.1(b1) sets out procedures for dealers to be compensated by the manufacturer for delivery, preparation, warranty, and recall work. A claim that has been approved and paid may not be charged back to the dealer unless the manufacturer can show that the claim was fraudulent, the repairs were not properly made or were unnecessary, or the dealer failed to reasonably substantiate the claim. This act further prohibits the manufacturer from charging the dealer back for payments of claims unless a representative of the manufacturer is sent to the dealership to meet with a representative of the dealer in person, or contacts the representative of the dealer by telephone, to discuss each of the proposed charge backs. In addition, if the dealer was selected for audit because the dealer's claims generally exceed the average, this act requires the manufacturer to provide the dealer with a written statement containing the basis or methodology upon which the dealer was selected for audit.

This act becomes effective December 1, 2003. (WGR)

Annuity Nonforfeiture Rate Change

S.L. 2003-144 (HB 829). See **Insurance**.

Dissenters' Rights Clarifications

S.L. 2003-157 (SB 136) clarifies that amendments to articles of incorporation that allow actions to be taken without a meeting of all shareholders, or without notice to all shareholders under certain circumstances, do not constitute amendments to exclude or limit the rights of shares to vote on any manner, or to cumulate votes, which otherwise give rise to dissenters' rights.

This act becomes effective October 1, 2003. (WR)

Farm Machinery Law/Notice of Termination

S.L. 2003-195 (HB 116) amends the Farm Machinery Agreements law to clarify when a farm machinery supplier may terminate an agreement with a retail dealer both with and without cause. The act amends the law to permit a supplier to terminate an agreement without good cause upon 90 days prior notice of intent to terminate with a 60-day right to cure any deficiency. If the deficiency is cured, the notice is void. If the cancellation is the result of the dealer's failure to obtain market penetration, a reasonable time must be allowed where the supplier has worked with the dealer to gain market share. The reason must be stated when an agreement is terminated for good causes.

The act also permits a supplier to terminate an agreement for good cause without notice and without permitting the right to cure. Good cause is currently defined in the law to include bankruptcy, misrepresentations with the intent to defraud, default on financing obligations with the supplier, close out of a substantial portion of the dealer's business related to the sale of farm machinery, significant change in ownership without prior consent of the supplier, abandonment of the business, or conviction of a felony.

This act becomes effective October 1, 2003. (TH)

No Credit Card Number on Receipts

S.L. 2003-206 (HB 357) adds two new statutes to the Financial Identity Fraud Act. The first statute prohibits a person who accepts credit cards for the transaction of business from printing more than five digits of a credit card number or an expiration date on a sales receipt. Violation of this prohibition is an infraction and is subject to a penalty of up to $500 per violation, not to exceed $500 per month or $2,000 per year. Penalties may be avoided if the person comes into compliance within 30 days of receiving a citation and remains in compliance. The second statute prohibits the sale of cash registers or other machines that cannot be operated to produce a receipt with five or fewer digits of the card account number and no expiration date printed on the receipt. Violation of this prohibition is also an infraction and subject to a $500 penalty per violation. The sale of each individual machine is a separate violation. For purposes of this act, "person" is defined to mean the person who owns or leases the cash register or other device that prints credit of debit card receipts.

This act becomes effective March 1, 2004, and applies to receipts printed by machines first put into use or sold on or after that date. Effective July 1, 2005, the prohibition applies to all machines regardless of when they were first put into use. (KCB)

Minor's Entertainment and Sports Contracts

S.L. 2003-207 (SB 315). See **Civil Law and Procedure**.

Promote E-Commerce & E-Government

S.L. 2003-233 (SB 622). See **Technology**.

Disclosure of Prior Motor Vehicle Damage

S.L. 2003-258 (SB 558) provides that, in addition to any other designations required by law, a vehicle that is declared a total loss by an insurance company is subject to the following requirements:

- The title and registration card must be marked "TOTAL LOSS CLAIM".

- A tamper-proof permanent marker that says "TOTAL LOSS CLAIM VEHICLE" must be inserted into the doorjamb of the vehicle by the Division of Motor Vehicles at the time of final inspection of the reconstructed vehicle, and, if the vehicle is later reconstructed, repaired, or rebuilt, the marker must be inserted in the doorjamb.

The act makes it unlawful for any person to remove or conceal a "TOTAL LOSS CLAIM VEHICLE" marker from a vehicle, or to reconstruct a total loss vehicle without inserting the "TOTAL LOSS CLAIM VEHICLE" marker into the rebuilt vehicle. Violation is a Class I felony, punishable by a fine of not less than $5,000.

The act also provides that, when calculating the percentage of cost of repairs in relation to value of the vehicle for the purpose of determining whether an unbranded title should be issued, the cost of replacing the air bag restraint system is excluded from the calculation when the vehicle is more than six model years old. Vehicles may be retitled with an unbranded title if the cost of repairing the vehicle does not exceed 75% of its fair market value. For purposes of determining whether damage must be disclosed upon transfer of a vehicle, the cost of replacing the air bag restraint system is excluded from the calculation when the vehicle is five model years old or less. Damage must be disclosed if the cost of repairs exceeded 25% of its fair market retail value.

The act amends the disclosure requirement for transferors of motor vehicles by requiring the disclosure of information of which the transferor has knowledge, rather than information the transferor knew or should have known.

The act makes it unlawful to install an object, other than an air bag designed in accordance with federal regulations, as part of a vehicle inflation restraint system. Violation is a Class 1 misdemeanor.

The act also amends G.S. 20-305.1(e), which requires new motor vehicle dealers to disclose in writing to a purchaser certain kinds of damage and repair to a new vehicle. The act provides that new motor vehicle dealers are not required to disclose any kind of damage and repair to a vehicle prior to sale only if the damage does not exceed 5% of the manufacturer's suggested retail price and any damaged item has been replaced with original or comparable equipment. It also provides that a purchaser may not file a cause of action or claim against the dealer due solely to the fact that the vehicle was damaged and repaired prior to the sale if disclosure was not required.

This act becomes effective December 1, 2003. (WGR)

Film Industry Development Account

S.L. 2003-284, Sec. 12.6A (HB 397, Sec. 12.6A) repeals the existing provision authorizing the Department of Commerce, Division of Tourism, Film, and Sports Development to provide annual grants as incentives to production companies that engage in production activities in the State and reenacts the provision to include legislative findings and purpose. The findings include the statement that "the enactment, funding, and administration of this program are necessary to stimulate the economy, facilitate economic recovery, create new jobs in North Carolina, and help sustain and preserve the State's investments in the film production industry and will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs and opportunities for employment, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions…". The purpose of the Film Industry Development Account is to stimulate economic activity and to create jobs and employment opportunities within the State.

To be eligible for a grant, a production company must engage in production activities in the State with expenditures of at least one million dollars. A grant may not exceed 15% of the amount a production company spends in the State in a calendar year. A grant may not exceed $200,000 per production, and grants shall be awarded to productions that substantially utilize

North Carolina's film industry infrastructure and workforce, that stimulate economic activity and create employment opportunities in the State.

The Department of Commerce is directed to report annually to the General Assembly on the operation of the account, and to report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the money in the account.

This section became effective on August 2, 2000. (KCB)

Amend Child Support Enforcement Laws

S.L. 2003-288 (SB 423). See **Children and Families**.

Sales Representative Commission Revisions

S.L. 2003-331 (SB 293) amends Article 27 of Chapter 66 of the General Statutes (Sales Representative Commissions) to expand its coverage to in-state principals and to principals who contract for the sale of services as well as products. It shortens the time frame for commission payments where the business relationship between a sales representative and a principal has been terminated. It also creates a cause of action by a sales representative where the principal has revoked a revocable offer of commission for the purpose of avoiding payment of the commission. It increases the amount of punitive damages a sales representative may receive where a principal has refused to pay commissions that are due or for wrongful revocation of a commission offer.

This act becomes effective October 1, 2003 and applies to causes of action accruing on or after that date. (SR)

Liability at Public Skateboard Parks

S.L. 2003-334 (SB 774). See **Civil Law and Procedure**.

Required Notices for Towing Payments

S.L. 2003-336 (HB 944) prohibits towers from collecting certain charges when they fail to give proper notice.

G.S. 20-77(d) requires that the operator of a business for garaging, repairing, parking, or storing motor vehicles notify the Division of Motor Vehicles (DMV) when a vehicle remains unclaimed after 10 days. It also requires that a landowner notify DMV when a vehicle has been abandoned for 30 days on the landowner's property. An unclaimed or abandoned vehicle must be reported to DMV within five days after expiration of the specified periods. Failure to make the appropriate report is a Class 3 misdemeanor. If, after the required report is made to DMV, the vehicle remains unclaimed by the owner, the operator of the business or the landowner may sell the vehicle in accordance with provisions pertaining to the enforcement of possessory liens on personal property.

This act provides that when a person required to make a report to DMV about an unclaimed or abandoned vehicle fails to make the required notice in a timely manner, that person may not collect storage charges for the time period between when the report should have been made and when the report actually was made.

This act becomes effective October 1, 2003. (WGR)

Tenant Late Fees

S.L. 2003-370 (SB 847) amends the law governing charging fees for late residential rent payments by clarifying how agreed-to late fees might be calculated. For monthly rent payments, the current late fee limit of the greater of $15 or 5% of the monthly rent will still apply. For weekly rent payments, the limit is the greater of $4 or 5% of the weekly rent. When part of the rent is paid by a governmental entity, any late fee will only apply to the tenant's share of the rent, not the subsidized portion of the rent.

This act became effective August 1, 2003. (WR)

Increase Homeowners Recovery Fund Fee

S.L. 2003-372 (SB 324) increases the fee that a general contractor must pay into the Homeowners Recovery Fund. The Homeowners Recovery Fund reimburses homeowners who have suffered a reimbursable loss in construction or alteration of a single-family home. A "reimbursable loss" is defined as a monetary loss that:

- Results from dishonest or incompetent conduct by a general contractor in the construction or alteration of the home;
- Is not paid, in whole or in part, by the contractor whose conduct caused the loss; and
- Is not covered by a bond, surety agreement, or an insurance contract.

In addition to suffering a reimbursable loss, the homeowner must have 1) neither obtained the building permit in the person's own name nor used a general contractor; and 2) exhausted all civil remedies against the contractor and obtained a judgment against the contractor that remains unsatisfied. However, the requirement of judgment is waived if the person is prevented from filing a civil suit or obtaining a judgment due to the automatic stay provision of the U.S. Bankruptcy Code.

The Board of General Contractors administers the Fund. The Board has the discretion to determine the order, amount, and manner of payments from the Fund.

Previously, when a general contractor applied for a permit for the construction or alteration of a single-family home, the contractor paid a $5 fee, $4 of which was remitted to the Fund and $1 retained by the city or county. This act increases the fee amount to $10, $9 of which is remitted to the Fund and $1 is retained by the city or county.

This act became effective on August 1, 2003, and applies to fees due for applications for permits submitted on or after that date. (SR)

Charitable Solicitations/Inform the Public

S.L. 2003-373 (SB 659) amends Chapter 131F of the General Statutes (Solicitation of Contributions) by requiring those who solicit on behalf of charitable organizations to file annually with the Secretary of State the amounts of the solicitations that will go to the charitable organization. It also adds a requirement that the report on charitable organizations and solicitors prepared by the Secretary of State include this information be posted on the Secretary's web site and be disseminated to the press. It amends

G.S. 131F-3 by specifically exempting from Chapter 131F tax-exempt nonprofit fire and emergency medical service organizations selling goods or services that do not ask for donations.

This act becomes effective January 1, 2004. (SR)

Uniform Athlete Agents Act

S.L. 2003-375 (SB 563) repeals Article 8 of Chapter 78C of the General Statutes (Regulation of Athlete Agents) and replaces it with Article 8A, the Uniform Athlete Agents Act.

The repealed Article 8 regulated the relationships between agents and student-athletes. Many of the basic provisions of Article 8 are retained in the new law.

An athlete (student-athlete) is a person who seeks to be employed as a professional athlete and is enrolled in a North Carolina high school or has been admitted to an institution of higher education in North Carolina. An athlete agent (agent) is a person who, for remuneration, solicits a student-athlete to represent the student-athlete in either an agent contract or a financial services contract. An agent contract authorizes the agent to receive compensation in exchange for attempting to obtain employment for the student-athlete with a professional sports team. A financial services contract is an agreement between the parties that allows the agent to make financial and investment decisions for a student-athlete. An agent must post a bond of $100,000 with the Secretary of State when the agent enters into a financial services contract with a student-athlete.

Agents are required to register with the Secretary of State before the agent has any contact with a student-athlete. The registration fee is $200 and the registration lasts for one year. A North Carolina licensed and resident attorney is not required to register if the attorney does not advertise directly or solicit student-athletes and does not represent more than two student-athletes. The Secretary of State may suspend, revoke, or deny the registration of an agent who fails to comply with the law, and may investigate any suspected violations.

An agent may not make any false, fraudulent, or misleading statements. An agent may not have an agreement to provide anything of value to any employee of the student-athlete's high school or college in return for the referral of any clients to the agent. The agent may not offer anything of value to induce a student-athlete to enter into a contract, except the agent may expend 'reasonable entertainment expenses and transportation expenses' to and from the agent's place of business. An agent may not contact the student-athlete until after the completion of the student-athlete's last high school or intercollegiate contest, including post-season games.

It is a Class I Felony to fail to register with the Secretary of State or to engage in any of the prohibited acts listed above. A contract with an agent who does not comply with the law is voidable at the discretion of the injured party. The Secretary of State may impose a civil penalty of between $2,500 and $25,000 for willful violations.

The new Uniform Athlete Agents Act differs from Article 8 as follows:

- Contains revised and additional definitions but generally does not expand or contract the scope of who is covered.
- Requires more specific registration information, including information regarding the agent's expertise, prior felony convictions, or convictions for crimes of moral turpitude.
- The registration application must contain a sworn statement that the information is true under penalty of perjury.
- Does not contain bonding requirements.
- Creates reciprocity of registration and renewal if the applicant has applied within the last six months in another state that has similar registration requirements.
- Contract warning language no longer warns the student-athlete to read the contract before signing it, but does includes a notice that by signing the contract, the student-athlete may lose eligibility to compete as a student-athlete in his or her sport.
- Shortens the contract cancellation period from 16 days to 14 days.
- The right of cancellation may not be waived.
- Does not require an agent to provide notice to the student-athlete's principal or athletic director prior to contacting a student-athlete, but does require the agent and student-athlete to notify the student-athlete's athletic director within 72 hours of signing a contract or before the next athletic event.
- Requires an agent to retain certain records that are subject to inspection by the Secretary of State and provides that by entering into an agency contract, a student-athlete waives the attorney-client privilege with respect to those records.

- Makes it a Class I felony for an agent to:
  - Furnish anything of value to the student-athlete prior to signing a contract if it is furnished with the intent to induce the student-athlete to sign the contract.
  - Furnish anything of value to anyone who is not the student-athlete or another agent, if it is furnished with the intent to induce the student-athlete to sign the contract.
- Creates a civil cause of action by the high school or college against the agent or student-athlete for damages caused by a violation of the law.

This act became effective August 1, 2003, except that the criminal provisions become effective December 1, 2003, and apply to offenses committed on or after that date. (KCB)

Toner/Inkjet Cartridges

S.L. 2003-386 (HB 999) makes any provision in an agreement or contract that prohibits the reusing, remanufacturing, or refilling of a toner or inkjet cartridge void and unenforceable as a matter of public policy. The act does not prohibit maintenance contracts that warrant the performance of equipment from requiring the use of new or specified cartridges in the equipment under contract.

This act becomes effective October 1, 2003, and applies to agreements and contracts entered into on or after that date. It does not apply to or affect any litigation pending before the effective date. (WGR)

MV Insurer to Disclose Financial Interest

S.L. 2003-395 (HB 986). See **Insurance**.

Manufactured Housing

S.L. 2003-400, Secs. 1-3, 5-7, and 17 (HB 1006, Secs. 1-3, 5-7, and 17) amend the laws related to manufactured homes, increase consumer protections for owners of manufactured homes, and establish minimum construction and design standards for single-family modular housing.

Section 1 allows owners of manufactured homes that have entered into a lease with a term of at least 20 years for the real property on which the manufactured home is located to surrender the title to the manufactured home. Previously, only the owner of a manufactured home who also owned the land on which the manufactured home was affixed could surrender the title to the manufactured home. A copy of the lease or a memorandum of the lease must be attached to the affidavit surrendering the title if it was not previously recorded. The Division of Motor Vehicles may charge $5 for the cancellation of the title.

Section 2 requires the owner of a manufactured home who has a lease term of 20 years for the land on which the manufactured home will be affixed and has surrendered the title to the manufactured home to record the affidavit required in G.S. 20-109 with the registrar of deeds in the county where the land is located.

Section 3 allows an owner of a manufactured home who has at least a 20 year lease for the property on which the real property is located or will be located to file a declaration of intent to affix the manufactured home to real property.

Section 5 adds a new section to Chapter 42 of the General Statutes and requires an owner of a manufactured home community that consists of at least five homes to give notice of an intended conversion that would require the movement of manufactured homes. This notice of conversion must be given to the owners of the manufactured homes at least 180 days before the owners of the manufactured homes are required to vacate and move the manufactured homes. Failure to give this notice is a defense in an action for possession. If the manufactured home

community is being closed pursuant to a valid government order, the owner must give notice to each resident of the community within three business days of the date of the order.

Section 6 adds a new section to Chapter 143 of the General Statutes by requiring the display of pricing on manufactured homes if the manufacturer has published a suggested retail price. In addition, each manufactured home dealer must display information on warranties and protections under federal and State law, information on the North Carolina Manufactured Housing Board, and how to file a consumer complaint with the Board.

Section 7 provides that purchase agreements for manufactured homes must state that any changes to the terms of a purchase agreement by the dealer cancels the agreement. Moreover, each time the dealer presents the buyer with a new set of financing terms, the buyer has up to three days to cancel the agreement unless the buyer is given a new set of financing terms that are favorable to the buyer. The North Carolina Manufactured Housing Board must adopt rules concerning deposits paid by buyers to dealers. Those rules may exempt deposits of less than $2,000 and must protect the deposits from the claims of creditors to the extent possible if the dealer should go into bankruptcy.

Section 17 rewrites G.S. 149-139.1 by adding specific minimum standards for modular homes. In order to qualify for a certification by the Building Code Council, a single family modular home must meet or exceed the following construction and design standards:

- A pitch of the roof of no less than five feet rise for every 12 feet of run for homes with a single predominant roofline
- An eave projection of the roof of no less than 10 inches and this may not include a gutter around the perimeter of the home unless the roof pitch is 8/12 or greater
- A minimum height of the exterior wall of at least seven feet six inches for the first story
- Siding and roofing materials that are compatible in composition, appearance, and durability to the exterior materials commonly used in standard residential construction
- A house design that requires foundation supports around the perimeter. The supports may be in the form of piers, pier and curtain wall, piling foundations, a perimeter wall, or other approved perimeter support

Sections 1-4 became effective August 7, 2003. Sections 5-7 become effective October 1, 2003. Section 17 becomes effective January 1, 2004.

This act also makes changes to the property tax laws and the sales and use tax laws with regard to manufactured housing. For additional information on these changes, see **Finance**.

Finally, this act makes the criminal history record check a condition for licensure as a manufactured home manufacturer, dealer, salesperson, or set-up contractor. For additional information on this provision, see **Occupational Boards and Licensing.** (DC)

Expand Usury Exemption

S.L. 2003-401 (HB 1182) exempts credit cards and home equity lines of credit in amounts of $10,000 or more made by North Carolina State chartered and federally chartered banks, thrifts and credit unions from the rate and fee limitations imposed under Chapter 24 of the General Statutes. It also subjects home equity lines of credit to the anti-predatory lending statutes. However, the act authorizes prepayment penalties of up to 2% when a borrower converts a portion of a home equity line to a fixed-rate term loan. The penalty may only apply to that portion of the loan that is repayable at a fixed rate over a specified term.

The act also removes the statutory interest rate limit on credit card plans offered by banks located in this State. Currently, all lenders who offer credit card plans are subject to an interest rate limitation of 18%.

This act becomes effective October 1, 2003, and applies to contracts entered into or renewed on or after that date. (KCB)

Unwanted Telephone Solicitations

S.L. 2003-411 (SB 872) prohibits telephone solicitors from calling the telephone number of a residential telephone subscriber if the subscriber's telephone number appears in the "Do Not Call" Registry, or if the subscriber has specifically requested to not receive further telephone solicitations from that telephone solicitor.

Under the Telemarketing Sales Rule (TSR), the Federal Trade Commission (FTC) regulates telemarketing aimed at the sale of goods or services through interstate phone calls. Effective October 1, 2004, telemarketers who are subject to FTC jurisdiction will be prohibited from making telephone solicitations to consumers who have put their phone numbers on a national "Do Not Call" Registry. Some businesses that engage in interstate phone calls will remain exempt from the TSR, including long-distance phone companies and airlines, and insurance companies operating under state regulations. Although these companies are not subject to the TSR, any telemarketers they hire to make calls on their behalf are required to comply.

This act recodifies and amends G.S. 75-30, which regulates the use of automatic dialing and recorded message players for intrastate telephone solicitations, and G.S. 75-30.1, which regulates intrastate telephone solicitations.

This act creates a new Article 4 (Telephone Solicitations) in Chapter 75 of the General Statutes. It expands the definition of "telephone solicitation" to include telephone calls for the purpose of soliciting or encouraging participation in a contest, sweepstakes, raffle, or lottery and for the purpose of obtaining a charitable donation. It defines "Do Not Call" Registry as the registry created and maintained by the Federal Trade Commission. It also means any other telemarketing registry created by the federal government or the Attorney General. Additionally, the act defines "doing business in this State" as making or causing to be made any telephone solicitation to residential telephone subscribers, whether the telephone solicitations are made from a location inside or outside North Carolina.

G.S. 75-30.1 had prohibited a telephone solicitor from calling a residential telephone subscriber who had communicated to that telephone solicitor a desire to be taken off the telephone solicitor's contact list. New G.S. 75-102 contains this prohibition and also prohibits a telephone solicitor from calling the telephone number of a residential telephone subscriber if the subscriber's telephone number appears in the "Do Not Call" Registry.

This act also:

- Provides that if a telephone solicitor makes a call to a residential telephone subscriber whose number is in the "Do Not Call" Registry based on an existing or past business relationship of an affiliate and the subscriber communicates a desire to receive no further telephone solicitations from that telephone solicitor, the telephone solicitor will remove that person's number from its contact records and the contact records of all of its affiliates within 30 days.
- Prohibits any telephone solicitations before 8 a.m. and after 9 p.m.
- Requires a telephone solicitor to terminate a solicitation immediately if the telephone subscriber objects to the call.
- Requires telephone solicitors to implement systems and written procedures to prevent further telephone solicitations being made to telephone subscribers whose numbers are on the "Do Not Call" Registry or who have specifically requested that the telephone solicitor not call them.
- Prohibits telephone solicitors from engaging in threats, intimidation, or the use of profane or obscene language.
- Requires telephone solicitors to inquire as to where the telephone subscriber is less than 18 years of age and to terminate the call if the subscriber is under 18 years of age.
- Prohibits the use of technologies that block a telephone subscriber's caller identification service.

- Provides that a telephone solicitor may contact a residential telephone subscriber whose telephone number appears in the "Do Not Call" Registry via non-telephonic means in order to obtain the subscriber's express written permission allowing the telephone solicitor to make telephone solicitations to the subscriber.
- Provides that a telephone solicitor may advertise in a general medium or contact a residential telephone subscriber whose telephone number appears in the "Do Not Call" Registry via non-telephonic means in order to encourage the subscriber to initiate telephonic communications to the telephone solicitor.
- Requires that any contract entered into during a telephone solicitation must meet certain federal requirements in order to be considered legally valid.

The prohibition against calling individuals who have registered with the "Do Not Call" Registry does not apply to the following telephone solicitations:

- The telephone subscriber has given prior express invitation or permission.
- There is an established business relationship between the telephone subscriber and the telephone solicitor that currently exists or has existed within the 18 months immediately preceding the telephone solicitation.
- Calls made by or on behalf of a tax-exempt nonprofit organization.
- Calls made by or on behalf of a telephone solicitor that employs fewer than 10 direct employees and those direct employees collectively make or attempt to make no more than an average of 10 telephone solicitations per week during a calendar year.
- Calls made for the purpose of arranging face-to-face meetings.
- Calls made by a person primarily soliciting the sale of a subscription for a newspaper of general circulation.

Although these types of telephone solicitors may make calls to persons whose names are listed on the "Do Not Call" Registry, they must comply with many if not all of the other State and federal requirements listed in G.S. 75-102.

In new G.S. 75-103, previous law is rewritten and recodified so that no person may use an automatic dialing and recorded message player to make an unsolicited telephone call except under one of the following circumstances:

- The person making the call (1) is a tax-exempt charitable or civic organization, a political party or candidate, a governmental official, or an opinion polling organization, radio station, television station, or broadcast rating service conducting a public opinion poll; (2) no part of the call is used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; to obtain information that will or may be used to solicit or encourage the purchase or rental of, or investment in, property, goods, or services; or to solicit or encourage the making of a charitable donation; and (3) the person making the call identifies the name and contact information of the person calling and the nature of the call.
- Prior to playing the recorded message, a live operator states the nature and length of the message, and asks for and receives approval to play the message.
- The call is in connection with an existing debt or contract for which payment or performance is due.
- The call is about an appointment made by the telephone subscriber.
- The call is from a utility or similar service provider about network outages, repairs, or service interruptions.

G.S. 75-105 broadens the enforcement powers of the Attorney General related to telephone solicitations and increases the amounts of civil penalties that may be imposed or recovered for violation of telephone solicitation laws. The new statute specifically:

- Authorizes the Attorney General to investigate alleged violations of the new Article 4 (Telephone Solicitations).

- Provides that the Attorney General may not seek treble damages on behalf of residential telephone subscribers if the Attorney General brings an action on behalf of the residential telephone subscribers. Authorizes the Attorney General to bring an action to impose the following civil penalties for violations of telephone solicitation laws:
  - $500 for the first violation, $1,000 for the second violation, and $5,000 for the third and each subsequent violation within two years of the first violation.
  - $100 for each violation within two years of the first violation if the violations are the result of a mistake, and the telephone solicitor has either established in-house procedures to comply with telephone solicitation requirements or made the telephone solicitation is allowed to make the telephone solicitation under the limited exception provisions.
- Authorizes a residential telephone subscriber who has received telephone solicitations in violation of the telephone solicitation laws to bring an action to recover $500 for the first violation, $1,000 for the second violation, and $5,000 for the third and each subsequent violation within the past two years. No action may be brought by or on behalf of residential telephone subscribers under this provision if the telephone solicitor has established in-house procedures to comply with telephone solicitation requirements and the violations are the result of a mistake.
- Provides that attorney's fees may be awarded under certain circumstances.
- Authorizes a citizen of the State to bring a civil action to enforce federal telephone solicitation laws.

Prohibits the use of a call generating system that does not transmit caller identification information, effective January 1, 2006.

- Requires both local exchange companies and competing local providers to disseminate a bill insert produced by the Attorney General, in consultation with the Public Staff of the Utilities Commission, at least annually. This requirement applies to telephone directories printed on or after January 1, 2004.

If certain provisions of the act are declared to be preempted or otherwise unenforceable in relation to interstate telephone calls, those provisions will remain in force with respect to intra-state calls.

Consistent with protected speech rights, this act shall be construed broadly to protect residential telephone subscribers from unwanted telephone solicitations and from problematic sales techniques and payment procedures often associated with these solicitations.

Except as otherwise noted, this act becomes effective October 1, 2003 and applies to telephone solicitations made on or after that date. (SR)

Prevent Price Gouging During Disasters

S.L. 2003-412 (SB 963) makes it unlawful for a person, during a declared state of disaster, to sell or rent any merchandise or services at an unreasonably excessive price that are consumed or used as a direct result of an emergency, or that are consumed or used to preserve, protect or to sustain life, health, safety or comfort of people or their property during a state of disaster. In determining whether a price is "unreasonably excessive," both of the following are to be considered:

- Whether the price charged is attributable to additional costs due to the state of disaster.
- Whether the seller offered to sell or rent the good or service at a price that was below the seller's average price in the 60 days preceding the state of disaster.

If the seller did not sell or rent the good or service before the state of disaster, then the price at which the good or service is generally available is to be used as a factor in determining whether the price is unreasonably excessive.

The act directs that when requested, the Attorney General must promptly issue a signed statement indicating that the provisions of this act have not been violated when the Attorney General's investigation of a price gouging complaint finds no violation. The act limits the time that the price restriction is in effect to 45 days, or the termination of the disaster, whichever occurs first. A "state of disaster" is defined as one declared by the Governor or General Assembly under G.S. 160A-6 or a local emergency declaration under G.S. 160A-8.

This act became effective August 14, 2003. (WR)

Strengthen Security Fraud Enforcement Laws

S.L. 2003-413 (SB 925) strengthens various laws prohibiting fraud in securities transactions and dealings by increasing criminal punishment for large-scale securities fraud, expanding civil remedies to recover damages arising from securities fraud, and strengthening administrative and criminal powers of securities administrators.

Specifically, the act makes the following changes:

- It increases the punishment for criminal violations of the Securities Act, the Investment Act, and the Commodities Act from a Class H felony to a Class C felony where total consideration lost totals $100,000 or more. The act also makes it a Class H felony to willfully interfere with an investigation by the Securities Administrator, including the destruction of records.
- It authorizes the recovery of punitive damages consistent with Chapter 1D of the General Statutes in addition to actual damages arising from securities fraud.
- It clarifies that the issuance of false or misleading securities analyses, reports or financial statements constitutes a deceptive or fraudulent manipulation of the market. It allows the Securities Administrator to require audited financial statements from the issuers of registered securities, except when waived by the Administrator by rule or order. The act specifies the civil liabilities for market manipulation in violation of the law and defines the measure of damages, including punitive damages.
- It conforms and expands the liability of a person who controls another person who violates the Securities Act and the Investment Advisor Act and sets the standard as "in the exercise of reasonable care could have known." The act also extends liability to employees of those who have actual knowledge of securities fraud.
- It extends the civil statute of limitations under the securities law from two years after the date of the sale of the securities to three years after the discovery of a violation, but in no event more than five years, except for liability arising from a fraudulent or deceitful act committed to induce a person to postpone bringing an action, in which case the statute of limitations will be three years from discovery. The act also extends the statute of limitations under the Investment Advisers Act to correspond to the changes made in the Securities Act. Here, the three-year statute of limitations from the date of the rendering of the investment advice in violation of the law is replaced by a period of three years after the discovery of a violation, but in no event more than five years, except for liability arising from a fraudulent or deceitful act committed to induce a person to postpone bringing an action, in which case the statute of limitations shall be three years from discovery.
- It clarifies a law enacted in 2002 which prohibits the Secretary of Administration from entering into a contract with a vendor, if the vendor or affiliate is incorporated or reincorporates in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the stock of the corporation incorporated in the tax haven country. The definition of "tax haven country" is amended to delete Cyprus and Liechtenstein from the list of countries considered to be tax haven countries.

The sections of the act creating new criminal offenses or increasing criminal punishments become effective December 1, 2003, and apply to acts committed on or after that date. Changes

in the law prohibiting the State from contracting with corporations incorporated in tax haven countries becomes effective October 1, 2003. The remainder of the act became effective August 14, 2003. (WR)

Vetoed Legislation

Conform Mortgage Lending Laws

HB 917. See **Vetoed Legislation** chapter.

Major Pending Legislation

Regulate Deferred Deposit

HB 1213 (Fourth Edition) would reauthorize regulation of deferred deposit transactions. Deferred or delayed deposit transactions, also known as payday loans, were previously authorized under provisions of the Check Casher Act. Those provisions expired on August 31, 2001. This bill would reauthorize these transactions and also provide additional consumer disclosures and protections that were not in the expired law. The bill is currently in Senate Finance.

The bill includes the following provisions:

- Adds several new definitions to the Check Casher Act to clarify provisions relating to the renewed authorization for deferred deposit transactions. One important addition is the term "lender." The bill defines this term to include any person or entity that offers or makes a deferred deposit loan or acts as an agent for a third party that makes such loans even if the third party is exempt from the licensing requirements. The definition also provides that although national depository institutions are exempt from interest rate, finance charge and licensure provisions of the Act, they are subject to all other provisions when they act as a deferred deposit lender.
- Adds a licensing requirement for businesses engaging in making deferred deposit transactions and those acting as agents for third parties that make deferred deposit transactions. The Commissioner of Banks is charged with issuing licenses and administering the Article.
- Adds several new sections to Article 22, which reauthorize and regulate deferred deposit transactions. These transactions are permitted subject to the following requirements:
  - Principal amount of the loan may not exceed $300.
  - Lender may not charge a fee in excess of 15% of the loan amount or $40.
  - Loan may not be repaid by the proceeds of another deferred deposit loan.
  - Loan must be documented by a written agreement signed by the borrower and the lender.
  - The amount of the fees charged must be expressed both as a dollar amount and as an effective annual percentage rate (APR).
  - The maturity date may not be less than 14 days nor more than 60 days from the transaction date.
  - A notice advising the borrower of the right to cancel the transaction must be included in 10-point type.
  - The agreement must be accompanied by a Regulation "Z" disclosure, as provided by the federal Truth in Lending Act.
  - The agreement may not contain a hold harmless clause, a confession of judgment clause, a mandatory arbitration clause that does not comply with

standards of the American Arbitration Association, a provision in which the borrower agrees not to assert a claim or defense, or a provision in which the borrower waives any provision of the Article.

- Lenders must also verbally inform borrowers of their right to cancel the transaction, the specific terms of the transaction, and the right to elect a mandatory repayment plan, and how to exercise the right.
- Lenders may not enter into transactions with borrowers who have outstanding loans in excess of $300.
- Borrower must certify he has no outstanding loans and the lender must verify by use of the database authorized by this act.
- Lender may not enter transaction with a borrower who has elected a mandatory repayment plan twice in a calendar year unless the borrower obtains credit counseling.
- Borrowers who cannot repay may elect to enter into a mandatory repayment plan providing for 6 equal installments due on the borrower's next 6 paydays, with at least 14 days between installments. The lender may collect a $15 processing charge for each repayment plan.
- Prohibited practices related to deferred deposit transactions include: taking security other than the borrower's check, taking more than one check in connection with a single transaction, selling or offering credit insurance, tying the transaction to any other transaction, using or threatening to use criminal process, unless fraud is involved, assigning or selling the check unless the required endorsement is attached, failing to report positive repayment activity to credit reporting agencies, and failing to assist or provide information to the Commissioner of Banks.

➢ Directs the Commissioner of Banks to contract with a provider to develop, implement and maintain a database with real-time access through the Internet. The database provider may collect verification fees from lenders with the approval of the Commissioner. Lenders must verify that the limitations of the Act are being obeyed by use of the database. Personal information contained in the database is not a public record.

➢ Lenders must submit annual reports to the Commissioner on or before the last day of February for the preceding year. The Commissioner must then compile an annual report by April 1, of each year beginning in 2005. The reports are available to all interested parties and the public.

➢ Increases the maximum amount of civil penalties that may be imposed for violation of the Act from $1,000 to $10,000 per violation. Agreements that violate the Article are void and the lender shall have no right to collect, receive, or retain any principal or charges whatsoever with respect to the loan.

➢ Clarifies that any bank or other depository institution that meets the definition of a lender and offers or underwrites deferred deposit transactions is subject to those provisions of the Article, notwithstanding that they are not required to be licensed.

The act would become effective when it becomes law. (KCB)

Chapter 7
Constitution and Elections

Erika Churchill (EC) and Bill Gilkeson (BG)

Enacted Legislation

"Help America Vote Act" Implementation and Compliance

S.L. 2003-12 (HB 549), Establish Election Fund to Implement HAVA.
S.L. 2003-226 (HB 842), Help America Vote Act Compliance.
S.L. 2003-284, Sec. 25.1 (HB 397, Sec. 25.1), Help America Vote Act Matching Funds.

The 2003 General Assembly enacted three pieces of legislation to comply with and adapt to a major act of Congress, the Help America Vote Act of 2002 (HAVA). Congress enacted HAVA in response to the flaws exposed in the American election system in the 2000 Presidential election, especially in Florida. HAVA contains three basic provisions:

- Grants to States to replace punch-card and lever-machine voting equipment, though HAVA does not require replacement of that equipment.
- A set of requirements for States concerning a statewide voter registration system, standards for voting equipment, provisional voting, voter identification, administrative complaints, and absentee voting by military and overseas voters.
- Grants to States to meet HAVA's requirements. The requirements grants required each State to put up a 5% match and meet maintenance-of-efforts standards in its own budget.

S.L. 2003-12 (HB 549) creates a special fund called the Election Fund to received federal funds under HAVA. HAVA required the creation of such a fund. The act became effective on April 16, 2003.

S.L. 2003-284, Sec. 25.1 (HB 397, Sec. 25.1) appropriates the State funds necessary to meet the 5% matching requirements and the maintenance-of-efforts standards necessary to qualify for grants under HAVA. This section became effective July 1, 2003.

S.L. 2003-226 (HB 842) changes North Carolina election law where necessary to achieve compliance with the non-appropriations requirements of HAVA. The act was designed to comply with HAVA in the following six ways:

Statewide Voter Registration. – The act makes the statewide computerized voter registration system of the State Board of Elections the official voter registration record of the State. Under prior law, the official voter registration records were in each county board of elections. The act gives the State Board of Elections the authority to adopt guidelines for administering the statewide system, exempt from the rulemaking provisions of the Administrative Procedure Act. Consistent with HAVA, the act adds a requirement that voter-registration applicants provide their drivers license number with their application. If they have no drivers license number, they must provide the last four digits of their social security number. If they have neither, the State Board will supply them with a unique identifier. These changes become effective January 1, 2004.

Standards for Voting Equipment. – The act expands the State Board of Elections' authority over the approval of voting equipment in counties, and requires the State Board to make that equipment comply with HAVA. It requires the State Board to adopt procedures for vote-counting that comply with HAVA. It also specifies that optical-scanning equipment must return an overvoted ballot to the voter for correction before the vote is accepted and counted. Most of these changes become effective January 1, 2006.

Provisional Voting. – The act mandates that certain HAVA-required information, including how to vote provisionally, must be posted at every polling place. The act provides that if voting hours are extended by court order, after-hours voters must vote by provisional ballot. In addition, the act contains a right-to-know provision, giving the provisional voter a confidential, cost-free means of finding out whether the vote was counted and if not, why not. These changes become effective January 1, 2004.

Identification Requirement for Certain First-Time Voters. – The act contains an I.D. requirement for voters who registered by mail after January 1, 2003, and are casting their first federal vote in North Carolina and did not put a drivers license number or social security number on their application form. This change becomes effective January 1, 2004.

Administrative Complaint Procedure. – The act delegates to the State Board of Elections the creation of a complaint procedure to comply with HAVA. It exempts the procedure from the Administrative Procedure Act. HAVA requires the procedure to be open to any person who believes there has been a violation of HAVA, must be finally decided within 90 days unless complainant agrees to an extension, and must provide alternative dispute resolution if the normal means do not yield a result in 90 days. The change becomes effective January 1, 2004.

Uniformed and Overseas Absentee Voting. – Longstanding federal legislation already gives special voting rights to US citizens serving in the military and certain others living overseas. The act makes the State Board of Elections the single office for information about uniformed and overseas voters. It removes any start date for the period when an absentee application can validly be sent by one of those voters. It extends the validity of the application through two general elections. The designation of the State Board as the single office became effective June 19, 2003, and the other changes become effective January 1, 2004.

In addition, the act made six changes not required by HAVA:

- Paperless voter registration using electronically captured signatures, effective June 19, 2003.
- Exemption of drivers license number, social security number, and signature from public records law if on voter registration form, effective June 19, 2003.
- Requirement that the State Board of Elections must update its statewide voter registration list to reflect felons restored to citizenship after completing their sentences, effective January 1, 2004.
- A phase-out by 2006 of lever machines, effective June 19, 2003. (HAVA provides funding for their replacement, but does not mandate their phase-out. HAVA also provides funding for phasing out punch-card equipment, North Carolina decided in 2001 to phase out punch-cards.)
- A requirement that all voters sign a pollbook or other document before voting, effective January 1, 2004.
- Provisions to provide the county jury commissions with the benefit of names that have been subjected to the computer matching process between the State Board of Elections and the DMV, effective January 1, 2004.

Unless specified otherwise for certain sections, this act becomes effective January 1, 2004. (BG)

Filling Candidate Vacancy

S.L. 2003-142 (HB 821) requires that when a vacancy on the ballot occurs after the primary, but before the general election, the political party in which there is a vacancy is to certify a replacement nominee to only the board of elections that has responsibility for canvassing and certifying the results of election for the office in question.

Previously, when a vacancy occurred on a political party's ticket, the appropriate party committee chose a replacement nominee and certified that person's name to the board of elections that printed the ballot on which the candidate's name was to appear. In 2001, the General Assembly rewrote the ballot laws making county boards of elections responsible for

printing all ballots. If the office was one that represented a multicounty area, then the name had to be certified to each county board of elections involved.

This act became effective June 4, 2003. (EC)

Reporting Absentee Votes

S.L. 2003-183 (HB 869) requires that in adopting rules to implement the requirement that voting data be maintained by precinct, the State Board of Elections is to demand that counties that can comply with the reporting requirement by 2004 do so. The 2001 General Assembly enacted a provision to require absentee votes, whether mail-in or one-stop, to be reported by precinct, effective with the 2006 election. The State Board was to adopt rules to ensure that the reporting by the county boards of elections was implemented by the 2006 election, and provide for exemptions from the reporting requirement in the case of financial hardship.

This act became effective June 12, 2003. (EC)

Name on Ballot

S.L. 2003-209 (HB 201) requires the State Board of Elections to develop a review procedure for local boards of elections to follow when preparing the official ballot. The procedure is to ensure that the candidates' names appear on the official ballot in compliance with State law, which requires that the name is to appear as on their notice of candidacy or qualifying petition. When stating the name, no title, appendage, or appellation indicating rank, status, or position is to be printed on the official ballot in connection with the candidate's name. Candidates may use the title Mr., Mrs., Miss, or Ms. Nicknames are permitted, if used in the notice of candidacy or qualifying petition, and in accordance with rule. In the case of candidates for presidential elector, the official ballot contains the names of the nominees for President and Vice President, not the candidates for presidential elector.

This act became effective June 19, 2003. (EC)

Reporting by Federal PAC

S.L. 2003-274 (HB 787) requires the State Board of Elections to develop reporting requirements for federal PACs that are no more stringent than the requirements for North Carolina political committees, unless the federal PAC makes a contribution in excess of $4,000 for that election in which the report is required.

This act becomes effective when the State Board of Elections develops the technology to implement the act, but not later than January 1, 2004. (EC)

Student Pollworkers/Other Changes

S.L. 2003-278 (HB 1120) makes 11 changes to the election laws. Most of the changes are technical corrections in previously enacted statutes. The substantive changes are as follows:

Student Election Assistant. – The act creates the position of "student election assistant." This will be a 17-year-old high school student who will be appointed by the county board of elections to work in a polling place under the supervision of the precinct judges. To qualify, a 17-year-old must be a resident of the county and US citizen, be enrolled in a secondary school, including a home school: have an exemplary record according to the school; be recommended by the head of the school; and have parental consent. The assistant could not serve as a precinct judge unless old enough to vote, but would be trained, sworn, and paid like a precinct assistant. This provision becomes effective January 1, 2004.

No Extra Pay to Election Official for Off-Site Work. – If an election official is already being paid an hourly wage or daily fee for election-day work, the act prohibits the payment of additional money to that official for work away from the assigned precinct. Only reimbursement of expenses for the off-site work is allowed. This provision became effective June 27, 2003.

Later Date for Designating Presidential Primary Candidates. – The act moves the date when the State Board of Elections must designate candidates for North Carolina's presidential preference primaries to the first Tuesday in March. The prior law set that date for the first Tuesday in February at a time when that was the day after the close of candidate filing for the State's regular primaries. In 2001, however, the regular filing deadline was moved to the last business day in February, and the designation day for presidential primary candidates was not moved accordingly. The State Board is required to designate for the North Carolina presidential primary any candidates who have qualified for matching funds under the federal public campaign financing act. Other candidates may get on the presidential primary ballot by collected signatures on petitions. The act changes the deadline for doing that from designation day itself to the day before designation day. These changes became effective June 27, 2003.

Seventh-Day Canvass. – The act moves the county canvass (i.e., the day when a county board of elections meets to complete and certify the official results of a primary or election) from three days after election day to seven days after election day. If the election day is Tuesday, as it usually is, the act will move the canvass from Friday to Tuesday. The rationale for the change is that the Help America Vote Act will probably result in more provisional ballots for county boards to count between election day and the canvass. The act gives the boards more time to do that. Changing the day of the canvass entails also changing the dates of several other post-election events. The chart below shows the changes, which become effective January 1, 2004.

Event	Date under prior law	Date under S.L. 2003-278
Canvass Day	3rd day after election – 11-5-04 3rd day after primary – 5 –7-04	7th day after election – 11-9-04 7th day after primary – 5-11-04
Demand Deadline for Mandatory Recount in County Race	4th day after election canvas – 11-9-04 4th day after primary canvass – 5-11-04	1 day after election canvass – 11-10-04 1 day after primary canvass -- 5-12-04
Demand Deadline for Mandatory Recount in Multi-County Race	2nd Wed. after election – 11-10-04 2nd Wed. after primary -- 5-12-04	2nd Thurs. after election – 11-11-04 2nd Thurs. after primary -- 5-13-04
Demand Deadline for 2nd Primary	7th day after primary – 5-11-04	9th day after primary – 5-13-04
Canvass Day for Municipal Partisan Primary and Second Primary	3rd day after primary – 9-30-05 3rd day after 2nd primary – 10-21-05	7th day after primary – 10-4-05 7th day after 2nd primary – 10-25-05
Demand Deadline for Municipal Partisan Second Primary	Monday after canvass – 10-3-05	Thursday after canvass – 10-6-05
Canvass and Demand Deadline for Municipal Nonpartisan Runoff	Canvass 3rd day after election – 10-14-05 Demand Mon. after canvass – 10-17-05	Canvass 7th day after election – 10-18-05 Demand Thurs. after canvass – 10-20-05
Canvass for Municipal Nonpartisan Primary	3rd day after primary – 10-14-05	7th day after primary – 10-18-05
Municipal Abstract Due to SBOE	5th day after election – 11-13-05	9th day after election – 11-17-05
Canvass for Nonpartisan Judicial Primary	3rd day after primary – 5-7-04	7th day after primary – 5-11-04
Issuance of Certificate	County: 5th day after canvass Multi-county: 5th day after canvass	County: 6th day after canvass Multi-county: 6th day after canvass

Except as specified above, this act became effective June 27, 2003. (BG)

Campaigning Outside Polls

S.L. 2003-365 (HB 819) requires the local board of elections to provide an area adjacent to the buffer zone at each polling place for the purposes of election-related activities prohibited in the buffer zone. This act also gives the Executive Director of the State Board of Elections the authority to grant exceptions under certain circumstances, namely there is no other available place to conduct the election in the precinct.

This act becomes effective January 1, 2004. (EC)

Local Option Project Development Financing

S.L. 2003-403 (SB 725). See **Finance**.

Amend Constitution/School Fines & Forfeitures

S.L. 2003-423 (SB 965). See **Education**.

Chapter 8
Courts, Justice, and Corrections

Brenda Carter (BC), Tim Hovis (TH), and Hal Pell (HP)

Enacted Legislation

Modernize Judgment Docketing Laws

S.L. 2003-59 (HB 636) modernizes the laws governing judgments by giving effect to electronic judgment dockets and by reestablishing the effective date of civil judgment liens and the date from which interest accrues on judgments.

G.S. 1-233 requires the clerk to docket all judgments entered by the court. The recording of a judgment is a three-step process. First, the judgment is entered. Second, the clerk indexes the judgment. Third, the judgment is docketed, which involves abstracting certain information, such as the names of the parties, the address of the party against whom the judgment is rendered, the relief granted, the date of the judgment, and the date, hour, and minute of docketing, onto the physical Judgment Docket Books. In cases affecting the title to real property, the clerk must enter upon the judgment docket the number and page of the minute docket where the judgment is recorded.

This act makes the following changes:

- Provides that if all of the named documents are already on file, then the clerk need not provide additional copies for purposes of creating the judgment roll. Under prior law, the clerk of superior court was required, in all cases, to attach several documents, such as the complaint, the summons, the pleadings, the verdict, and all other papers related to the merits of the case or affecting the judgment, to a copy of the judgment, for purposes of establishing the judgment roll.
- Requires clerk of superior court to record in the docket the date, hour, and minute of both the entry of judgment and the indexing of the judgment.
- Deletes language requiring the clerk to record the number and page of the minute docket where a judgment affecting title to real property is recorded.
- Deletes language deeming all judgments rendered during the same session of court as docketed on the first day of the session.
- Changes the point at which a judgment becomes a lien from the time it is docketed to the time at which it is indexed.
- Provides that post-judgment interest in all types of actions begins to accrue after the date of entry of the judgment under G.S. 1A-1, Rule 58.

The act became effective on September 1, 2003, and applies to all judgments entered, indexed, and docketed on or after that date. (TH)

DWI Blood Test Result-Directly to Clerk

S.L. 2003-104 (SB 619). See **Transportation**.

Juvenile Code Revisions/Court Improvement Project

S.L. 2003-140 (HB 1048). See **Criminal Law and Procedure**.

Adjust Magistrate Authorizations

S.L. 2003-284, Sec. 13.8 (HB 397, Sec. 13.8) amends the statute that authorizes the minimum and maximum number of magistrates in counties throughout the State. The amendment provides that the minimum number of magistrates in Martin County shall be four (previously five); the minimum number in Duplin shall be eight (previously nine) and that the maximum number in Swain County shall be four (previously three).

This section became effective July 1, 2003. (HP)

Clarify Partial Payment of Appointment Fee for Criminal Defendants

S.L. 2003-284, Sec. 13.11 (HB 397, Sec. 13.11) deletes a provision that allowed for partial payments of the $50 counsel appointment fee in criminal court cases. If paid at the time of appointment, the fee is credited to any amount the court determines is payable for legal services rendered to the defendant. If not paid at the time of appointment, the amount is added to any amounts the court deems are payable for the legal services. Upon completion of the action, if the court determines that no attorney's fees are due, and the appointment fee has not been paid, then a judgment for the $50 is entered. The judgment is docketed and constitutes a lien under State law.

This section became effective July 1, 2003. (HP)

Pilot Project on Assignment of Civil Cases

S.L. 2003-284, Sec. 13.12 (HB 397, Sec. 13.12) authorizes the Administrative Office of the Courts to conduct a pilot project in up to four judicial districts to assess the processing of general civil cases. Factors to be evaluated include the nature of the case, the amount in controversy, the complexity of the issues, the likelihood of settlement, the availability and suitability of alternative dispute resolution programs, and any other factors relevant to a just resolution of the cases and efficient use of court resources. No more than one project site may be selected within a judicial division and a site may not be selected without the approval of the senior resident superior court judge and the chief district court judge.

This section became effective July 1, 2003 and expires June 30, 2005. (TH)

Dispute Resolution Fee Clarification

S.L. 2003-284, Sec. 13.13 (HB 397, Sec. 13.13) clarifies that the fee paid for referral of a criminal case to a community mediation center is $60 per mediation. The center must also attach a receipt evidencing payment of the fee to the dismissal form provided to the district attorney.

This section became effective July 1, 2003. (TH)

Divide Superior Court District 19B

S.L. 2003-284, Sec. 13.14 (HB 397, Sec. 13.14) divides Superior Court District 19B in the Fifth Judicial Division into two separate districts. District 19B is composed under this section of Montgomery and Randolph Counties. This section creates a new District 19D composed of Moore County. The superior court judgeship in the new District 19B is filled by the current District 19B superior court judge residing in Randolph County. The superior court judgeship in the new District 19D is filled by the current District 19B superior court judge residing in Moore County.

This section becomes effective December 1, 2003. (TH)

Certain Litigation Expenses to be Paid by Clients

S.L. 2003-284, Sec. 14.3 (HB 397, Sec. 14.3) requires client departments agencies, and boards to reimburse the Department of Justice for reasonable court fees, attorney travel, subsistence costs and other costs directly related to litigation in which the Department is providing representation to the department, agency, or board.

This section became effective July 1, 2003. (TH)

Rape Kits a Priority

S.L. 2003-284, Sec. 14.7 (HB 397, Sec. 14.7) requires the Department of Justice to develop and implement a plan to process rape kits as expeditiously as possible. The Department is required to work with local law enforcement to determine how many untested or unanalyzed rape kits exist and how many rape kits are collected as evidence each year.

This section became effective July 1, 2003. (HP)

Rape Kit Analyses by Private Vendors

S.L. 2003-284, Sec. 14.9 (HB 397, Sec. 14.9) requires the Department of Justice to issue a request for information to determine all of the following:

- The interest of private vendors in providing analyses of forensic samples of DNA from rape kits in which there is no suspect.
- The qualifications of interested private vendors.
- The estimated costs of contracting with private vendors to provide the analyses.

This section became effective July 1, 2003. (HP)

Juvenile Justice Compliance with Audit Report

S.L. 2003-284, Sec. 15.9 (HB 397, Sec. 15.9) requires the Department of Juvenile Justice and Delinquency Prevention to develop and implement a plan to address the findings and recommendations in the performance audit of the youth development centers and juvenile detention centers within the Department. The Department must report to the Chairs of the Senate and House of Representatives Appropriations Committees and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee on the progress of the development of the plan by November 1, 2003. The Department must report on the final plan by March 1, 2004.

This section became effective July 1, 2003. (TG)

Shift Pay for Security Staff

S.L. 2003-284, Sec. 16.3 (HB 397, Sec. 16.3). See **Labor and Employment**.

Department of Corrections Security Staffing Formulas

S.L. 2003-284, Sec. 16.4 (HB 397, Sec. 16.4). See **Labor and Employment**.

Use of Closed Prison Facilities

S.L. 2003-284, Sec. 16.5 (HB 397, Sec. 16.5) directs the Department of Correction, with regard to the closing of prison facilities, to consult with county or municipal governments, elected

State and local officials, and State agencies about converting the facility to another use. The Department may also consult with private for-profit or nonprofit firms about possible uses of a facility. Priority is given to a criminal justice use of the facility. The State may also provide for the transfer or lease of facilities to counties, municipalities, State agencies, or private firms, and if cost-effective, may convert the facility from one security level to another. Prior to any transfer or lease of units, the Department must report the terms of any lease or transfer agreement to the Joint Legislative Commission on Governmental Operations, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The Department must also provide annual summary reports on all conversions, transfers, and leases.

This section became effective July 1, 2003. (BC, TH)

Probation and Parole Caseloads

S.L. 2003-284, Sec. 16.18 (b) and (c) (HB 397, Sec. 16.18(b) and (c)). See **Labor and Employment**.

Housing of Inmates

S.L. 2003-284, Sec. 16.22 (HB 397, Sec. 16.22) directs the Department of Correction (Department) to develop a plan addressing the appropriate mix of close, medium, and minimum custody beds, the future construction of new beds including the expansion of current facilities, the conversion of current facilities from one custody level to another, and the housing of two inmates per cell including a facility-by-facility assessment of the pros and cons of housing inmates in that manner. The Department is directed to place particular focus on the housing of two inmates per cell at the Pamlico, Mountain View, Eastern, Southern, Pasquotank, and Marion facilities, and at any of the new facilities authorized by the 2003 General Assembly.

The overall plan should address budgetary, security, and operational needs and should note any adherence to or deviation from the Department's custody population projection model.

The Department is directed to report on the plan by February 1, 2004 to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety.

This section became effective July 1, 2003. (BC, TH)

Transfer Criminal Justice Information Network to the Department of Crime Control and Public Safety

S.L. 2003-284, Sec. 17.1 (HB 397, Sec. 17.1) transfers the Criminal Justice Information Network, and its governing board, from the Department of Justice to the Department of Crime Control and Public Safety.

This section became effective July 1, 2003. (BC, TH)

The Juvenile Justice Information System

S.L. 2003-284, Sec. 17.2 (HB 397, Sec. 17.2) amends G.S. 143B-516(b)(13) to direct the Department of Juvenile Justice to develop and administer a juvenile justice information system. The section also amends G.S. 143-633(a)(1) to direct the Criminal Justice Information Network Governing Board to provide for the effective and efficient use of criminal justice information by the State's juvenile justice agencies.

This section became effective July 1, 2003. (BC, TH)

Equalize Longevity Service for District Attorneys, Assistant District Attorneys, Public Defenders, and Assistant Public Defenders

S.L. 2003-284, Sec. 30.19A (HB 397, Sec. 30.19A). See **Retirement**.

Acquire Two Private Prisons

S.L. 2003-284, Sec. 46A.1 (HB 397, Sec. 46A.1). See *2003 Budget Act* in **Finance**.

Youth Development Centers

S.L. 2003-284, Sec. 46A.2 (HB 397, Sec. 46A.2). See *2003 Budget Act* **in Finance**.

Lease-Purchase New Prisons

S.L. 2003-284, Sec. 47.1 (HB 397, Sec. 47.1). See *2003 Budget Act* in **Finance**.

The Larry T. Justus Western Justice Academy

S.L. 2003-289 (SB 117) designates the Western Justice Academy as the Larry T. Justus Western Justice Academy. Designation of the Academy is made in recognition of Representative Larry T. Justus' dedicated leadership in the General Assembly on justice and public safety issues and his commitment to the safety and well-being of the citizens of North Carolina.

This act became effective July 4, 2003. (TH)

Clarify Legal Filing Law

S.L. 2003-337 (HB 394). See **Civil Law and Procedure**.

Remove Sunset/Private Correctional Officers

S.L. 2003-351 (HB 497) allows correctional officers and security supervisors, in private facilities constructed prior to August 18, 2001, and under contract to the Federal Bureau of Prisons, to continue to have the same power to use force and make arrests as employees of the North Carolina Department of Correction. The authority was originally provided by S.L. 2001-378, and was to expire on August 18, 2003. This act amends S.L. 2001-378 by removing the expiration date.

This act became effective July 27, 2003. (HP)

Worthless Check Program/Extend Statewide

S.L. 2003-377 (HB 1026). See **Criminal Law and Procedure**.

Qualifications For Magistrates/Juvenile Custody Pilot

S.L. 2003-381 (SB 753) amends the qualification criteria for nomination as a magistrate, and establishes a pilot program to address the issue of conflicting child custody orders. The act

provides that a person with eight years' experience as the clerk of a superior court in a county in this State may be eligible for nomination as a magistrate.

The act also directs the Administrative Office of the Courts, in consultation with the Department of Health and Human Services, to establish a pilot program in the Twelfth Judicial District (Cumberland County) that addresses the issue of conflicting child custody orders. Under the program, when a court obtains jurisdiction over a juvenile in an abuse, neglect, or dependency case:

- The court in the juvenile proceeding may stay any other civil action in this State in which the custody of the juvenile is an issue.
- If an order entered in the juvenile proceeding and an order entered in another civil custody action conflict, the order in the juvenile proceeding controls as long as the court continues to retain jurisdiction in the juvenile proceeding.
- The court in the juvenile proceeding may order that any civil action or claim for custody filed in the pilot judicial district be consolidated with the juvenile proceeding.
- If a civil action or claim for custody has been filed in a district other than the pilot judicial district, then the court in the juvenile proceeding may, after consulting with the court in the other district, order that the civil action or claim for custody be transferred to the pilot judicial district or may order a change of venue in the juvenile proceeding and transfer the juvenile proceeding to the other district.
- The court may establish a mechanism for determining the legal status of a juvenile after jurisdiction of the juvenile court terminates, including a determination as to who has custody of the juvenile and under what circumstances custody may subsequently be changed.

The Administrative Office of the Courts must evaluate the pilot program and report its findings and recommendations to the 2005 General Assembly prior to its convening. This section expires June 30, 2005.

This act became effective August 1, 2003. (DJ, HP)

Prisoner Health Information/EMS Changes

S.L. 2003-392, Sec. 1 (SB 661, Sec. 1) requires local confinement facilities, upon transfer of a prisoner, to provide the receiving facility with any health information or medical records held by the transferring facility.

This section became effective August 7, 2003. (BC, TH)

The act also makes changes to the Emergency Medical Services Act. For more information on these provisions, see **Health and Human Services**.

The act also increases the criminal penalty for damaging a public building with an explosive or incendiary device, and creates a new arson offense involving injury to a firefighter or emergency medical technician. For more information on these provisions, see **Criminal Law and Procedure**.

Studies

Public Defender Study

S.L. 2003-284, Sec. 13.6 (HB 397, Sec. 13.6) requires the Office of Indigent Defense Services to study the establishment of additional public defender districts in the State. The Office must report to the Chairs of the Senate and House of Representatives Appropriations Committees and the Chairs of the Senate and House of Representatives Subcommittees on Justice and Public Safety by March 1, 2004.

This section became effective July 1, 2003. (HP)

Referrals to Existing Commissions/Committees

Dispute Settlement Centers Study/Reporting of Cases Mediated

S.L. 2003-284, Sec. 13.15 (HB 397, Sec. 13.15) directs the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee to review funding provided by the General Assembly to community mediation centers; to study the use of the funding to determine whether existing law adequately states the General Assembly's priorities for the centers and the spending of state funds; to recommend whether match requirements should vary for each center depending on the center's ability to obtain funding from non-State sources; and to study any other factors relevant to State funding. The Committee must report its findings by May 1, 2004 to the Chairs of the Senate and House Appropriations Committees and the chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety.

This section became effective July 1, 2003. (TH)

Chapter 9
Criminal Law and Procedure

Brenda Carter (BC), Trina Griffin (TG), Jeff Hudson (JH), Hal Pell (HP),
Wendy Graf Ray (WGR), Walker Reagan (WR), Susan Sitze (SS)

Enacted Legislation

Failure to Appear/Citation

S.L. 2003-15 (SB 440) allows a judge to issue an order of arrest for a person who fails to appear in court where the person had received a citation charging a misdemeanor offense. Prior law allowed an order of arrest to be issued for misdemeanors charged by some form other than citation.

This act became effective April 19, 2003. (SS)

Juvenile Commitment to Department of Juvenile Justice and Delinquency Prevention

S.L. 2003-53 (HB 950) requires the Department of Juvenile Justice and Delinquency Prevention (Department) to obtain the approval of the court before placing a juvenile committed to the Department in a program not located in a youth development center or detention facility.

The act allows the Department, after assessment of a juvenile, to recommend placement of the juvenile in a program not located in a youth development center or detention facility. If the Department wishes to place a juvenile in such a program, the Department must file a motion with the committing court, along with information on the specific placement recommended. The Department must also notify the district attorney, the juvenile, and the juvenile's attorney. The court may enter an order without the appearance of witnesses and without hearing if the court determines that the identified commitment program is appropriate and a hearing is not necessary. The court must hold a hearing if the juvenile or the juvenile's attorney requests a hearing. If the court notifies the Department of its intent to hold a hearing, the court shall set the date for the hearing and the Department shall place the juvenile in a youth development center until the determination by the court at that hearing.

This act becomes effective October 1, 2003, and applies to dispositions entered on or after that date. (SS)

Evidence in Juvenile Hearings

S.L. 2003-62 (HB 126) clarifies the juvenile law relating to juvenile dispositional, review, and permanency planning hearings to permit the introduction of hearsay evidence in order to determine the needs of the juvenile and the most appropriate disposition.

This act makes it clear that for dispositional, permanency planning, and review hearings, hearsay evidence is admissible as long as the court finds the evidence to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. This clarification applies in juvenile cases in which a juvenile is alleged to be abused, neglected, dependent, delinquent, or undisciplined.

This act became effective May 20, 2003. (WR)

Evidence - DWI Blood Withdrawal Valid

S.L. 2003-95 (SB 449) provides that evidence regarding the qualifications of the person who withdrew a blood sample may be provided at trial by testimony of the charging officer or by an affidavit of the person who withdrew the blood. Evidence of this nature is sufficient to constitute prima facie evidence regarding the person's qualifications. Prima facie evidence is evidence that is sufficient on its face, unless challenged, to establish a given fact.

This act becomes effective December 1, 2003. (SS)

Controlled Hunting/No Importation of Coyotes

S.L. 2003-96 (SB 245). See **Animals and Wildlife**.

School Safety Officers – Students/Sex Offenses

S.L. 2003-98 (SB 555). See **Education.**

Conform Evidence Rule 103

S.L. 2003-101 (HB 689). See **Civil Law and Procedure**.

Clarify Definition of Protective Order

S.L. 2003-107 (SB 630). See **Civil Law and Procedure**.

Improper Equipment Included in Speeding

S.L. 2003-110 (HB 510) makes an improper equipment violation a lesser-included offense of speeding violations under G.S. 20-141.

This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. (HP)

Revisions to Juvenile Code

S.L. 2003-140 (HB 1048) makes various clarifying and conforming changes to the Juvenile Code.

The act clarifies that the Director of the Department of Social Services is required to prepare a predisposition report for the court only in abuse, neglect, and dependency proceedings. These reports will include results of mental health evaluations, home placement plan, and a treatment plan for the juvenile. The requirement for appointment of a guardian ad litem in termination of parental right cases is limited to those situations where the parent is legally incompetent. The purpose of the Juvenile Code is modified to be consistent with the federal Adoption and Safe Families Act of 1997 by providing standards to ensure that the best interests of the juvenile are foremost in consideration by the court. The clerk of court's office is directed to provide a copy of the juvenile petition and any notices of hearings to the local guardian ad litem's office when a petition alleging abuse or neglect is filed without waiting for the official appointment to be made in the case.

The act clarifies that guardians ad litem appointed from the Guardian Ad Litem Program for the juvenile in termination of parental right cases are only to be appointed for children who have been found to be abused, neglected, or dependent. The act also requires that the court

verify that a person who is appointed guardian of the person or is given custody of the juvenile understands the legal significance of the appointment or placement and has adequate resources to care appropriately for the child.

The act adds also attorneys, Department of Social Services personnel involved in abuse or neglect cases, and guardians ad litem to the list of court officials against whom an assault or threat of serious bodily harm is punishable as a felony.

The criminal provision of the act becomes effective December 1, 2003 and applies to offenses committed on or after that date. The remainder of the act became effective June 4, 2003. (WR)

Drug Screening & Assessment – AB

S.L. 2003-141 (HB 352) requires a defendant who has been ordered, as a special condition of probation, to submit to a period of residential treatment in the Drug Alcohol Recovery Treatment (DART) program to first undergo a screening to determine chemical dependency. If the screening indicates that the defendant is chemically dependent, the court must order an assessment to determine the appropriate level of treatment. Participation in the program will be based on the results of the assessment.

The act also deals with defendants who are ordered to participate in DART as a condition of an active sentence, or while the defendant is in prison. Under current law, the sentencing judge has authority to recommend that a sentenced offender be assigned to the DART program during his period of imprisonment. This act repeals G.S. 15A-1351(h), which provides this judicial authority. The practical effect of repealing this subsection is that judges will no longer have the authority to recommend participation in the DART program for a defendant given an active sentence. Rather, the Department of Corrections will make this recommendation based on its assessment of the defendant upon entering the correctional system. Currently, the Department of Corrections already screens all sentenced offenders entering the correctional system.

This act was a recommendation of the North Carolina Sentencing and Policy Advisory Commission. The Commission found that judges often refer offenders to the DART program based solely on the request of the defense attorney. The Commission concluded that without an assessment to determine chemical dependency, these referrals are resulting in an inefficient use of the treatment resource. Given this, the Commission recommended legislation requiring that offenders first be screened for chemical dependency and then assessed as to the level of treatment before receiving services to produce more efficient and effective use of limited treatment resources.

This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. (TG)

Amend Special Probation Definition

S.L. 2003-151 (SB 93) reduces the maximum amount of confinement that may be imposed while on special probation. When a convicted offender violates a condition of probation, a court may place him on special probation. As part of the conditions of special probation, the court may order that the offender serve a period or periods of confinement (split sentence), which may be continuous or non-continuous. Under current law, the total for all periods of confinement may not exceed the lesser of six months or one-fourth of the maximum sentence of imprisonment imposed for the offense.

Under the act, the total for all periods of confinement may not exceed one-fourth of the maximum sentence of imprisonment imposed for the offense. Thus, the maximum amount of

confinement that may be imposed under the amended statute is nine months as compared to a maximum of thirty-six months under current law.

The act becomes effective December 1, 2003, and applies to all offenses committed on or after that date. (TG)

IT Security Changes

S.L. 2003-153 (HB 1003). See **State Government**.

Criminal Unauthorized Recordings

S.L. 2003-159 (HB 42) amends the law relating to the unauthorized transfer of copyrighted works, the recording of live performances for sale, and the sale of unauthorized copies of works. The act:

- Reorganizes applicable definitions and defines the term "fixed" as provided in federal copyright law.
- Provides that Internet service providers who are only providing third parties with a means of delivery, or conduit, for the transfer of recordings are not "using or causing the use of" recordings that might be transferred in violation of the Article.
- Makes it illegal to sell any recorded article if the packaging, cover, box, jacket, or label does not clearly and conspicuously disclose the actual true name and address of the manufacturer of the article and the name of the actual author, artist, performer, producer, or programmer.
- Rewrites G.S. 14-337(a) to reduce the number of articles involved to charge a Class I felony. The term "article" includes both sound recordings and audio-visual works. The effect of the change is to clarify, for example, that it is not the number of individual recordings on a compact disc (the tangible medium) that are counted to determine the classification of the offense; it is the number of compact discs (the "articles" to be counted).

This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. (HP)

Enhance Amusement Device Safety

S.L. 2003-170, Sec. 5 (HB 609, Sec. 5) creates new G.S. 95-111.13(i) in Article 14B of Chapter 95 of the General Statutes, which sets out regulations relating to operation of amusement devices in North Carolina. G.S. 95-111.13(i) provides criminal penalties for persons who violate the provisions of Article 14B when the violation causes the death of any person. A first violation causing death will be punishable as a Class 2 misdemeanor, including a fine not to exceed $10,000, and any subsequent violation causing death will be punishable as a Class 1 misdemeanor, including a fine not to exceed $20,000.

G.S. 95-111.13(i), as enacted by this section, becomes effective December 1, 2003, and applies to offenses committed on or after that date.

The remainder of the act makes various other changes to the Amusement Device Safety Act. For a summary of those provisions, see **Labor and Employment.** (WGR)

Stalking/Supervised Probation is Minimum

S.L. 2003-181 (HB 304) provides that if a court convicts a person for the crime of misdemeanor stalking and sentences him or her to a community punishment, the person must be placed on supervised probation in addition to any other punishment imposed by the court.

This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. (WGR)

AMBER Alert

S.L. 2003-191 (HB 478). See **Children and Families**.

Child Care Facilities/Penalties

S.L. 2003-192 (SB 877). See **Children and Families**.

Concealed Handgun Reciprocity

S.L. 2003-199 (SB 33) provides that a valid concealed handgun permit issued by another state is valid in North Carolina if the issuing state grants the same right to North Carolina residents with valid North Carolina permits while carrying a concealed handgun in that state.

The act requires the Attorney General to maintain a registry of states that meet the requirements for reciprocity and to make the registry available to law enforcement officers for investigative purposes. The Attorney General is also required to make written inquiries to each state every 12 months as to whether a North Carolina resident can carry a concealed handgun in that state based on the person's valid North Carolina permit and whether a North Carolina resident may apply for a permit in the other state based on his or her valid North Carolina permit.

The act also amends G.S. 14-269(a1), which makes it unlawful to carry a concealed handgun, by adding an exception for persons who have permits from other states that are considered valid in North Carolina.

The requirement that the Attorney General maintain a registry of states that meet the requirements for reciprocity became effective June 14, 2003, and that requirement must be implemented within 60 days of that date. The remainder of the act became effective 60 days after June 14, 2003. (WGR)

Prohibit Rebirthing

S.L. 2003-205 (SB 251) creates a specific criminal offense for the practice of rebirthing, whether or not a patient is actually injured. "Rebirthing" involves reenacting the birthing process in a manner that includes restraint and creates a situation in which a patient may suffer physical injury or death. A first offense is a Class A1 misdemeanor. A second or subsequent offense is a Class I felony. The act also specifies that "rebirthing technique" is not an acceptable measure of therapeutic treatment that would permit the use of restraint on a client.

The criminal offense created by this act becomes effective December 1, 2003, and applies to offenses committed on or after that date. The remainder of the act became effective June 18, 2003. (SS)

Criminal History Record Checks

S.L. 2003-214 (HB 1024) enacts into law and enters the State into the National Crime Prevention and Privacy Compact (Compact), a system for the interstate and federal-State exchange of criminal history records for noncriminal justice purposes. Noncriminal justice purposes include: employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

Under the act, the Federal Bureau of Investigation (FBI) will appoint a Compact Officer to administer the Compact for federal agencies and to maintain a centralized information-sharing system. Each party state will appoint a state Compact Officer to administer the Compact within the state.

Any records obtained under the Compact may be used only for the official purposes for which the record was requested. A request for a criminal history record check must be submitted through a state's criminal history record repository or through the FBI.

A Compact Council, administratively located within the FBI, will adopt rules to administer the system. The Council will consist of 15 members appointed by the United States Attorney General. Nine of these members will be state compact officers.

The State may leave the Compact by enacting a law to do so within 180 days of notifying the other party states and the federal government of its intent.

The North Carolina Attorney General must report to the General Assembly on or before March 1, 2004 on the State Compact Officer to be appointed, rules or procedures adopted to implement the Compact, and any changes to the General Statutes needed to conform to the Compact.

The act also authorizes the Department of Justice to provide a city with a criminal history background check on any applicant for employment, upon the applicant's consent. Additionally, it authorizes city councils to require that a criminal history background check be conducted on all applicants and to consider the results in its hiring decisions.

This act became effective June 19, 2003. (JH)

Analogues/Schedule I Controlled Substance

S.L. 2003-249 (SB 694) adds to Schedule I of the North Carolina Controlled Substances Act substances that are intended for human consumption and that either have a chemical structure substantially similar to a controlled substance or that produce an effect substantially similar to that of a controlled substance, or "analogues." Under current State law, the manufacture, sale, delivery, or possession with intent to sell or deliver a scheduled controlled substance is a felony. Analogues of controlled substances, however, are not scheduled offenses unless specified. Under federal law, analogues intended for human consumption are treated as Schedule I controlled substances. Therefore, this act makes State law consistent with federal law with regard to the treatment of controlled substance analogues.

The act defines "controlled substance analogue" as a substance:

- The chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II;
- Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
- With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

Under the act, a "controlled substance analogue" does not include any of the following:

- A controlled substance.
- Any substance for which there is an approved new drug application.
- Any substance subject to an exemption for investigational use, to the extent conduct with respect to the substance is pursuant to an exemption.
- Any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. (TG)

Sexual Battery

S.L. 2003-252 (SB 912) creates a new criminal offense of sexual battery. A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person:

- By force and against the will of the other person; or
- Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

The act defines "sexual contact" as either touching the sexual organ, anus, breast, groin, or buttocks of any person, or a person touching another person with their own sexual organ, anus, breast, groin, or buttocks. This new offense is a Class A1 misdemeanor.

This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. (HP)

Amend Juvenile Law

S.L. 2003-297 (HB 1037) amends the criminal statutes by extending the penalty for allowing prisoners to escape to include persons who allow juveniles to escape from the custody of the Department of Juvenile Justice and Delinquency Prevention. The offense is a Class 1 misdemeanor.

The act also requires a county juvenile detention facility to photograph any juvenile who has been committed to that facility if the juvenile was at least 10 years old at the time that the juvenile allegedly committed a nondivertible offense. Nondivertible offenses include murder, rape, sex offense, arson, felony drug charges, 1st degree burglary, crime against nature, or any felony involving the willful infliction of serious bodily injury by use of a deadly weapon. Additionally, the court may order the release of a juvenile's photograph to the public if the juvenile escapes from a youth development center, other juvenile facility, a holdover facility, or from the custody of juvenile personnel or a local law enforcement officer.

The new criminal penalty for allowing a juvenile to escape becomes effective December 1, 2003, and applies to offenses committed on or after that date. The remainder of this act becomes effective October 1, 2003. (SS)

Pyrotechnic Regulation Enhanced

S.L. 2003-298 (SB 521) provides that before a county, a city, The University of North Carolina, or the University of North Carolina at Chapel Hill may permit the indoor use of pyrotechnics at a concert or public exhibition, the local fire marshal, the State Fire Marshal, or other appropriate official must first certify that:

- Adequate fire suppression will be used at the site;
- The structure is safe for the use of the pyrotechnics with the type of fire suppression to be used; and
- The building has adequate exits based on the size of the expected crowd.

The act also increases the penalty for violating the law governing indoor pyrotechnic exhibitions from a Class 2 misdemeanor to a Class 1 misdemeanor.

The new certification requirements became effective July 4, 2003, and apply to permits granted on or after that date. The increase in penalty becomes effective December 1, 2003, and applies to offenses committed on or after that date. (JH)

Amend Hazing Laws

S.L. 2003-299 (HB 1171) makes several changes with regard to the offense of hazing. First, it amends the definition of hazing. Prior law defined hazing as "to annoy any student by playing abusive or ridiculous tricks upon him, to frighten, scold, beat or harass him, or to subject him to personal indignity." The previous law applied to conduct by a student against any other student, regardless of whether it related to initiation into any organized society, team, or similar group. Hazing is defined in the new law as subjecting "another student to physical injury as part of an initiation, or as a prerequisite to membership, into any organized school group, including any society, athletic team, fraternity or sorority, or other similar group." The amended statute requires that the target of the hazing be subjected to physical injury, thereby removing emotional trauma, or the more subjective "personal indignity," as grounds for a hazing charge. Actual physical injury is not required; the newly amended law only requires a showing that the subject of the hazing was exposed to physical injury. The hazing must now relate to initiation into an organized group, as opposed to general hazing of any student at the school.

Second, the act removes the sanction of mandatory expulsion from school as the penalty for hazing.

Third, the act also repeals the statute that made it a criminal offense for a school official to fail to expel a student who has been convicted of hazing.

This act becomes effective December 1, 2003, and applies to acts committed on or after that date. (HP)

Amend Secret Peeping Law

S.L. 2003-303 (HB 408) amends the secret peeping law by making it gender neutral and creating higher penalties for specific conduct. The act retains the current Class 1 misdemeanor offense for secretly peeping into a room occupied by another person. The previous law only applied if the room was occupied by a female person.

The act provides the following penalties for the following offenses:

- Class A1 misdemeanor
  - Secretly peeping into a room while in possession of any device that may be used to create a photographic image.
- Class I felony
  - Secretly peeping into a room while using any device to create a photographic image of another person in that room for the purpose of arousing or gratifying the sexual desire of any person.
  - Using any device to create a photographic image of another person underneath or through the clothing being worn by that other person for the purpose of viewing the body of, or the undergarments worn by, that other person without the person's consent.
  - Secretly or surreptitiously using or installing in a room any device that can be used to create a photographic image with the intent to capture the image of another without their consent and for the purpose of arousing or gratifying the sexual desire of any person.
  - Knowingly possessing a photographic image that the person knows, or has reason to believe, was obtained in violation of this act.

- Class H felony
  - Disseminating or allowing to be disseminated images that the person knows, or should have known, were obtained as a result of the violation of this act if the dissemination is without the consent of the person in the photographic image.

The act defines the term "photographic image" as any "photograph or photographic reproduction, still or moving, or any videotape, motion picture, or live television transmission, or any digital image of any individual." The term "room" is also defined as including, but not limited to, "a bedroom, a rest room, a bathroom, a shower, and a dressing room."

The act further provides that a second or subsequent conviction of a felony shall be punished as though convicted of an offense one class higher. A second or subsequent conviction for a Class 1 misdemeanor shall be punished as a Class A1 misdemeanor. A second or subsequent conviction for a Class A1 misdemeanor shall be punished as a Class I felony. Additionally, if a person is placed on probation as a result of violation of this act, for a first conviction, the judge may impose a requirement that the defendant obtain a psychological evaluation and comply with any treatment recommended as a result of that evaluation. For a second or subsequent conviction, the judge must impose the evaluation and treatment requirement. If a person is convicted of a felony offense under this act, or is convicted of a second or subsequent misdemeanor offense, the court must consider whether the person is a danger to the community and whether requiring the person to register as a sex offender would further the purposes of the sex offender registration act.

The act creates a civil cause of action for any person whose image is captured or disseminated in violation of this act against any person who captured or disseminated the image or procured any other person to do so, and allows actual damages, punitive damages, reasonable attorney's fees and other litigation costs.

The act exempts, from the portions of the act that do not require a sexual purpose for the offense, both law enforcement officers while engaged in their official duties, and personnel of the Department of Correction or of a local confinement facility for security purposes or during investigation of alleged misconduct by a person in their custody. The act also states that it does not affect the legal activities of those with private protective services licenses or alarm systems licenses, who are legally discharging their duties and not engaging in activities for an improper purpose.

This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. (SS)

Clarify Authority/Regulation of Cervids

S.L. 2003-344, Sec. 10 (HB 948, Sec. 10) makes the importation or possession of black-tailed or mule deer in this State for any purpose a Class 1 misdemeanor. The remainder of the act clarifies the authority of the Wildlife Resources Commission to regulate the possession and transportation of cervids (members of the deer and elk family). For a summary of those provisions, see **Agriculture.**

This section becomes effective October 1, 2003, and applies to acts committed on or after that date. (TG)

Amend Locksmith Act/Criminal Checks/Fees

S.L. 2003-350 (SB 655). See **Occupational Boards and Licensing**.

Uniform Athlete Agents Act

S.L. 2003-375 (SB 563). See **Commercial Law and Consumer Protection**.

DNA Registry

S.L. 2003-376 (HB 79) expands the current DNA database to require that a DNA sample be taken from anyone convicted of any felony and anyone found not guilty by reason of insanity of any felony. The previous law only required that a sample be taken from persons convicted of certain felonies. If a sample has previously been taken from an offender and stored in the DNA database, and that sample has not been expunged, another sample does not have to be taken for subsequent convictions.

The act also clarifies the procedure for taking DNA samples from persons who are not sentenced to a term of confinement. These provisions require the person to report immediately following sentencing to the location designated by the sheriff. If the sample cannot be taken immediately, the sheriff shall inform the court of the date, time and location at which the sample shall be taken, and the court shall enter that date, time and location into its order. A copy of the court order is provided to the sheriff and if the person does not appear at the appropriate time, the sheriff shall inform the court. The court may issue an order to show cause and an order for arrest pursuant to the criminal contempt procedures. The SBI shall provide the necessary testing kits to the sheriff and the sheriff is required to use only those kits provided by the SBI.

Additionally, the act clarifies that any records or samples in the DNA database shall be used solely for criminal justice purposes in identifying the perpetrator of a criminal offense, except that in appropriate circumstances the records may be used to identify potential victims of mass disasters or missing persons.

This act becomes effective December 1, 2003. (SS)

Worthless Check Program/Extend Statewide

S.L. 2003-377 (HB 1026) authorizes the Administrative Office of the Courts (AOC) to authorize the establishment of a program for the collection of worthless checks in any prosecutorial district where economically feasible. Prior to this law, G.S. 14-107.2 authorized district attorneys only in certain counties to establish a program for the collection of worthless checks in cases that would be otherwise punishable as misdemeanors, felonies, or both. Under the program, a district attorney may not prosecute a worthless check case if the check passer pays a $60 fee to the Collection of Worthless Checks Fund and provides restitution to the check taker for: (1) the amount of the worthless check; (2) any service charge imposed on the check taker by a bank for processing the dishonored check; and (3) a processing fee imposed by the check taker of up to $25.

The new law requires the AOC to determine the economic feasibility of establishing a worthless check collection program in six specified prosecutorial districts; the AOC would then authorize programs in those districts, where economically feasible, before it authorizes a program in any other district. The AOC must report to legislative committees every other year on the economic viability of the worthless check collection programs.

This act became effective August 1, 2003. (HP)

Amend Enhanced Sentences Laws

S.L. 2003-378 (SB 693) amends the enhanced sentencing laws to conform to a recent United States Supreme Court case and to a North Carolina Court of Appeals case by requiring that (1) the facts supporting an enhanced sentence be alleged in the indictment, and (2) a jury determine the enhancement issues beyond a reasonable doubt. These provisions were a recommendation of the North Carolina Sentencing and Policy Advisory Commission.

Currently, there are three circumstances under which a sentencing judge is required to increase a defendant's sentence beyond the ranges authorized by structured sentencing: These circumstances are for (1) the use of a firearm, (2) the subsequent conviction of a Class B1 felony

where the victim is 13 years old or younger, and (3) the use or possession of a bulletproof vest. Prior to the passage of this act, a judge was required to increase a defendant's sentence in accordance with the enhancement statutes if the judge made a finding of certain facts by a preponderance of the evidence. The act modifies the three enhanced sentencing statutes to conform with recent court decisions by requiring that a jury determine beyond a reasonable doubt the facts supporting an enhanced sentence.

Firearm Enhancement. – Now, a defendant will be subject to a 60-month enhancement if a jury finds beyond a reasonable doubt that the defendant (i) used, displayed, or threatened to use or display a firearm during the commission of a Class A through E felony and (ii) actually possessed a firearm about his or her person.

Subsequent B1 Felonies with Young Victims. – Now, a defendant who is convicted of a Class B1 felony shall be sentenced to life imprisonment without parole if a jury determines beyond a reasonable doubt that (1) the victim was 13 years of age or younger at the time of the offense, and (2) the defendant has one or more prior convictions of a Class B1 felony. The enhanced sentence will not apply if there are mitigating factors present.

Bulletproof Vest Enhancement. – Now, a defendant who is convicted of a felony where the jury determines beyond a reasonable doubt that the person wore or had in his immediate possession a bulletproof vest at the time of the felony shall be guilty of a felony that is one class higher than the underlying felony for which the person was convicted. Just as with the prior law, the enhanced sentence will not apply if evidence that the person wore or had in his immediate possession a bulletproof vest is needed to prove an element of the felony.

The bulletproof vest exception for law enforcement officers was also modified. Prior to the passage of this act, law enforcement officers were exempt from the application of this sentencing enhancement. Now, the bulletproof vest sentencing enhancement will apply to law enforcement officers, but only if the State proves beyond a reasonable doubt that the officer was not performing a law enforcement function, and the officer knowingly wore or had in his immediate possession a bulletproof vest at the time of the commission of the felony for the purpose of aiding the officer in the commission of the felony.

Previously, prior convictions were required to be proven by a preponderance of the evidence. This act requires that the indictment allege prior convictions and that this be proven beyond a reasonable doubt.

This act became effective August 1, 2003, and applies to offenses committed on or after that date. Prosecutions for offenses occurring before August 1, 2003 are not affected by this act, and the statutes that would be applicable before this act remain applicable to those prosecutions. (TG)

ABC/Sexually Explicit Conduct Banned

S.L. 2003-382 (SB 996). See **Alcoholic Beverage Control**.

Prisoner Health Information/EMS Changes

S.L. 2003-392, Sec. 3 (SB 661, Sec. 3) amends the criminal statutes to create a Class E felony if a person commits a felonious burning or arson-related offense where a firefighter or EMS technician suffers bodily injury while discharging or attempting to discharge his or her duties on or proximate to the property. The act also amends the criminal statutes addressing malicious injury to create a Class E felony for the willful and malicious damage of the State Capitol, the Legislative Building, the Justice Building or any building owned or occupied by the State or any of its agencies, institutions, or subdivisions or other governmental entities.

This section becomes effective December 1, 2003, and applies to offenses that occur on or after that date. (TG)

For information regarding the changes to the Emergency Medical Services Act made by this act, see **Health and Human Services**. For information regarding the requirement that confinement facilities provide prisoner health information upon transfer to another facility, see **Court, Justice, and Corrections.**

Hit and Run – 2 Year License Revocation

S.L. 2003-394 (HB 963). See **Transportation**.

DWI Provider Authorization Fees

S.L. 2003-396 (SB 934). See **Health and Human Services**.

Detector Dog Trainers

S.L. 2003-398 (HB 860). See **Health and Human Services**.

Unauthorized Administration of Medications By Child Care Facilities

S.L. 2003-406 (SB 226) will make it unlawful to administer prescription or over-the-counter medication to a child attending a licensed or unlicensed child care facility without written authorization signed by the child's parent or guardian. A violation of the statute that results in serious injury to the child is punishable as a Class F felony, and any other violation of the section is punishable as a Class A1 misdemeanor.

The act provides an exception for circumstances in which an emergency medical condition presents itself and the child's parent is unavailable. In this situation, medication may be lawfully administered without the parent's written authorization if the medication is administered with the authorization of a bona fide medical care provider and in accordance with the provider's instructions.

This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. (WGR)

Assault in Presence of Minor/Enhance Penalty

S.L. 2003-409 (HB 926) creates a new criminal offense for assault in the presence of a minor. The offense is a Class A1 misdemeanor, and applies if a person commits (1) an assault with a deadly weapon or that inflicts serious injury, (2) on a person with whom the offender has a personal relationship, and (3) the assault is in the presence of a minor. There are mandatory minimum sentences of supervised probation for a first offender, and 30 days active sentence for a second or subsequent violation. The mandatory minimum sentences are in addition to any other sentencing by the court.

This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. (HP)

Homicide Prevention Act/Domestic Violence

S.L. 2003-410 (SB 919). See **Children and Families**.

Strengthen Security Fraud Enforcement Laws

S.L. 2003-413 (SB 925). See **Commercial Law and Consumer Protection**.

Chapter 10
Education

Dee Atkinson (DA), Drupti Chauhan (DC), Shirley Iorio (SI),
Robin Johnson (RJ), and Sara Kamprath (SK)

Enacted Legislation

Competitively Bid Beverages Contracts

S.L. 2003-284, Sec. 6.15 (HB 397, Sec. 6.15) requires local school administrative units, community colleges, and constituent institutions of The University of North Carolina to competitively bid contracts involving the sale of juice or bottled water. The section allows these entities to set quality standards for these beverages and to use these standards to accept or reject bids.

This section became effective July 1, 2003, and applies to contracts bid on or after that date. (RJ)

Public Schools

School Calendar Flexibility/Inclement Weather

S.L. 2003-8 (HB 340) amends G.S. 115C-84.2(a)(1), governing the school calendar, by allowing a local board of education to make up a maximum of three instructional days by adding instructional hours to previously scheduled instructional days. A local board could make this decision only if all of the following criteria were met:

- The days to be made up were missed because schools were closed due to unusual and extraordinary inclement weather conditions.
- Making up the days would cause undue hardship to parents, teachers, and students.
- The school calendar continued to have a minimum of 1000 instructional hours covering at least nine months.
- The additional hours added on to the existing days equaled the regularly scheduled number of instructional hours at each school.

If a local board chose to use this exception, the local school administrative unit was deemed to have a minimum of 180 days of instruction, teachers employed for a 10-month term were deemed to have been employed for the days being made up, and all other employees were to be compensated as if they had worked the days being made up.

This act became effective April 4, 2003, and applied only to the 2002-2003 school year. (RJ)

Community College Shared Leave

S.L. 2003-9 (HB 432). See **Community Colleges** subheading in this chapter.

Charter Schools and State Retirement and Medical Plans

S.L. 2003-69 (SB 39) authorizes any charter school that signed a charter on or after January 1, 2002, to elect to participate in the Teachers' and State Employees' Retirement System and the State Employees' Major Medical Plan no later than 30 days after the effective date of this

act. This act allows any charter school, which signed a charter on or after January 1, 2002, a second opportunity to elect to join the Retirement System and the Major Medical Plan if it initially failed to do so within the statutory time limits. The act also allows the Board of Directors of River Mill Academy, within 30 days of the effective date of the act, to elect to become a participating employer in the Teachers' and State Employees' Retirement System and to elect to become a participating employing unit in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan. The act further authorizes the assessment of interest on premiums not remitted in a timely manner by charter schools to the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan. The total amount of premiums, including amounts withheld from the compensation of Plan members, that is not remitted to the Plan by the 15th day of the month following the due date of the remittance shall be assessed interest of one and 1½ % of the amount due to the Plan, per month or fraction thereof.

This act became effective May 20, 2003. (DC)

School Safety Officers-Students/Sex Offenses

S.L. 2003-98 (SB 555) adds school safety officers to the list of school personnel subject to criminal penalties under G.S. 14-27.7(b) for engaging in intercourse or sexual acts with students and G.S. 14-202.4 for taking indecent liberties with students. By listing school safety officers with teachers, school administrators, student teachers, and coaches, the result is that school safety officers would be charged with a felony for violating these statutes regardless of their age in relation to the student. The act also defines "school safety officer" in both of these statutes as a school resource officer or any other person regularly present in a school for the purpose of promoting and maintaining safety.

This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. (DC)

Veterans Day a Holiday for School Staff

S.L. 2003-131 (HB 421) requires local boards of education to make Veterans Day a holiday for staff when they build their school calendar. The number of holidays would not be increased but Veterans Day would be included in the calendar in place of another day designated as a holiday. Currently, Veterans Day is a holiday for all students enrolled in public schools.

This act became effective June 4, 2003, and applies to all school years beginning with the 2005-2006 school year. (SK)

Purchasing Flexibility for Schools

S.L. 2003-147 (SB 620) removes the requirement that local school administrative units (LEAs) must purchase materials, equipment, and supplies under contracts established or approved by the State Department of Administration (DOA), effective April 1, 2004 at the latest. Instead, LEAs will use the same competitive bidding methods used by other units of local government. This act allows a LEA to be removed from the requirement to purchase under State contracts earlier than April 1, 2004, if the LEA is certified as E-Procurement compliant by the Department of Public Instruction and purchases a specified percentage of their materials, equipment, and supplies through the NC E-Procurement Service.

This act requires the State Board of Education to adopt rules regarding equipment standards for supplies, equipment, and materials related to student transportation. The State Board may adopt guidelines for any commodity that needs safety features. However, if the State Board of Education adopts safety guidelines for certain commodities, those guidelines must be at least as strict as ones adopted for State term contracts. Local school administrative units may utilize the E-Quote and Interactive Purchasing System for soliciting bids. This act also establishes

a "user group" made up of representatives from the Department of Administration and local school administrative units that will address issues related to proper bidding procedures, the exchange of information, and use of the E-Procurement system.

LEAs must report to the Department of Administration on the percentage of contract purchases that were from minority-owned businesses, female-owned businesses, disabled-owned businesses, disabled business enterprises, and nonprofit work centers for the blind and the severely disabled.

This act acknowledges that the State wants to encourage LEAs to purchase goods through the NC E-Procurement Service (Service). Therefore, the State Board of Education, in consultation with the Office of Information Technology Services, the Division of Purchase and Contract, and the Service must establish standards for determining when a local school administrative unit's purchasing process is E-Procurement compliant. As of the date a LEA is certified as being E-Procurement compliant, it must expend at least 30% of its remaining unencumbered funds used to purchase supplies, equipment, materials, computer software, and other tangible personal property during the fiscal year in which it is certified through the NC E-Procurement Service. The LEA must purchase at least 35% of its goods through the Service during the fiscal year following certification and the State encourages the LEA to purchase at least 50% of its goods in this manner. During the second fiscal year following certification, the LEA must purchase at least 40% of its goods through the Service and the State encourages the LEA to purchase at least 70% of its goods in this manner.

To use the NC E-Procurement Service, a LEA's purchasing system must be interfaced with the Internet-based purchasing system of the Service. The NC E-Procurement Service must work with the LEAs to accomplish this interface through the following graduated process:

- The Service will work with four local school administrative units that represent the two most popular purchasing systems used by the LEAs. The four pilot units will be the LEAs of Guilford County, Cabarrus County, Sampson County, and Edgecombe County. These four units must be certified as being E-Procurement compliant by December 1, 2003. However, if the State Board determines that the pilots will not be compliant within the specified timeframe, it may extend the required date of compliance.
- The Service will work with the LEAs of Wake County and Charlotte/Mecklenburg County. These two units have a unique purchasing system. These two units must be certified as being E-Procurement compliant by July 1, 2004.
- The remaining 111 LEAs must be certified as being E-Procurement compliant by January 1, 2005.

There is nothing in this act that limits the authority of the Department of Administration to develop, implement, and monitor a pilot program for reverse auctions for public school systems.

Except as otherwise noted, this act became effective June 4, 2003. (SI)

Encourage Early College Attendance

S.L. 2003-251 (HB 601) amends G.S. 115C-12 by requiring the State Board of Education, in cooperation with the Education Cabinet, to work with local school systems, the constituent institutions of The University of North Carolina, the local community colleges, and private colleges and universities to encourage early entry of motivated students into college programs and to ensure that there are opportunities for academically talented high school students to take college coursework, either at nearby institutions or through distance learning.

The act also requires the State Board of Education to adopt policies directing school guidance counselors to make ninth grade students aware of the potential to complete the high school courses required for college entry in a three-year period.

This act became effective June 26, 2003. (DC)

Age/Eligibility/NC Schools for the Deaf

S.L. 2003-253 (SB 503). See **Health and Human Services**.

School Food/Beverage Purchases

S.L. 2003-257 (HB 1032) requires local boards of education to give preference in purchasing contracts to high-calcium foods and beverages. "High calcium foods and beverages" are defined in this act as foods and beverages that contain a higher level of calcium and are equal to or lower in price than other products of the same type or quality. However, if a local board of education determines that a high calcium food or beverage would interfere with the proper treatment and care of individuals receiving services from a public school food program, the local board of education is not required to purchase high-calcium foods or beverages for that individual. Local boards of education that have entered into contracts to purchase food or beverages before the effective date of the act are not required to purchase high-calcium foods or beverages for the duration of the contract if purchasing those products would change the terms of the contract.

This act became effective June 26, 2003. (SI)

Alternatives to School Competency Test

S.L. 2003-275 (HB 801) modifies the State Competency Testing Program so that high school students who do not pass the Competency Test are given the opportunity to take an alternate test. The State Board must either:

- Adopt one or more nationally standardized tests or equivalent measures that evaluate competencies in verbal and quantitative areas; or
- Develop and validate alternate means to demonstrate minimum competence. These alternate means must be as difficult as the current required competency test.

The State Board shall adopt a policy to identify which students and under what circumstances students would be permitted to pass one of these alternate tests in lieu of the competency test.

This act also requires that students with disabilities who fail the current competency test after two attempts be given the opportunity to take and pass one of the alternate tests that the State Board adopts.

This act became effective July 1, 2003. (SK)

Innovative Education Initiatives Act

S.L. 2003-277 (SB 656) directs the Education Cabinet to set as a priority cooperative efforts between secondary schools and institutions of higher education in order to reduce high school dropout rates, increase high school and college graduation rates, decrease the need for remediation in institutions of higher education, and raise certificate, associate, and bachelor degree completion rates. The Cabinet must report annually to the Joint Legislative Education Oversight Committee on these efforts.

The act authorizes boards of trustees of community colleges and local boards of education to jointly establish cooperative innovative programs in high schools and community colleges to serve high school students who are at risk of dropping out of school before attaining a high school diploma, or to serve high school students who would benefit from accelerated academic instruction. A joint application for such programs would be submitted to the State Board of Education and the State Board of Community Colleges. Both Boards would appoint a joint advisory committee to review the applications and recommend those programs that meet the requirements of the act to the State Boards that would then approve the programs. An

approved program would be accountable to the local board of education but would be exempt from the laws and rules applicable to a local board of education, a local school administrative unit, a community college, or a local board of trustees of a community college except as otherwise provided by the act and the program agreement. A program would operate under the terms of a signed written agreement for a term of no more than five school years.

The act further directs local boards and the State Board of Education to review and strengthen their policies that encourage students to remain in high school rather than drop out. Nothing in the act is to be construed to obligate the General Assembly to make appropriations to implement the act.

This act became effective June 27, 2003. (DC)

See also **Studies** subheading in this chapter.

Student Pollworkers/Other Changes

S.L. 2003-278 (HB 1120). See **Constitution and Elections**.

Recruitment and Retention Initiatives to Address Teacher Shortages

S.L. 2003-284, Sec. 7.20(c)-(h) (HB 397, Sec. 7.20(c)-(h)) does the following in an effort to address the shortage of teachers:

- Authorizes the initial certification for a teacher from another state who meets all of the following criteria:
  - Has less than three years of full-time classroom teaching experience.
  - Is fully certified and highly qualified, as provided in the No Child Left Behind Act of 2001 (NCLB), in that other state.
  - Is employed as a teacher by a local school administrative unit in North Carolina. Under this provision, initial certification is for one year or until the teacher has three years of full-time teaching experience, whichever is longer. Unless the employing local school unit recommends otherwise, a teacher receives continuing certification upon the completion of three years of full-time teaching, including one full year in that unit. The teacher is then subject to the same continuing certification and certificate renewal requirements as other North Carolina teachers. The teacher is not required to take and pass a standard examination, unless NCLB requires otherwise.
- Authorizes continuing certification for a teacher from another state who meets all of the following criteria:
  - Has three or more years of experience as a full-time teacher.
  - Is fully certified and highly qualified, as provided in NCLB, in that other state.
  - Is employed as a teacher by a local school administrative unit in North Carolina. Under this provision the teacher retains continuing certification if, at the end of one year of employment, the employing local board of education recommends to the State Board that the teacher's continuing certification be renewed. The teacher is not required to take and pass a standard examination, except as otherwise provided by NCLB. This teacher would be subject to the same continuing certification and certificate renewal requirements as other North Carolina teachers.
- Directs the State Board of Education to determine whether the minimum score required on the PRAXIS exam, required for initial certification, is appropriate.
- Encourages the lateral entry into teaching by qualified individuals who have at least a bachelors degree, and directs the State Board of Education to review and revise the curriculum requirements for lateral entry candidates to receive certification.

- Directs the State Board to issue provisional certificates for no more than three years to lateral entry teachers who are required by federal law to obtain a certificate by the fourth year of teaching.
- Allows other qualified lateral entry teachers to receive a provisional teaching certificate for five years.
- Directs the State Board to ensure that teacher preparation programs that provide training for lateral entry candidates provide that training in a uniform and consistent manner to enable lateral entry candidates to obtain certification as required by NCLB while working as full-time teachers.

This section became effective July 1, 2003, and expires June 30, 2004. Provisions addressing teachers from other states apply to individuals initially employed as teachers in North Carolina for the 2003-2004 school year. (RJ)

See also **Studies** subheading in this chapter.

Pilot Programs on Financial Literacy

S.L. 2003-284, Sec. 7.35 (HB 397, Sec. 7.35) directs the State Board of Education to establish a pilot program that authorizes and assists up to five school systems to implement programs on teaching personal financial literacy. The purpose of the pilot program is to determine the best methods of teaching knowledge and skills for students to make decisions regarding their personal finances. The State Board must also do the following:

- Develop a curriculum, materials, and guidelines for local boards to use in implementing an instructional program on personal financial literacy before it selects the five participating school systems.
- Provide to local boards information on securing public and private funds and on using other assets to implement this instructional program.
- Report by January 1, 2004, to the Joint Legislative Education Oversight Committee on the implementation of the pilot program.

This section became effective July 1, 2003. (RJ)

See also **Studies** subheading in this chapter.

Review of Teacher Certification Process

S.L. 2003-284, Sec. 7.39 (HB 397, Sec. 7.39) removes the requirement that the State Board of Education must contract with an outside consultant to conduct a study, authorized last year, of the teacher certification process, and directs the State Board to conduct the study. In addition, this section eliminates portfolios from the issues to be considered as part of this study and extends the date from January 1, 2004, to March 15, 2004, by which the Board must report its findings and recommendations to the Joint Legislative Education Oversight Committee.

This section became effective July 1, 2003. (RJ)

See also **Studies** subheading in this chapter.

Enhancement of Character and Civic Education Program

S.L. 2003-284, Sec. 7.40 (HB 397, Sec. 7.40) encourages:

- High schools and middle schools to have elected student councils.
- All other schools to have student councils.
- Student discussions of current events in a wide range of classes, particularly social studies and language arts classes.
- High schools and middle schools to have at least two classes per grade level to offer interactive current events discussions at least every four weeks.

- Local boards of education to include, beginning with the 2004-2005 school year and as part of a character education program, instruction on the responsibility for school safety that includes a consistent and age-appropriate antiviolence message and a conflict resolution component for students in kindergarten through twelfth grade.
- All schools to provide opportunities for student involvement in community service or service-learning projects.

In addition, this section directs the State Board of Education to consider incorporating into the ABC's Program a character and civic educational component that may include a requirement for student councils.

This section became effective July 1, 2003. (RJ)

Collaboration Among DHHS, DPI, and LEAs to Ensure Medicaid-Related Services for Eligible Public School Students With Disabilities

S.L. 2003-284, Sec. 10.29A (HB 397, Sec. 10.29A). See **Health and Human Services**.

Employees May Voluntarily Share Leave With a Coworker's Immediate Family Member

S.L. 2003-284, Sec. 30.14A (HB 397, Sec. 30.14A). See **Labor and Employment**.

Modify Law/Contracts for School Principals

S.L. 2003-291 (SB 955) amends the law governing the length of contracts for school principals and assistant principals who are employed by contract. The change clarifies that only the initial contract between a local board of education and a school administrator may be for two to four years, ending on June 30 of the final 12 months of the contract. Subsequent contracts between a local board and principal or assistant principal must now be for a term of four years. These contracts still may be renewed at any time after the first 12 months so long as the term of the new, renewed, or extended contract does not exceed four years.

This act became effective July 1, 2003. (RJ)

Clarify Group Homes Licensure & LEA Reimbursement

S.L. 2003-294 (SB 926) makes various clarifying changes to the licensure statutes for group homes and to the statutes governing reimbursement for the educational costs of children in group homes. The following changes have been made regarding reimbursement for the educational costs of children in group homes:

- Amends G.S. 115C-140.1(a), effective July 1, 2003, by requiring that State and federal funds for the cost of a free appropriate public education for a child with disabilities in a group or foster home must be exhausted before the "home county" LEA is to reimburse the "host county" LEA. A local school administrative unit providing an education to a child with disabilities may submit an application for funds to the Special State Reserve Program when the costs exceed the per child group home allocation. Additionally, the Department of Public Instruction is required to review the current cost of children with disabilities served in the local school administrative units with group homes or foster homes to determine the actual cost of services.

- Clarifies that the local school administrative unit requesting funding from the Group Homes Program to Children with Disabilities must receive full school year funding.
- Requires the Department of Health and Human Services, together with the Department of Juvenile Justice and Delinquency Prevention and the Department of Public Instruction, to determine a method of identifying and reporting child placements outside the family unit group home and therapeutic foster care home settings, and submit a report to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division by April 1, 2004.

Except as otherwise noted, this act became effective July 4, 2003. (SI)

For information on the clarifying changes to the group home licensure statutes, see **Health and Human Services.**

This act also requires DHHS to report on the Comprehensive Treatment Services Program. For additional information on this reporting requirement, see **Children and Families.**

Compensation/Public School Employees/Active Duty

S.L. 2003-301 (SB 714) requires the State Board of Education to adopt rules relating to leaves of absence for public school employees, without loss of pay or time, for periods of military training and for State or federal military duty or special emergency management service. The rules shall provide that the State pays any salary differential to public school employees in State-funded positions, local boards pay any salary differential to public school employees in locally-funded positions, charter schools pay any salary differential to public school employees in charter schools, and local boards pay the local supplement.

This act became effective on or after July 1, 2002. (DC)

Probationary Period Shortened/Career Teachers

S.L. 2003-302 (HB 38) amends G.S. 115C-325(c)(2) to provide that career teachers do not have to serve another probationary period of more than one year following a return to the profession or a transfer to another school system. Local boards could grant career status immediately or after the first year of employment.

This act became effective July 4, 2003, and applies to contracts of employment beginning with the 2004-2005 school year. (DC)

Amend Child Welfare Laws

S.L. 2003-304, Sec. 3 (SB 421, Sec. 3). See **Children and Families**.

Advisory Members on State Board of Education

S.L. 2003-306 (SB 698) adds the following three advisory members to the State Board of Education:

- A superintendent appointed by the Governor.
- The State Principal of the Year as designated by the Department of Public Instruction.
- The local board of education member who is the current Raleigh Dingman Award winner.

These members will each serve one-year terms. They will participate in State Board deliberations and committee meetings in an advisory capacity only and may be excluded from executive sessions. They will receive per diem, travel, and subsistence. Their addition brings to seven the total number of advisory members to the State Board.

This act became effective July 4, 2003. (RJ)

School Volunteer Records Private

S.L. 2003-353 (HB 1114) amends the Community Schools Act by adding a new section providing that all school records regarding volunteers are not open to public inspection under the Public Records Act. "Volunteers" are defined as persons who provide services to the board without expectation of compensation and with the understanding that the board is not obligated to accept the services or pay for them.

The volunteers, superintendent, school supervisory personnel, members of the local board, the school board's attorney, the parent or guardian of any student with whom the volunteer has or had contact, and a party by authorization of a subpoena or court record, may inspect the records. The new section also requires the release or inspection of these records when the board determines or finds the release or inspection is essential to maintaining the integrity of the board OR to maintaining the level or quality of services provided by the board AND the board prepares a written memorandum with its reasons for release or inspection. The superintendent must keep the memorandum, which is a public record.

The act requires that volunteers be notified at the time they apply to volunteer that a file will be maintained on them and that the information in the file may be open to inspection under circumstances set forth in the act.

The act does not require school systems to maintain records related to volunteers.

This act became effective August 1, 2003. (RJ)

Charter Schools/Deed Registration

S.L. 2003-354 (SB 35) authorizes the board of directors of Clover Garden Charter School in Alamance County to elect to become a participating employing unit in the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan no later than 30 days after the effective date of this act.

The act also permits the State Board of Education to extend the terms of initial charters, and their renewals, from a maximum of five years to a maximum of ten years. The State Board must review the operations of each charter school at least once every five years to ensure that the school is meeting the expected academic, financial, and governance standards.

This act became effective August 1, 2003, and applies to charters granted or renewed on or after that date. (SI)

School Acquisition by Counties Statewide

S.L. 2003-355 (SB 301). See **Local Government**.

Local Flexibility Regarding Job Sharing in Schools

S.L. 2003-358 (SB 701) deletes G.S. 115C-302.2, job sharing by classroom teachers, and creates a new part in Chapter 115C that provides for job sharing by school employees. The State Board of Education is required to adopt rules to facilitate job sharing by these employees, including receiving on a pro rata basis the holidays and leave benefits that they would be entitled to receive if they were employed on a full-time basis. The act also amends the creditable service section of the Teachers' and State Employees' Retirement System for a school employee in a job-sharing position. The act also amends the eligibility criteria of the Comprehensive Major Medical Plan to allow coverage on a partially contributory basis for those employees.

The statutory changes pertaining to job sharing by school employees become effective January 1, 2004. The rest of the act became effective August 1, 2003. (SK)

Retirement System Technical Changes

S.L. 2003-359 (HB 331). See **Retirement**.

An Act to Safeguard Children

S.L. 2003-408 (SB 993) requires the State Board of Education to automatically revoke the certificate of a teacher or school administrator, without the right to a hearing, upon receiving proof that the person was convicted of certain serious felonies and misdemeanors, including murder, rape, assault with a deadly weapon with intent to kill or inflict serious injury, kidnapping, abduction of children, crimes against nature, incest, sexual misconduct involving minors, sexual exploitation of a minor, indecent liberties with children and students, and child abuse.

The act requires that the Board, before acting, receive a certified copy of the criminal record showing the conviction and verification that the record applies to the teacher or school administrator. The State Board must give written notice to the teacher or school administrator that revocation action is being considered, including notification that the person may challenge that the criminal record is for another person. If challenged, the Board may not revoke the certificate unless it can establish as a fact that the defendant and the teacher or school administrator are the same person.

The act also authorizes the State Board to contract with individuals who are qualified to conduct investigations in order to obtain all information needed to assist the State Board in the proper disposition of allegations of misconduct by certified persons.

This act became effective August 13, 2003. (SI)

Assistance to LEAs on Implementation of No Child Left Behind

S.L. 2003-419 (HB 797) requires the State Board of Education to assist schools in meeting the Adequate Yearly Progress (AYP) provision of the federal No Child Left Behind Act of 2001 (NCLB). Under NCLB, AYP is defined as the progress made toward the ultimate goal of having 100% of students proficient in reading and mathematics, according to State standards, by the end of the 2013-2014 school year. To meet AYP, the percent of students passing the State tests in reading and mathematics, school-wide and by each of ten subgroups, must meet or exceed the AYP targets for the year. The subgroups are: the school as a whole, White students, Black students, Native American students, Asian/Pacific Islander students, Hispanic students, Multiracial students, Limited English proficient students, students with disabilities, and economically disadvantaged students.

This act directs the State Board of Education to:

- Identify schools that are meeting AYP with the specified subgroups.
- Study the instructional, administrative, and fiscal practices and policies used by the schools selected by the State Board that are meeting AYP.
- Create assistance models for each subgroup based on the practices and policies used in schools that are meeting AYP. The schools of education at the constituent institutions of The University of North Carolina, in collaboration with the Center for School Leadership Development, shall assist the State Board in developing these models.
- Determine the number of local school systems that are not meeting AYP.

- Offer technical assistance, based on the identified assistance models, to the school systems that are not meeting AYP, giving the highest priority to those that have the highest concentrations of schools that are not meeting AYP and could be served effectively in the first two years of implementation. The technical assistance must include peer assistance and professional development by teachers, support personnel, and administrators in schools with subgroups that are meeting AYP.

The State Board of Education and the Department of Public Instruction must report to the Joint Legislative Education Oversight Committee by June 15, 2004, and December 15, 2005, on the implementation of this act, the number and location of schools meeting AYP, the assistance models developed, the technical assistance provided, and the need for additional resources to implement this act statewide.

This act became effective August 14, 2003. (RJ)

See also **Studies** subheading in this chapter.

Tobacco-Free Schools

S.L. 2003-421 (SB 583) directs local boards of education to adopt and enforce written policies for enforcement of the federal prohibition on smoking in any school building used to provide routine or regular kindergarten, elementary, or secondary education or library services to children. Further, the policy must prohibit the use of all tobacco products in enclosed school buildings during school hours.

The policy shall include all of the following:

- Adequate notice for students and personnel about the policy.
- The posting of signs prohibiting the use of tobacco products.
- Requirements that the school personnel must enforce the policy. The policy may allow tobacco products to be used in research or instructional activities so long as the tobacco product is not smoked, chewed or otherwise ingested.

Nothing in the act prohibits a local board from adopting and enforcing a more restrictive policy on tobacco use in school buildings and school facilities, on a school campus, at school related events, or on other school property.

This act became effective August 14, 2003. (SK)

Amend Constitution/School Fines and Forfeitures

S.L. 2003-423 (SB 965) authorizes the voters of the State to vote on an amendment to the North Carolina Constitution clarifying that the General Assembly may place in a State fund the clear proceeds of all civil penalties, civil forfeitures, and civil fines collected by a State agency and which belong to the public schools.

Proposed Constitutional Amendment. – The amendment would modify Section 7 of Article IX of the NC Constitution so that it clearly authorizes the changes made by the General Assembly in 1996. Section 7 of the Constitution would be separated into two subsections. Subsection (a) would retain the current constitutional language. Subsection (b) would create an exception to subsection (a) by authorizing the General Assembly to place in a State fund the clear proceeds of all civil penalties, forfeitures, and fines collected by a State agency and that belong to the public schools under subsection (a). The General Assembly is directed to appropriate the money in that State fund, on a per pupil basis, to the counties to be used exclusively to maintain free public schools.

The act prescribes the form of the constitutional amendment to be submitted to the voters at the statewide general election in November 2004, and specifies that if a majority of voters approve the proposed constitutional amendment, then it would become effective January 1, 2005.

Civil Penalty and Forfeiture Fund. – If voters approve the constitutional amendment, then the act provides for conforming statutory changes to be made effective January 1, 2005. These changes would clarify that the Civil Penalty and Forfeiture Fund consists only of the clear proceeds of civil penalties, forfeitures, and fines collected by a State agency and payable to the Fund under the new subsection (b) of Section 7 of Article IX of the NC Constitution.

State School Technology Fund. – The act also amends the statute governing the transfer of funds from the Civil Penalty and Forfeiture Fund to the State School Technology Fund. Currently, these funds are allocated to the local school administrative units. Charter schools do not receive any of these funds. This section directs the funds to be distributed to the counties to be allocated to the public schools, including charter schools.

Charter School Law Change. – The act amends the charter school law by clarifying that of the per pupil local funds transferred to a charter school, the amount consisting of revenue from supplemental taxes may be transferred only to a charter school in the tax district for which the taxes are levied and in which the student resides.

Except as otherwise noted, this act became effective August 14, 2003. (SK)

State Government Sales Tax Exemption/School Cooperatives Refund

S.L. 2003-431 (SB 100). See **Finance**.

Higher Education

Tuition Waiver Correction

S.L. 2003-230 (SB 424) changes the application of tuition waivers that are available to the following persons enrolled in community colleges and UNC institutions:

- Survivors of State or local law enforcement officers, firefighters, volunteer firefighters, or rescue squad workers who are killed while in active service or training for active service or who died as a result of a service-connected disability.
- Children, aged 17-23, and spouses of State or local law enforcement officers, firefighters, volunteer firefighters, or rescue squad workers who are permanently and totally disabled as a direct result of a traumatic injury sustained in the line of duty.

The act removes the limitation that the death or disability must have occurred on or after October 1, 1997, and makes numerous technical and clarifying changes.

In addition, this act directs the Joint Legislative Education Oversight Committee to study whether to extend the tuition waivers to law enforcement officers, firefighters, volunteer firefighters, or rescue squad workers who are permanently and totally disabled as a result of a service-connected disability; and to consider whether to remove the age limitations on their children. The Committee is directed to report its findings and recommendations to the General Assembly by April 15, 2004.

This act became effective July 1, 2003, and applies to persons enrolled in community colleges and UNC institutions on or after that date. (RJ)

See also **Studies** subheading in this chapter.

Tuition Modifications

S.L. 2003-284, Sec. 8.16 (HB 397, Sec. 8.16) provides that active duty members of the armed services who are admitted to a UNC constituent institution but do not qualify as residents for tuition purposes shall be charged the maximum available federal tuition assistance as the

required tuition and fees. This amount shall not exceed the established out-of-state tuition rate and mandatory fees.

The section also allows any person lawfully admitted to the U.S. who satisfied the qualifications for assignment to a public school and graduated from the school that the person was assigned to be eligible for the State resident community college tuition rate. This section does not make the person a resident of North Carolina for any other purpose.

This section became effective July 1, 2003. (SK)

Waive Deadlines for Troops

S.L. 2003-300 (SB 936). See **Military, Veterans', & Indian Affairs**.

Community Colleges

Community College Shared Leave

S.L. 2003-9 (HB 432) makes the following changes related to State employees, public school employees, and community college employees voluntarily sharing leave with immediate family members:

- Requires that the State Personnel Commission, in cooperation with the State Board of Community Colleges and the State Board of Education adopt rules and policies to allow any employee to voluntarily share leave with an immediate family member who is an employee of a State agency, community college, or public school.
- Requires that the State Board of Education, in cooperation with the State Board of Community Colleges and the State Personnel Commission adopt rules and policies to allow any employee to voluntarily share leave with an immediate family member who is an employee of a public school, community college or State agency.
- Requires the State Board of Community Colleges, in cooperation with the State Board of Education and the State Personnel Commission to adopt rules and policies to allow any employee of a community college to voluntarily share leave with an immediate family member who is an employee of a community college, public school or State agency.
- Under the act, an "immediate family member" is defined as a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

Prior to the adoption of rules, the president of any community college must allow a community college employee to share leave under these provisions. Additionally, community colleges, public schools and State agencies must permit eligible employees to receive the leave.

This act became effective April 10, 2003. (SI)

See also S.L. 2003-284, Sec. 30.14A (HB 397, Sec. 30.14A), Employees May Voluntarily Share Leave With A Coworker's Immediate Family Member, in **Labor and Employment.**

Community Colleges Financial Aid Process Clarified

S.L. 2003-52 (HB 234) states that only students who are enrolled in degree, diploma or certificate programs have to complete a Free Application for Federal Student Aid (FAFSA) in order to be eligible for financial assistance. Students who go to the community college to take non-credit continuing education courses are not be required to complete the FAFSA application because those students are not eligible for federal financial aid.

This act became effective May 20, 2003. (DC)

Permit Weapons at Johnston Community College Nature Center

S.L. 2003-217 (SB 167). See **Animals and Wildlife**.

Community Colleges Trust Fund

S.L. 2003-284, Sec. 8.14 (HB 397, Sec. 8.14) establishes the NC Community Colleges Instructional Trust Fund to supplement funds raised by the community college foundations to enhance the colleges' academic missions. The section requires that every $2 raised by the community college foundations during the 2003-2004 fiscal year be matched with $1 in State funds. The total matching State contribution shall not exceed $25,000 for each of the community colleges. The matching State funds may be used only for scholarships or financial aid for needy students. The act also authorizes the State Board of Community Colleges to request an audit of State funds expended from any foundation.

This section became effective July 1, 2003. (SK)

Tuition Modifications/Nonprofit Sponsorship of Community College Student

S.L. 2003-284, Sec. 8.16A (HB 397, Sec. 8.16A) allows a nonresident of the U.S. who is lawfully admitted to the U.S. and is sponsored by a North Carolina nonprofit entity to be eligible for the State resident community college tuition rate.

A nonresident of the U.S. is sponsored by a North Carolina nonprofit entity if the student resides in the State while attending the community college and the nonprofit accepts financial responsibility for the student's tuition and other required educational fees. The nonprofit must provide a signed affidavit to the community college verifying that the entity is accepting financial responsibility.

This section does not make a person a resident of North Carolina for any other purpose.

This section became effective July 1, 2003. (SK)

Community Colleges Facility/Public-Private Partnership

S.L. 2003-286 (SB 773) allows a community college board of trustees to enter into an agreement to lease college property to a private entity in exchange for that entity constructing a facility on the property. In order for a community college to enter into a public/private partnership, all of the following conditions must be met:

- The State Board must approve the agreement in advance.
- The lease must be conditioned on the private entity constructing a facility.
- The local board of trustees cannot lease the facility as a lessee under a long-term lease or capital lease from the private entity.
- The local board of trustees cannot finance its portion of the facility through any kind of installment or financing contract with the private entity.
- State bond funds are not used for construction of that part of the facility that is to be owned and used by the private entity.

The Department of Administration must approve the plans and specifications if the cost of the facility exceeds $300,000.

This act became effective July 4, 2003. (RJ)

Vocational Rehabilitation Students in Community Colleges/Funds

S.L. 2003-385 (HB 223) permits the State Board of Community Colleges to use certain funds to provide financial assistance to students with disabilities. Students with disabilities who have been referred by the Division of Vocational Rehabilitation and are enrolled in a community college will qualify for the Targeted Assistance program.

This act became effective July 1, 2003. (SI)

Universities

Increase Science & Math School Trustees

S.L. 2003-57 (HB 103) increases from 26 to 27 the number of members of the Board of Trustees of the North Carolina School of Science and Math in order to correspond with the increase in congressional districts in North Carolina. The Board of Governors of The University of North Carolina appoints all the members to this Board. The members serve staggered four-year terms. The initial term of the new member ends June 30, 2007.

This act became effective July 1, 2003. (RJ)

Amend Arboretum Board of Directors

S.L. 2003-102 (SB 851) shortened from four years to one year the time that a person had to be absent from the Board of Directors of the Arboretum before being reappointed.

This act became effective May 31, 2003. (SK)

Meningitis Immunization Information

S.L. 2003-194 (HB 825) requires each public or private educational institution that offers a postsecondary degree as defined in G.S. 116-15 and that has a residential campus to provide vaccination information on meningococcal disease to each student. The vaccination information must be included on the student health forms provided to each student and include any recommendations from the Centers for Disease Control and Prevention regarding the disease. The health form must include space for the student to indicate whether or not the student has received the vaccination against meningococcal disease. The vaccination information obtained under this section is confidential and shall not be a public record under G.S. 132-1.

The educational institution is not required to provide the meningococcal vaccination to students. If the national Centers for Disease Control and Prevention no longer recommend the meningococcal vaccine, then the section does not apply. The section does not create a private right of action.

This act became effective June 12, 2003, and applies beginning with the 2003-2004 academic year. (SI)

Appalachian State/Regulate Parking

S.L. 2003-213 (HB 928) revises and expands the list of streets along which Appalachian State University may, through its own ordinances, prohibit, regulate and limit parking of motor vehicles if parking is not prohibited by an ordinance of the Town of Boone on those streets.

This act became effective June 19, 2003. (DC)

N.C. School of the Arts/Board Membership

S.L. 2003-215 (HB 1210) modifies the membership of the Board of Trustees of the North Carolina School of the Arts. Currently, the conductor of the North Carolina Symphony is an ex officio, nonvoting member. This act would allow the conductor's designee to serve as an ex officio, nonvoting member in place of the conductor.

This act became effective June 19, 2003. (SK)

UNC Purchasing Flexibility

S.L. 2003-228 (HB 975) exempts The University of North Carolina (UNC) from the State's purchase and contract laws if the purchase of personal property or services is not covered by a State term contract and one of the following applies:

- The funds being used were not appropriated from the General Fund or received as tuition.
- The funds being used are from multiple sources (i.e. from the General Fund or tuition as well as from other sources), and the General Fund or tuition part of the funds does not exceed 30% of the total funds.
- The funds being used are grant or contract funds.
- The funds being used are from multiple sources (i.e. from the General Fund or tuition as well as from grants or contracts), and the contract or grant funds exceed 50% of the total funds.

UNC's special responsibility constituent institutions (which are endowed with specific financial management powers as designated by the Board of Governors and which include the President's Office and General Administration) continue to be subject to the requirements of Article 3 of Chapter 143 of the General Statutes, regarding the procedure in canvassing bids and awarding contracts; however, the approval or oversight of the Secretary of Administration, State Purchasing Officer, or Board of Awards is not required.

The act also permits special responsibility constituent institutions to make purchases of equipment, materials, supplies, and services from non-certified sources when a purchase is more favorable than the State term contract and it meets the following three conditions:

- The purchase price including cost of delivery is less than the cost under the State term contract.
- The items are the same or substantially similar as items under the State term contract.
- The cost does not exceed established benchmarks.

The institution notifies the Department of Administration about purchases that are consistently being made under this provision so that State term contracts can be improved.

This act became effective July 1, 2003. (RJ)

University Athletic Facilities Exemption

S.L. 2003-239 (SB 706) allows a public university to add bleachers to an existing softball field without having to construct additional plumbing facilities. The act applies to public universities located in counties that have a population of 160,000 or more according to the most recent federal census, border the Atlantic Ocean, and border no more than two other counties that are a part of North Carolina.

This act became effective June 24, 2003. (SI)

School of Science Math/College Scholarships

S.L. 2003-284, Sec. 9.4 (HB 397, Sec. 9.4) provides that every North Carolina resident who graduates from the NC School of Science and Math and enrolls full-time in a UNC constituent institution shall receive a tuition grant for four consecutive academic years. The amount of the tuition grant shall be determined by the General Assembly. The NC State Education Assistance Authority (NCSEAA) shall administer the tuition grants. The institution must certify that the student applying for the grant is eligible before the grant will be approved. After receiving certification, the NCSEAA shall remit the grant to the institution on behalf of the student. The institution shall refund the full amount of the grant if the student is not enrolled and carrying a minimum academic load by the tenth class day of the term. If there are not sufficient funds to provide each eligible student with a full grant, the UNC Board of Governors may transfer funds to meet the needs and each eligible student shall receive a pro rata share of available funds for the remainder of the academic year.

This section became effective July 1, 2003, and applies to students graduating in the 2003-2004 academic year and subsequent academic years. (SK)

UNC/Add Nonsmoking Areas

S.L. 2003-292 (HB 1016) adds the following to the list of specific areas in State–controlled buildings that may be designated as nonsmoking areas: UNC health facilities, wellness centers, enclosed physical education facilities, enclosed student recreational centers, laboratories, or residence halls. Each constituent institution is required to make a reasonable effort to provide residential smoking rooms in residence halls in proportion to student demand for those rooms.

This act became effective July 4, 2003. (SK)

Amend Distinguish Professors Endowment Trust Fund

S.L. 2003-293 (SB 952) requires that the focused growth institutions and special needs institutions only have to match the funds from the Distinguished Professors Endowment Trust Fund with a one-to-one match. The focused growth institutions are: Elizabeth City State University, Fayetteville State University, North Carolina Agricultural and Technical University, North Carolina Central University, The University of North Carolina at Pembroke, Western Carolina University, and Winston-Salem State University. The special needs institutions are the North Carolina School of the Arts and The University of North Carolina at Asheville.

For the focused growth institutions and the special needs institutions, the Board of Governors is directed to appropriate one $500,000 challenge grant for each $500,000 raised from private sources and one $250,000 challenge grant for each $250,000 raised from private sources. Contributions are also eligible for matching if there is a commitment for at least a $500,000 donation and an initial payment of $83,300 or if there is a commitment for at least a $250,000 donation and an initial payment of $41,600. Pledged contributions may not be matched before the total funds are collected.

This act became effective July 1, 2003. (DC)

Amend Hazing Laws

S.L. 2003-299 (HB 1171). See **Criminal Law and Procedure**.

Purchase Contracts/Increase UNC Benchmark

S.L. 2003-312 (HB 1070) increases the maximum expenditure benchmark from $250,000 to $500,000 for purchases by the UNC constituent institutions. If the Board of Governors sets a benchmark greater than $250,000 for an institution, then that institution would handle the bidding process, but would be required to submit to the Division of Purchasing and Contract for its approval of all offers along with the institution's recommendation of award or other action. The Division of Purchasing and Contract must send a notice of its decision to the institution, which the institution would be required to follow.

This act became effective July 1, 2003. (DC)

Modify Optional Retirement Program

S.L. 2003-356 (HB 1000). See **Retirement**.

Modify UNC Bond Law

S.L. 2003-357 (SB 633). See **Finance**.

UNC Nonappropriated Capital Projects

S.L. 2003-360 (SB 705). See **Finance**.

Establish State Education Grants

S.L. 2003-429 (HB 150) establishes a different administrative procedure to provide tuition grants to eligible North Carolina undergraduate students who attend a private nonprofit educational institution that is not owned or operated by the State, is accredited by the Southern Association of Colleges and Schools, and awards a postsecondary degree as it is defined in G.S. 116-15. A student is eligible if the student is a full-time student attending an institution defined in this act.

The act directs the State Education Assistance Authority (SEAA) to adopt rules to administer the tuition grants provided for in the act. The SEAA is further directed to pay the tuition grants directly to the eligible students and the amount of the grant will be determined by the General Assembly. The tuition grant can be paid to the student only after he or she completes the academic year and the SEAA must receive proper certification from the institution that the student is eligible. The first disbursement of money would be in the second year of this biennium (July 2004). The SEAA must document the number of full-time equivalent students that are enrolled in the private institutions and the amount of funds collected pursuant to this act. The SEAA must report those findings to the Secretary of Administration, the House and Senate Appropriations Subcommittees on Education, and the Joint Legislative Education Oversight Committee.

This act became effective July 1, 2003, and applies to the 2003-2004 academic year and each year thereafter. (SK)

Vetoed Legislation

No Portfolio Required/Teacher Certification

SB 931. See **Vetoed Legislation** chapter.

Studies

Referrals to Existing Commissions/Committees

Joint Legislative Education Oversight Committee

The Joint Legislative Education Oversight Committee shall study the following issues:

- Whether To Extend Tuition Waivers To Certain Persons Enrolled In UNC Constituent Institutions And Community Colleges. S.L. 2003-230 (SB 424).
- Effects Of Rapid Growth In Student Population On Local School Administrative Units. S.L. 2003-284, Sec. 7.29 (HB 397, Sec. 7.29).
- Recommendations Based On State Board Of Education Review Of Teacher Certification Process. S.L. 2003-284, Sec. 7.39 (HB 397, Sec. 7.39).
- Evaluation Of The Comprehensive Articulation Agreement. S.L. 2003-284, Sec. 8.12 (HB 397, Sec. 8.12).

Referrals to Departments, Agencies, Etc.

State Board of Education

The State Board of Education has been directed to study the following issues:

- Policies That Encourage Potential Dropouts To Remain In School And Encourage All Students To Pursue A Rigorous Academic Course Of Study. S.L. 2003-277 (SB 656).
- Initiatives To Assist High-Priority Schools. S.L. 2003-284, Sec. 7.10(c) (HB 397, Sec. 7.10(c)).
- Allotment Formula For Funding Students With Limited English Proficiency. S.L. 2003-284, Sec. 7.15(c) (HB 397, Sec. 7.15(c)).
- Results Of A Pilot Program To Test A Revised ABCs Model. S.L. 2003-284, Sec. 7.16(c) (HB 397, Sec. 7.16(c)).
- Expenditure Of Funds To Assist Local School Administrative Units And Individual Schools In Meeting Adequate Yearly Progress (AYP) Goals With The Subgroups Specified In The No Child Left Behind Act Of 2001. S.L. 2003-284, Sec. 7.17 (HB 397, Sec. 7.17).
- Whether The Minimum Required Score On The PRAXIS Exam Demonstrates Academic And Professional Preparation For Teaching. S.L. 2003-284, Sec. 7.20(d) (HB 397, Sec. 7.20(d)).
- Revisions To The Curriculum Requirements For Lateral Entry Candidates. S.L. 2003-284, Sec. 7.20(f) (HB 397, Sec. 7.20(f)).
- Adequacy Of Safety Rules Adopted By Local Boards Of Education On The Use Of Activity Buses. S.L. 2003-284, Sec. 7.25(c) (HB 397, Sec. 7.25(c)).
- Characteristics Of Mentor Teacher Programs That Are Most Effective In Retaining Teachers. S.L. 2003-284, Sec. 7.30(d) (HB 397, Sec. 7.30(d)).

- Effectiveness Of Local Mentor Teacher Programs. S.L. 2003-284, Sec. 7.30(e) (HB 397, Sec. 7.30(e)).
- Ratio Of School Nurses To Students Needed To Provide Services. S.L. 2003-284, Sec. 7.32 (HB 397, Sec. 7.32).
- Implementation Of The Pilot Programs On Financial Literacy. S.L. 2003-284, Sec. 7.35 (HB 397, Sec. 7.35).
- Weighted Grades For High School Students Taking University And Community College Courses. S.L. 2003-284, Sec. 7.36 (HB 397, Sec. 7.36).
- Review Of Teacher Certification Process. S.L. 2003-284, Sec. 7.39 (HB 397, Sec. 7.39).
- Statewide Privatization Of State-Funded Driver Education Programs. S.L. 2003-284, Sec. 29.7 (HB 397, Sec. 29.7).
- Efforts To Assist Local School Administrative Units And Individual Schools In Meeting Adequate Yearly Progress (AYP) Goals With The Subgroups Specified In The No Child Left Behind Act Of 2001. S.L. 2003-419 (HB 797).

UNC Board of Governors

The UNC Board of Governors has been directed to study the following issue:

- Film Industry Feasibility. S.L. 2003-284, Sec. 9.5 (HB 397, Sec. 9.5).

Major Pending Legislation

Charter Schools

Raise Cap on Charter Schools

HB 31 (Second Edition) would raise the cap from 100 to 110. The bill is pending in the Senate Education/Higher Education Committee.

Charter School Law Changes

HB 319 (Second Edition) would allow teachers who have taught in a charter school that participates in the State Retirement System to retire and return to the classroom after a six-month break in service and keep full retirement benefits. This would be effective for one year (July 1, 2003 through June 30, 2004). It would require all charter school teachers in grades 6 through 12 to be college graduates if they teach in the core subject areas of math, science, social studies, and language arts. The bill is pending in the Senate Education/Higher Education Committee.

Modify Law/Charter School Advisory Committee

HB 1162 (First Edition) would require the State Board of Education to establish a charter school advisory committee. The bill is pending in the Senate Education/Higher Education Committee.

Forsyth Charter Schools/Raise Cap

SB 359 (Fourth Edition) would allow the Forsyth County Board of Education to be a chartering entity for a charter school and this school would not be included in the overall

statewide cap for charter schools. This bill would also raise the cap on charter schools from 100 to 110. The bill is pending in the Senate Committee on Rules and Operations of the Senate.

Governance

Superintendent of Public Instruction Appointed

SB 568 (Second Edition) would change the Constitution to authorize the Governor to appoint the State Superintendent. This bill is pending in the House Education Committee.

School Board/County Dispute Resolution

SB 796 (Second Edition) would amend the procedure for dispute resolution between boards of education and boards of county commissioners including mediation. This bill is pending in the House Education Committee. This bill is pending in the House Education Committee.

Safe Schools

School Suspension for Sale of Alcohol/Drugs

SB 994 (Third Edition) would allow a superintendent to remove a student to an alternative education setting or suspend the student for up to 365 days if the student:

- Knowingly offers, distributes, delivers, sells, gives away, possesses with intent to offer, distribute, deliver, sell, or give away, or uses any controlled substance; or
- Knowingly offers, distributes, delivers, sells, gives away, or possesses with intent to offer, distribute, deliver, sell, or give away, any alcoholic beverage or any prescription drug.

This activity must occur on educational property or at a school-sponsored curricular or extracurricular activity off educational property. This bill is pending in the House Committee on Rules, Calendar, and Operation of the House.

Student Achievement

Community Colleges Offer 4-Year Degrees

HB 1183 (First Edition) would authorize the State Board of Community Colleges to approve the establishment of bachelors degree programs in community colleges. This bill is pending in the House Education Committee.

Education Instead of Long-Term Suspension

HB 1135 (Fourth Edition) would require that the State Board of Education, The Department of Public Instruction, and the Department of Juvenile Justice and Delinquency Prevention, and Division of Mental Health, Developmental Disabilities, and Substance Abuse Services develop a State plan to study the feasibility and cost to ensure that students recommended for long-term suspensions receive free and appropriate education. This bill is pending in the House Committee on Rules, Calendar, and Operation of the House.

Link Principal's Bonus To 4-Year Graduation Rate

SB 949 (First Edition) would provide an annual bonus to high school principals if the four-year graduation rate increased by more than ten percent from the previous school year or if the four-year graduation rate exceeds 8%. This bill is pending in the Senate Education/Higher Education Committee.

Student Health and Disabilities

Sun Safety for School Children

SB 886 (Third Edition) would require local boards to adopt policies to establish sun safety as a priority and emphasize the importance of skin cancer prevention. This bill is pending in the House Education Subcommittee on Pre-School, Elementary and Secondary Education.

Establish Commission on Childhood Obesity

SB 582 (Second Edition) would establish a Commission to study childhood obesity and include as members the Superintendent of DPI, parents of school children, public school nutritionists and administrators. The Commission would study the causes of childhood obesity and recommend possible methods to decrease the occurrence and the Commission would report back to the General Assembly. The bill is pending in the House Health Committee.

Healthy, Active Children in Grades K-8

HB 303 (Third Edition) would provide that local boards of education have a duty to ensure that all students participate in at least 30 minutes of physical education activity each school day. The bill is pending in the Senate Education Committee.

Children with Disabilities/Federal Law

HB 318 (Second Edition) would:

- Consolidate definitions into one section and conform them to those in IDEA, the federal law governing educational programs for children with disabilities.
- Delete all references to 'children with special needs' and to substitute 'child with a disability' or 'children with disabilities'.
- Conform statutes to some of the discipline language required by IDEA.

The bill is pending in the Senate Health and Human Resources Committee.

Schools Can't Recommend Some Medications

HB 943 (Second Edition) would require LEAs to adopt rules and policies to prohibit school personnel from recommending that a student be prescribed psychotropic drugs and prohibit any school from requiring a child to take a psychotropic drug as a condition of school attendance. The bill is pending in the Senate Health and Human Resources Committee.

Teacher Recruitment and Retention

Initiatives to Address Teacher Shortages

HB 805 (Second Edition) would authorize a study for compensation programs and salary increases for beginning teachers, provide for local initiatives to recruit and retain teachers, require the State Board of Education to modify the approval standards for teacher education programs in order to encourage an increase in the number of students in the programs, provide for tax credits for public school teachers, and provide for tuition scholarship loans for nonresident students who agree to teach in North Carolina. This bill is pending in the House Education Subcommittee on Pre-School, Elementary and Secondary Education.

Modify Retired Educator Option

SB 10 (Second Edition) would allow retired educators (teachers, principals, assistant principals or instructional support personnel position) to return to the public schools without losing their retirement benefits. This bill would also shorten the necessary break in service from six months to two months and remove the sunset provision that would cause the option to expire in 2004. The bill is pending in the Senate Committee on Pensions & Retirement, and Aging.

Testing & Accountability

K-8 Testing Reform Act of 2003

HB 1015 (First Edition) would modify the State testing programs by:

- Requiring tests in grades 3-8 to be nationally normed achievement tests.
- Limiting testing to no more than five days in a school year.
- Requiring remedial instruction in 9th grade for students who scored below the national average in reading and math in the eighth grade.
- Establishing an advisory committee to assist with test selection.
- Prohibiting school systems from administering locally adopted standardized tests in addition to the SBE adopted tests.

This bill is pending in the House Education Committee.

Eliminate High School Exit Exam

HB 678 (Second Edition) would eliminate the high school exit exam and restrict the State Board of Education from developing any further standardized tests that are not required to fulfill federal law. This bill is pending in the Senate Education/Higher Education Committee.

Chapter 11
Environment and Natural Resources

George Givens (GG), Jeff Hudson (JH), Jennifer McGinnis (JM), and Tim Dodge (TD)

Enacted Legislation

Air Quality

Air Quality Permits

S.L. 2003-428 (SB 945) clarifies the extent to which a prospective air quality permit applicant for a new facility may engage in construction prior to obtaining the air quality permit and specifies the circumstances under which a person who holds an air quality permit may alter or expand the facility. The act makes the following changes:

Consistency with local government ordinances. – The act requires a person that proposes to construct or expand a facility to ensure that the construction or expansion of the facility is consistent with local zoning or subdivision ordinances prior to operation. The act provides that its provisions do not affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or affect the responsibility of any person to comply with any local ordinance.

Procedures for construction of new air pollution facilities. – The act prohibits the construction or operation of an air contaminant source, equipment, or associated air cleaning device at a site or facility where, at the time of the construction, there is no other air contaminant source, equipment, or associated air cleaning device for which an air permit is required. A person may, however, undertake the following activities prior to obtaining a permit if the person complies with the requirements of the act:

- Clearing and grading.
- Construction of access roads, driveways, and parking lots.
- Construction and installation of underground pipe work, including water, sewer, electric, and telecommunications utilities.
- Construction of ancillary structures, including fences and office buildings, that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device.

Procedures for facilities currently holding a permit. – The act requires a permittee to submit a notice of intent to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or associated air cleaning device in a manner that alters the emission of air contaminants at least 15 days prior to commencing alteration or expansion. The notice of intent must include the following information:

- The name and location of the proposed facility and the name and address of the permit applicant.
- The current permit number.
- The nature of the contaminant sources and equipment associated with the modification.
- An estimate of regulated emissions under the proposed modification.
- The air cleaning devices that will be employed to address each contaminant source.
- The expected construction schedule.
- An acknowledgement by the permittee that the actual air contaminant sources may not be operated in a manner that alters the permitted emissions until a modified permit is obtained.

- An acknowledgement that any construction of an air contaminant source prior to obtaining a modified permit will be performed at the permittee's own risk.
- A certification under oath of the accuracy of the notice of construction or modification.

The act also requires the permittee to give notice by publication, in a newspaper having general circulation in the county or counties where the facility is located, at least 15 days prior to alteration or expansion. The notice by publication must include the first six items listed above.

Review and Determination by the EMC. – Within 15 days of receipt of a complete notice of intent, the act directs the Environmental Management Commission (EMC) to make a determination of whether the following conditions have been met:

- The permittee is and has been in substantial compliance with other permits issued to the permittee.
- The facility will be altered or expanded so that it will be used for either the same or a similar use as the use already permitted.
- The alteration or expansion will not result in a disproportionate increase in the size of the facility already permitted.
- The alteration or expansion will result in the same or substantially similar emissions as that of the facility already permitted.
- The alteration or expansion will not have a significant effect on air quality.
- The EMC is likely to issue the permit modification.

If the EMC determines that all of the forgoing criteria have been met, it must notify the permittee that alteration or expansion may begin. If the EMC determines that one or more of the conditions has not been met, the EMC must notify the permittee that alteration or expansion may not begin.

Order to Cease Construction, Alteration, or Expansion. – The act authorizes the EMC to order a permittee to cease construction, alteration, or expansion if the EMC determines that the permittee will not qualify for a permit or permit modification.

Administrative and Judicial Review of Permit Decisions. – The act prohibits the use of any evidence of prior financial investment, construction, alteration, or expansion undertaken, or economic loss incurred in a contested case or judicial proceeding by a person or permittee who proceeds with construction, alteration, or expansion without first obtaining a permit or permit modification.

State, EMC, and Employees Not Liable. – The act provides that the State, EMC, and their employees are not liable for any loss incurred by a person, permittee, or owner of a facility as a result of the enforcement of the provisions of the act.

Compliance With Other State Laws Not Affected. – The act does not relieve any person of the obligation to comply with any other requirement of State law.

Federal Air Quality Programs Not Affected. – The act does not affect a person's duty to comply with any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, nor does the act apply if it is inconsistent with any federal requirement.

Fee. – The act provides that an applicant or permittee shall pay a processing fee of $200 at the time of notification.

This act became effective August 19, 2003, and applies to construction of any new facility and alteration or expansion associated with the modification of a permit for an existing facility that commences on or after that date. (GG, TD)

Coastal Development

Erosion Control Structures

S.L. 2003-427 (HB 1028) authorizes the Coastal Resources Commission to adopt rules to establish a general permit for the construction of offshore sills for estuarine shoreline protection and wetland enhancement. The act also codifies the ban on the construction of new permanent erosion control structures in ocean shorelines and prohibits the construction of temporary erosion control structures in ocean shorelines using any material other than sandbags.

The provision establishing the general permit for the construction of offshore sills became effective July 1, 2003. The provision codifying the ban on the construction of permanent erosion control structures became effective August 19, 2003. (GG, TD)

Environmental Health

Consecutive Water System/Manufactured Homes

S.L. 2003-173 (HB 1201) expands the definition of "contiguous premises" so that landlords who rent spaces for manufactured homes or who rent manufactured homes, may meter the water consumption of each tenant and charge for actual water usage at the same cost the landlord pays the supplier of the water, plus an administrative charge set by the Utilities Commission.

This act became effective June 12, 2003. (TD)

Sanitary District Compensation

S.L. 2003-185 (SB 90). See **Local Government.**

Fisheries

Limit Shellfish Lease Area in Core Sound

S.L. 2003-64 (SB 765) limits the area of western Core Sound that may be leased for shellfish cultivation to the area that was subject to shellfish cultivation leases on June 30, 2003.

Core Sound is a body of water located between mainland Carteret County and Core Banks. A moratorium on issuing new shellfish cultivation leases in the western, mainland side of Core Sound was established May 1, 1996. This act allowed the moratorium to expire on July 1, 2003, but limited the area of western Core Sound available for shellfish cultivation leasing to the area that was subject to shellfish cultivation leases on June 30, 2003. On June 30, 2003, 95 acres of western Core Sound were subject to shellfish cultivation leases. Thus, the effect of the act is to limit shellfish cultivation leasing in western Core Sound to these 95 acres.

The act also:

- Expresses the intent of the General Assembly that the limitation on shellfish cultivation leasing in western Core Sound be permanent.
- Provides that shellfish cultivation leases in western Core Sound remain transferable.

- Directs the Division of Marine Fisheries in the Department of Environment and Natural Resources to report to the Joint Legislative Commission on Seafood and Aquaculture on or before January 1, 2004, on the implementation of the limitation on shellfish cultivation leasing in western Core Sound.

The shellfish leasing provisions became effective June 30, 2003. The study provision became effective May 20, 2003. (JH)

Amend Atlantic States Marine Fisheries Commission Appointment

S.L. 2003-92 (SB 979) authorizes the Governor to appoint the legislative member of North Carolina's delegation to the Atlantic States Marine Fisheries Commission (ASMFC) and deletes language that provides for Senate approval of the Governor's appointment of the citizen member of North Carolina's delegation to the ASMFC.

In 1940, Congress authorized the creation of the Atlantic States Marine Fisheries Compact (Compact) and the ASMFC for the better management and utilization of the fisheries of the Atlantic seaboard. The 1940 congressional act authorized the member states of the Compact to appoint three members each to the ASMFC: the executive branch officer responsible for the conservation of marine fisheries resources; a member of the state legislature appointed by the state commission on interstate cooperation or, if there is no commission on interstate cooperation, by the Governor; and a citizen with knowledge of and interest in marine fisheries issues appointed by the Governor. This congressional directive as to how a state is to appoint its members to the ASMFC is controlling and must be followed by a state that chooses to become a member of the Compact.

In 1949, the General Assembly enacted legislation to authorize North Carolina's entrance into the Compact and membership in the ASMFC. This legislation, as amended over time, provided that North Carolina's delegation would consist of the Director of the Division of Marine Fisheries in the Department of Environment and Natural Resources, a member of the General Assembly who is a member of and appointed by the North Carolina Commission on Interstate Cooperation, and a citizen member appointed by the Governor, with the advice and consent of the Senate.

In 1992, the General Assembly enacted legislation to abolish the North Carolina Commission on Interstate Cooperation. This legislation did not include a conforming change to the ASMFC appointment statute. This resulted in a statutory requirement that the legislative member of North Carolina's delegation to the ASMFC be a member of and appointed by a commission that no longer exists.

The act corrects this oversight by providing that the Governor will appoint the legislative member of North Carolina's delegation to the ASMFC. The act also deletes language that provides for the advice and consent of the Senate in the Governor's appointment of the citizen member of North Carolina's delegation to the Commission and makes a number of technical, clarifying, and conforming changes to the ASMFC appointment statutes.

This act became effective May 30, 2003. (JH)

Extend Coastal Habitat Protection Plan Adoption Deadline

S.L. 2003-111 (HB 1134) extends the deadline for the adoption of Coastal Habitat Protection Plans from July 1, 2003, to December 31, 2004.

In 1997, the General Assembly enacted the Fisheries Reform Act of 1997, which overhauled the licensing of marine fishing; required systematic, long-range planning for management of marine fisheries resources; increased penalties for violation of marine fisheries laws; and authorized a number of studies related to marine fisheries. The act also required the Department of Environment and Natural Resources to work with the Marine Fisheries

Commission, the Environmental Management Commission, and the Coastal Resources Commission to jointly develop and adopt Coastal Habitat Protection Plans (Plans). The goal of the Plans is the long-term enhancement of marine fisheries through the protection of habitats important to these fisheries, such as wetlands, spawning grounds, nursery areas, shellfish beds, and submerged aquatic vegetation beds. Once the Plans are adopted, the three environmental rulemaking commissions are required to ensure, to the maximum extent practicable, that their actions are consistent with the Plans.

This act became effective May 31, 2003. (JH)

Amend Fisheries Proclamation Process

S.L. 2003-154 (HB 987) authorizes the Director of the Division of Marine Fisheries to issue proclamations governing quota-managed fisheries that are effective immediately upon issuance.

The Marine Fisheries Commission (MFC) may delegate to the Director of the Division of Marine Fisheries in the Department of Environment and Natural Resources (Fisheries Director) the authority to issue proclamations suspending or implementing rules of the Commission that are affected by variable conditions. This act removes the proclamation provisions from G.S. 113-221 and recodifies them in new G.S. 113-221.1. This act amends the recodified proclamation provisions to provide that a proclamation that governs a quota-based fishery may be made effective immediately upon issuance. This act also:

- Provides that a person who violates a proclamation that is made effective immediately upon issuance may not be charged with a criminal offense for the violation if the violation occurred between the time of issuance and 48 hours after the issuance and the person did not have actual notice of the issuance of the proclamation.
- Expands the authority of the MFC to call an emergency meeting to review proclamation issues to include review of the desirability of directing the Fisheries Director to issue a proclamation to prohibit the taking of certain fisheries resources.
- Makes technical, clarifying, and conforming changes to existing G.S. 113-221 and new G.S. 113-221.1.

This act became effective July 1, 2003. (JH)

Parks and Public Spaces

State Parks added to State Park System

S.L. 2003-106 (HB 1078) and S.L. 2003-108 (HB 1025) authorize the Department of Environment and Natural Resources (DENR) to add Mayo River State Park and Haw River State Park, respectively, to the State Parks System. G.S. 113-44.14(b) provides that DENR may add a State park, State natural area, State recreation area, State trail, State river, or State lake to the State Parks System upon authorization by an act of the General Assembly.

Mayo River State Park will be located in northwestern Rockingham County. The Mayo River is a popular recreational river, with whitewater for canoeing, kayaking, and rafting near the Virginia state line. Mixed hardwoods dominate the rough and hilly scenic corridor. Steep slopes, numerous outcrops, and a mosaic of soil types result in an unusual assemblage of plant communities. At least nine rare species are known to occur along the river, as well as the State's best example of the Piedmont calcareous mafic cliff natural community type. The river valley also has a rich cultural history.

Haw River State Park will be located north of Greensboro along the border between Guilford and Rockingham Counties. The Haw River supports several natural communities within the river floodplain and on the adjacent bluffs and uplands. The river corridor contains a large

collection of wetlands, including what may be the largest complex of beaver ponds in the Piedmont. There are several areas with high quality upland forests, habitat for rare plant and animal species, and significant historic and archaeological resources.

Both parks will be located in a region of the State that is one of four areas identified in the 2000 Systemwide Plan for the North Carolina State Parks System as underserved by the current parks system, based on State park acres per capita. This area was identified as a high priority for the addition of new parks.

The boundaries of the proposed parks have not yet been determined. It is likely that both parks will include linear corridors protecting the water quality and natural resources of the rivers as well as one or more upland nodes at each park that will support State park facilities such as a visitor centers, campgrounds, picnic areas, trails, and river access. DENR is considering several different revenue sources to fund land acquisition for the new parks, including the Natural Heritage Trust Fund, the Clean Water Management Trust Fund, the Ecosystem Enhancement Program, and the Parks and Recreation Trust Fund. Park facilities will be constructed in future years when suitable land has been acquired for the parks.

These acts became effective May 31, 2003. (JM)

State Nature and Historic Preserve Additions and Removals

S.L. 2003-234 (SB 627) dedicates and accepts certain properties as part of the State Nature and Historic Preserve (Preserve), removes certain lands from the Preserve, and deletes Waynesborough State Park from the State Parks System. Section 5 of Article XIV of the Constitution of North Carolina establishes the Preserve, which is intended to insure that lands and waters acquired and preserved for public park, recreation, conservation, and historic preservation purposes continue to be used for these purposes. Upon inclusion in the Preserve, these lands may not be used for other purposes except as authorized by a law enacted by a vote of three-fifths of the members of each house.

The act:

- Dedicates and accepts into the Preserve over 6,700 acres of property added to the North Carolina Park System since the last acceptance of properties in 2001. This property includes Beech Creek Bog, Elk Knob State Natural Area, and Lea Island State Natural Area as new components of the Preserve.
- Removes the following properties from the Preserve:
  - A portion of a parcel at Crowders Mountain State Park is deleted in order to resolve multiple encroachments on the Park and to improve an irregular boundary in a section of the Park.
  - Portions of two parcels at South Mountains State Park that are needed for the realignment of Secondary Road 1904 within the Park.
  - A portion of a parcel at South Mountains State Park that contains the Walker Top Baptist Church is deleted in order to allow transfer of the property to the Trustees of the Church for use for church purposes, with a clause providing that the property shall revert to the State if it ever ceases to be used for church purposes.
  - A portion of a parcel at Eno River State Park that contains a scenic easement is deleted in order to allow for the exchange of easement areas with adjacent landowners. The easement area that the State will receive in exchange is greater than the easement area that is being removed and increases the width of the buffer that the State Park and easement provides to the Eno River.
- Amends the statute that directs the Secretary of State to forward a certified copy of the enacted law to the register of deeds of the counties in which the accepted properties are located, to require that the Secretary of State also forward copies of the enacted law to the register of deeds of counties in which properties that have been removed from the Preserve are located.

- Deletes Waynesborough State Park from the State Parks System. The Systemwide Plan for the North Carolina State Parks System for 2000 through 2005 issued by the Division of Parks and Recreation of DENR recommended that the Park be removed on the basis that the Park does not contain the biological, archaeological or other resources that make it suitable for continued inclusion in the State Parks System. The Park is located on property that was once a landfill constructed by the City of Goldsboro in 1960. The City of Goldsboro, Wayne County, and the Old Waynesborough Historical Commission have expressed an interest in assuming ownership of the property. The Park closed in August 2002.

This act became effective June 19, 2003. (JM)

Study/Impact of Acquisition of Land for Conservation Purposes on Local Government Ad Valorem Tax Revenues

S.L. 2003-284, Sec. 11.7 (HB 397, Sec. 11.7). See **Finance.**

Solid Waste

Franchise Not Required Smokestacks Landfills

S.L. 2003-37 (HB 1205) exempts sanitary landfills that are used only to dispose of waste generated by a coal-fired generating unit that is owned or operated by an investor-owned utility subject to the "Clean Smokestacks Act" (S.L. 2002-4) from the requirement that a franchise be obtained for the operation of those landfills. Generally, an applicant for a new permit, a permit renewal, or a substantial amendment to a permit for a sanitary landfill, is required to obtain a franchise for the operation of the landfill from each local government with jurisdiction over any part of the land on which the landfill is located.

This act became effective May 14, 2003. (JM)

Underground Storage Tanks

Underground Storage Tank Program Amendments

S.L. 2003-352 (HB 897) makes the following changes to the Leaking Petroleum Underground Storage Tank (UST) Cleanup Program:

Cost-effectiveness. – The act provides that the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund (Commercial Fund) and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund (Noncommercial Fund) will not be used to reimburse costs in excess of those required to achieve the most cost-effective cleanup. An owner, operator, or landowner may select a cleanup method other than the cost-effective cleanup method approved by the EMC as long as the EMC determines that the alternative cleanup method will address imminent threats to human health and the environment. The Department of Environment and Natural Resources (DENR) will not, however, pay or reimburse costs in excess of the cost of implementing the approved cost-effective cleanup.

Performance-based cleanups. – The act authorizes DENR to use up to $250,000 of the funds in the Noncommercial Fund and $2,500,000 in the Commercial Fund during each fiscal year for performance-based cleanups of leaking UST sites. The act also provides that before a cleanup contract is awarded, the environmental service firm must secure a surety or performance bond equal to the price of the firm's services under the contract and must demonstrate having

secured the bond to the satisfaction of DENR. The performance-based cleanup program is scheduled to expire on October 1, 2006.

Secondary containment. – The act authorizes the EMC to adopt rules to establish standards and requirements for secondary containment for nontank components of petroleum UST systems, including all piping and fittings, pump heads, and dispensers. The rules will apply to any new UST system that is installed on or after the date on which the rules become effective and to the replacement of any nontank component of an UST on or after that date.

Commingled plumes. – Under current law, a discharge or release of petroleum from an UST may be cleaned up to risk-based cleanup standards, but a discharge or release of petroleum from an aboveground storage tank must be cleaned up to State groundwater standards. The act provides that a plume of contamination that results from the commingling of contamination from a leaking UST and a leaking aboveground storage tank may be cleaned up to risk-based standards. The Commercial Fund and Noncommercial Fund may only be used to pay or reimburse the portion of the costs of assessment or remediation that result from the leaking UST.

Preapproval and cleanup schedule. – The act directs DENR to establish the degree of risk to human health and the environment posed by a discharge or release from a leaking commercial UST and to determine a schedule for further assessment and cleanup based on those factors. If any of the costs of assessment or cleanup are eligible to be paid from the Commercial Fund, DENR must also consider the availability of funds in the Commercial Fund. Once DENR has established a cleanup schedule, the costs of any assessment or cleanup activities are not eligible for reimbursement from the Commercial Fund until the actions are authorized by DENR pursuant to the schedule. An owner, operator, or other person may choose to undertake assessment or cleanup before receiving authorization from DENR, but the costs for the assessment or cleanup will only be reimbursed after DENR has paid or reimbursed the costs for all assessments and cleanups authorized by DENR. The preapproval requirements will expire on October 1, 2005.

Testing requirements. – The act authorizes the EMC to adopt rules to modify testing requirements in order to reduce costs associated with the assessment and cleanup of discharges and releases of petroleum from leaking petroleum UST cleanup sites.

Study UST Program. – The act authorizes the Environmental Review Commission (ERC) to study the following issues related to the UST program:

- The adequacy of program funding.
- Options for management of available funds, including prioritization of cleanups and preapproval of cleanups.
- Changes in deductible and co-payment requirements.
- Options to increase program funding.
- The availability and use of private insurance to pay or reimburse the costs of the assessment and cleanup of releases and discharges of petroleum from petroleum USTs and of any liability of owners and operators of those tanks to third parties.
- Issues related to the inclusion of aboveground storage tanks in the program, including registration, fees and other funding issues, cleanup standards, and regulation of these tanks.
- Issues related to the provision of liability protection to a bona fide purchaser of a petroleum-contaminated property who has knowledge of, but did not cause or contribute to, the contamination of the property.

The ERC may report its findings and recommendations, including any proposed legislation, to the 2004 Regular Session of the 2003 General Assembly, or to the 2005 General Assembly.

This act became effective July 27, 2003. The preapproval requirements expire on October 1, 2005. (GG, TD)

Water Quality/Quantity/Groundwater

General Nondischarge Permits/Animal Operations

S.L. 2003-28 (SB 733) directs the Department of Environment and Natural Resources (DENR) to extend the expiration of general permits for animal waste management systems for swine, cattle, and poultry operations and of the certificates of coverage issued under these general permits that were set to expire on April 30, 2003, to October 1, 2004. The act also directs DENR to study the use of general non-discharge permits for animal waste management systems for swine, cattle, and poultry operations, including the impact on land application and potential discharge of nitrogen and phosphorous to surface water and groundwater in the State. DENR will conduct the study in consultation with the Department of Agriculture and Consumer Services; the College of Agriculture and Life Sciences at North Carolina State University; representatives of swine, cattle, and poultry farmers; representatives of environmental protection and natural resources conservation groups; and other interested parties. In the course of the study, DENR will prepare and circulate draft revised general permits for these operations, along with drafts of the forms that farmers would be required to use in connection with these permits, among interested parties for comment. DENR may, consistent with water quality protection goals and strategies, further revise the draft general permits and associated forms on the basis of comment from interested parties. DENR will report its findings and recommendations to the Environmental Review Commission on or before March 1, 2004.

This act became effective April 30, 2003. (JM)

Monitor Coastal Water Quality

S.L. 2003-149 (SB 959) authorizes the Commission for Health Services to adopt rules regarding monitoring of coastal recreation waters in order to implement the federal Beaches Environmental Assessment and Coastal Health Act of 2000. The rules will address definitions, surveys, sampling, action standards, and posting of information on the water quality of coastal recreation waters. The act also provides that a person who removes or destroys a sign posted to convey information on the water quality of coastal recreation waters is guilty of a Class 2 misdemeanor.

This act became effective June 4, 2003, except that the criminal penalty provision becomes effective December 1, 2003, and applies to offenses committed on or after that date. (JM)

Extend Swine Moratoria

S.L. 2003-266 (SB 593) extends the moratoria on the issuance of a permit by the Environmental Management Commission for the construction of a new swine farm or expansion of an existing swine farm from September 1, 2003, until September 1, 2007. These moratoria were first established in 1997 by S.L. 1997-458 and were extended in 1998, 1999, and 2001. The act allows time for the completion of ongoing studies of animal waste management technologies and related research and allows for the implementation of any legislation that may be enacted as a result of the studies.

This act became effective June 26, 2003. (TD)

Cost Share Funds for Limited Resource/New Farmers

S.L. 2003-284, Sec. 11.6 (HB 397, Sec. 11.6) provides that the limitation on the State share of agriculture cost share funding will be increased from 75% to 90% if the assisted farmer is a limited-resource farmer or a beginning farmer. The assisted farmer will be responsible for providing 10% of the funding, which may include in-kind support. Awards of agriculture cost share funding under this allocation formula are limited to $100,000 per year per farmer. A "beginning farmer" is a farmer who has not operated a farm or who has operated a farm for not more than 10 years. A "limited-resource farmer" is a farmer with direct and indirect gross farm sales that do not exceed $100,000.

This section became effective July 1, 2003. (JH)

Local Water Supply Plans

S.L. 2003-387 (HB 1062) requires a community water system that regularly serves 1,000 or more service connections or 3,000 or more individuals to comply with the local water supply planning requirements that apply to local governments. The act requires these community water systems and local governments to include in their local water supply plans a description of how the community water system or local government will respond to water shortage emergencies and continue to meet essential public water supply needs. The act directs the Department of Environment and Natural Resources to establish a Drought Management Advisory Council (Council) in order to enhance coordination among governmental bodies in order to improve the management and mitigation of the harmful effects of drought, and to provide consistent and accurate information to the public about drought conditions. The act authorizes the Council to assist local governments and other water users in taking appropriate drought response actions by issuing drought advisories that designate:

- Specific areas of the State where drought conditions are impending.
- Specific areas of the State as suffering from drought conditions.
- The level of severity of drought conditions.

This act became effective August 7, 2003. The first local water supply plans prepared by community water systems are due on or before January 1, 2004. (JM)

Swift Creek Reclassification

S.L. 2003-433 (HB 566) approves, effective August 1, 2003, portions of two administrative rules, 15A NCAC 2B.0225 (Outstanding Resource Waters) and 15A NCAC 2B.0316 (Tar-Pamlico River Basin), that reclassify a 14-mile stretch of Swift Creek to Outstanding Resource Waters (ORW) and impose an ORW management strategy on all waters and lands that are located west of Nash County State Road 1003 (Red Oak Road). The act also provides that portions of the rules that impact all waters and lands that are located east of Nash County State Road 1003 (Red Oak Road) shall become effective only as the 2004 Regular Session of the 2003 General Assembly may provide by law. The act also authorizes the Environmental Review Commission to identify and evaluate options to protect water quality and endangered species in the portion of Swift Creek and its watershed in the Tar-Pamlico River Basin that are located east of Nash County State Road 1003 (Red Oak Road) and report its findings to the 2004 Regular Session of the 2003 General Assembly.

This act became effective August 19, 2003. (GG, JM)

Miscellaneous

Protect Certain Reptiles and Amphibians

S.L. 2003-100 (SB 825). See **Animals and Wildlife.**

Soil and Water Conservation Commission

S.L. 2003-198 (HB 727) amends the statute that specifies the membership of the Soil and Water Conservation Commission to allow members of the Commission to concurrently hold one elective office and one other appointive office or two other appointive offices.

This act became effective June 13, 2003. (JM)

Express Review Pilot Program

S.L. 2003-284, Sec. 11.4A (HB 397, Sec. 11.4A) authorizes the Department of Environment and Natural Resources (DENR) to develop the Express Review Pilot Program (Program). Under the Program, DENR will provide expedited review of certain environmental permits, approvals, and certifications and may charge fees higher than those set by statute for the normal review process. DENR will determine which project applications will receive express review from those submitted by applicants who request to participate in the Program. The Program may apply to permits, approvals, or certifications under the erosion and sedimentation control program, the coastal management program, and the water quality programs, and will focus on stormwater permits, stream origination certifications, water quality certifications, erosion and sedimentation control permits, and Coastal Area Management Act permits. DENR may establish up to eight positions to administer the Program. No later than May 1, 2004, DENR will report to the General Assembly regarding its findings on the Program and whether the Program should be continued or expanded.

This section became effective July 1, 2003. (JH)

Environmental Permits on Department of Transportation Construction Projects

S.L. 2003-284, Sec. 29.6 (HB 397, Sec. 29.6). See **Transportation.**

Metropolitan Planning Organizations/Rural Transportation Planning Organizations Transportation Planning Funding

S.L. 2003-284, Sec. 29.14 (HB 397, Sec. 29.14). See **Transportation**.

Department of Environment and Natural Resources Fees

S.L. 2003-284, Secs. 35.1 and 35.1A (HB 397, Secs. 35.1 and 35.1A) provide that the Department of Environment and Natural Resources (DENR) may collect reasonable fees for:

- Vehicle access for off-road driving at the beach at Fort Fisher State Recreation Area.
- The erection, maintenance, and use of a marina at Carolina Beach.
- The use of boats and other watercraft that are purchased and maintained by DENR.

These sections also make a number of technical, clarifying, and conforming changes to G.S. 113-34 and G.S. 113-35, which govern State forests and State parks.

These sections became effective July 1, 2003. (JH)

Amend Environmental Laws

S.L. 2003-340 (SB 824) makes changes to various environmental laws as follows:

- Makes clarifying, conforming, and technical changes and corrections to various environmental statutes.
- Recodifies Article 13A (Clean Water Management Trust Fund) of Chapter 113 (Conservation and Development) of the General Statutes as a new Article 18 of Chapter 113A (Pollution Control and Environment) of the General Statutes.
- Modifies the reporting requirements on implementation of the performance-based cleanup program for underground storage tanks to conform with the annual reporting requirement for the consolidated report on the Leaking Petroleum Underground Storage Tank Cleanup Program, which is due on September 15 of each year.
- Expands what constitutes a permissible base of operations for a pushcart or mobile food unit to include commissaries.
- Increases by two the membership of the Environmental Review Commission.
- Extends by one year the time that temporary rules to protect water quality and riparian buffers in the Catawba River Basin will remain in effect.
- Extends the pilot program for inspection of animal waste management systems by two years and amends the reporting requirement for the pilot program.
- Establishes an exemption to the Moore County moratorium on swine farm and swine waste management system expansion or construction.

This act became effective July 27, 2003. However, the provision that extends the time period that temporary rules protecting water quality and riparian buffers in the Catawba River Basin will remain in effect, became effective retroactively to June 30, 2003. (GG, JM)

Clean Water Management Trust Fund Board Terms

S.L. 2003-422 (SB 831) staggers the terms of members of the Clean Water Management Trust Fund Board of Trustees (Board) to facilitate a regular interval of appointments and expirations. When fully implemented, the staggered four-year cycle will result in the expiration of five terms in each of years one through three and six terms in year four. The act increases the appointments made to the Board by the Governor from six to seven and increases the appointments made upon the recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives from six to seven each. The act also establishes a uniform date for the expiration of terms (July 1) and makes clarifying changes to the statutes regarding vacancies and quorum for the Board to conform to the provisions of similar appointive bodies.

This act became effective July 1, 2003, except that the act is effective retroactively to December 31, 2002 with respect to the term of any person whose term as a member of the Board would otherwise have expired on December 31, 2002. (TD)

Studies

Referrals to Existing Commissions/Committees

General Nondischarge Permits/Animal Operations

S.L. 2003-28, Sec. 2 (SB 733, Sec. 2) directs the Department of Environment and Natural Resources (DENR) to study the use of general non-discharge permits for animal waste management systems for swine, cattle, and poultry operations, including the impact on land application and potential discharge of nitrogen and phosphorous to surface water and groundwater in the State. DENR will conduct the study in consultation with the Department of Agriculture and Consumer Services; the College of Agriculture and Life Sciences at North Carolina State University; representatives of swine, cattle, and poultry farmers; representatives of environmental protection and natural resources conservation groups; and other interested parties. In the course of the study, DENR will prepare and circulate draft revised general permits for these operations, along with drafts of the forms that farmers would be required to use in connection with these permits, among interested parties for comment. DENR may, consistent with water quality protection goals and strategies, further revise the draft general permits and associated forms on the basis of comment from interested parties. DENR will report its findings and recommendations to the Environmental Review Commission on or before March 1, 2004.

This section became effective April 30, 2003. (JM)

Underground Storage Tank Program Amendments

S.L. 2003-352, Sec. 12 (HB 897, Sec. 12) authorizes the Environmental Review Commission (ERC) to study the following issues related to the Leaking Petroleum Underground Storage Tank (UST) cleanup program:

- The adequacy of program funding.
- Options for management of available funds, including prioritization of cleanups and preapproval of cleanups.
- Changes in deductible and co-payment requirements.
- Options to increase program funding.
- The availability and use of private insurance to pay or reimburse the costs of the assessment and cleanup of releases and discharges of petroleum from petroleum USTs and of any liability of owners and operators of those tanks to third parties.
- Issues related to the inclusion of aboveground storage tanks in the program, including registration, fees and other funding issues, cleanup standards, and regulation of these tanks.
- Issues related to the provision of liability protection to a bona fide purchaser of a petroleum-contaminated property who has knowledge of, but did not cause or contribute to, the contamination of the property.

The ERC may report its findings and recommendations, including any proposed legislation, to the 2004 Regular Session of the 2003 General Assembly, or to the 2005 General Assembly.

This section became effective July 27, 2003. (TD)

Swift Creek Reclassification

S.L. 2003-433, Sec. 3 (HB 566, Sec. 3) authorizes the Environmental Review Commission to identify and evaluate options to protect water quality and endangered species in the portion of Swift Creek and its watershed in the Tar-Pamlico River Basin that are located east

of Nash County State Road 1003 (Red Oak Road) and report its findings to the 2004 Regular Session of the 2003 General Assembly.

This section became effective August 19, 2003. (JM)

Pending Legislation

Coastal Recreational Fishing License

HB 831 (Sixth Edition) would establish a program for the licensing of coastal recreational fishing. An annual Coastal Recreational Fishing License (CRFL) would cost $10. An individual could engage in coastal recreational fishing without holding a CRFL if the individual:

- Is under 16 years of age.
- Is 62 years of age or older.
- Holds a Standard Commercial Fishing License or a Retired Standard Commercial Fishing License.
- Holds a Lifetime Resident Comprehensive Fishing License or a Lifetime Sportsman License.
- Is fishing from a public bridge.
- Is fishing from the shore or a shore-based structure.
- Is fishing with hook and line in the county of the individual's residence using natural bait.

Fees collected from the sale of CRFLs would be credited to the General Fund and could be used only for the management, protection, restoration, and enhancement of the marine resources of the State.

HB 831 would authorize the Department of Environment and Natural Resources to use up to $1,100,000 for the 2003-2004 fiscal year and up to $2,000,000 for the 2004-2005 fiscal year of funds appropriated by the 2003 Budget Bill (S.L. 2003-284) to implement the licensing program. HB 831 also provides that no funds appropriated to the Division of Forest Resources or the Division of Soil and Water Conservation may be used to implement the licensing program.

This bill is pending in the Senate Agriculture/Environment/Natural Resources Committee. (JH)

Clean Air Trust Fund

HB 866 (First Edition) and SB 981 (First Edition) would establish the Clean Air Trust Fund (Fund). The purpose of the Fund is to finance projects to protect and restore air quality and to prevent and reduce emissions of various air pollutants. State agencies, local governments, and nonprofit corporations with an environmental purpose are eligible to apply to the Fund for grants and loans. The acts would also establish the Clean Air Trust Fund Board of Trustees, which would develop criteria for awarding grants and loans, and the Clean Air Trust Fund Advisory Council, which would advise the Board of Trustees with regard to criteria, guidelines, and allocations made from the Fund.

The House Bill is pending in the House Environment and Natural Resources Committee. The Senate Bill is pending in the Senate Agriculture/Environment/Natural Resources Committee. (TD)

Improve Environmental Enforcement

HB 868 (Second Edition) and SB 911 (Second Edition) would:

- Add a civil penalty of up to $10,000 for the first day of a violation of the Sedimentation Pollution Control Act of 1973 or ordinance, rule, or order adopted pursuant to the act.
- Increase the maximum amount of the civil penalty that may be assessed for a minor development violation under the Coastal Area Management Act of 1974 (CAMA) from $250 to $1,000. HB 868 would also increase the maximum amount of the civil penalty that may be assessed for a major development violation under CAMA from $2,500 to $25,000. SB 911 would increase the maximum amount of this penalty from $2,500 to $10,000.
- Authorize the assessment of reasonable costs of any investigation, inspection, or monitoring that results in the imposition of a civil penalty for major and minor development violations under CAMA.
- Provide that the Secretary of Environment and Natural Resources or a local health director may institute an action for injunctive relief against a person who violates an order issued pursuant to Chapter 130A of the General Statutes. This authority would be in addition to existing authority under the Statute to institute actions for injunctive relief for violations of the Chapter, or any rule adopted by the Commission for Health Services or a local board of health.
- Increase the maximum amounts of certain administrative penalties that may be assessed for violations of Article 9 (Solid Waste Management) and Article 11 (Wastewater Systems) of Chapter 130A of the General Statutes.
- Add a penalty for false reporting under the North Carolina Drinking Water Act.
- Repeal a 10% cap on actual costs of collection that may be deducted from civil penalties and civil forfeitures that are collected and payable to the County School Fund.

The House Bill is pending in the Senate Agriculture/Environment/Natural Resources Committee. The Senate Bill is pending in the Senate Finance Committee. (JM)

Establish Electronics Recycling Program

HB 878 (First Edition) and SB 970 (First Edition) would impose a privilege tax on electronic devices that contain cathode ray tubes (i.e., in general, televisions and computer monitors) in order to establish an electronics recycling program and to provide local governments with funds to implement the program. Effective January 1, 2007, the bills would also prohibit the disposal of certain electronic devices in landfills and permitted incinerators.

The House Bill is pending in the House Environment and Natural Resources Committee. The Senate Bill is pending in the Senate Finance Committee. (TD)

Certification of Wastewater Site Evaluators

HB 912 (First Edition) and SB 907 (First Edition) would direct the Water Pollution Control System Operators Certification Commission (Commission) to establish a certification and training program for wastewater system site evaluators. Effective July 1, 2005, the bills would require a certified site evaluator to review and certify all wastewater system permits applications before submission to a local health department, and would require all wastewater system permits applications be reviewed and approved or denied only by a certified site evaluator employed by the local health department. The bills would increase the membership of the Commission from

11 to 13 members, reconfigure the qualifications for each individual commission seat, and provide for a system of staggered three-year terms.

The House Bill is pending in the House Finance Committee. The Senate Bill is pending in the Senate Agriculture/Environment/Natural Resources Committee. (TD)

Sedimentation Act Amendments

HB 953 (First Edition) would:

- Require self-inspection of an area covered by an approved erosion and sedimentation control plan by the person who submitted the plan or the person's agent.
- Raise the fee for the review of an erosion and sedimentation control plan to $150 per acre from a maximum of $50 per acre.
- Allow a local government with an approved erosion and sedimentation control program to regulate land-disturbing activities conducted by that local government.
- Require exposed slopes to be planted or provided with ground cover within 10 working days or 21 calendar days, whichever is shorter, of completion of any phase of grading.
- Authorize a local government to establish a limited erosion and sedimentation control program. Under a limited program, the local government would be responsible for inspecting land-disturbing activities. The Division of Land Resources of the Department of Environment and Natural Resources (DENR) would be responsible for all other program functions (e.g. plan approval and enforcement).
- Require DENR to report annually to the Environmental Review Commission on the implementation of the Sedimentation Pollution Control Act of 1973.

This bill is pending in the House Environment and Natural Resources Committee. (JM)

North Carolina Climate Action Registry

HB 1045 (First Edition) and SB 863 (First Edition) would establish the North Carolina Climate Action Registry (Registry). The primary purpose of the Registry is to promote the voluntary reduction of greenhouse gas emissions in the State. The bill defines greenhouse gases to include carbon dioxide, methane, oxides of nitrogen, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. The bills directs the Department of Environment and Natural Resources to adopt rules to establish monitoring and tracking systems for greenhouse gas emissions in the State, to establish programs to promote participation in the Registry, to encourage companies and organizations to establish greenhouse gas emissions reduction goals, and to adopt a uniform format for reporting emissions baselines and reductions in order to facilitate their recognition in any future regulatory scheme. Participation in the Registry would be voluntary.

The House Bill is pending in the House Environment and Natural Resources Committee. The Senate Bill is pending in the Senate Agriculture/Environment/Natural Resources Committee. (TD)

Certify On-Site Wastewater Contractors

HB 1127 (First Edition) and SB 927 (First Edition) would create the nine-member North Carolina On-Site Wastewater Contractors and Inspectors Certification Board (Board) to establish training and certification requirements for personnel involved in the construction, installation, repair, and inspection of on-site wastewater systems. Effective July 1, 2005, the bills would prohibit the construction, installation, repair, or inspection of an on-site wastewater system in the State by non-certified personnel.

The House Bill is pending in the House Finance Committee. The Senate Bill is pending in the Senate Agriculture/Environment/Natural Resources Committee. (TD)

Closure of Industrial Lagoons

HB 1145 (First Edition) would authorize the Environmental Management Commission to adopt rules governing the maintenance, operation, closure, and post-closure care of industrial lagoons. The bill would require an owner of an industrial lagoon to: (1) establish and maintain evidence of financial responsibility to ensure sufficient availability of funds for facility closure and post-closure monitoring and corrective measures, (2) close the lagoon within one year of cessation of activities for which the lagoon was permitted, and (3) perform post-closure remediation activities that may be necessary to comply with applicable statutes and rules.

The bill would also require the Department of Environment and Natural Resources to perform closure or postclosure remediation activities for an industrial lagoon, if the lagoon's owner fails to do so. The bill would provide that any person owning the land on which an industrial lagoon is or has been located, or who owned the land while the lagoon was in operation, or who disposed of waste in the lagoon, shall have joint and several liability for closure or remediation costs that exceed the amount of financial responsibility established by the owner. The bill would also establish an annual fee of $1,000 for any treatment works for which a water quality permit is required that includes an industrial lagoon.

This bill is pending in the House Environment and Natural Resources Committee. (JM)

Phase Out Swine Waste Lagoons and Sprayfields

HB 1188 (First Edition) would:

- Delete the provision that establishes moratoria on the construction and expansion of swine farms and on lagoons and animal waste management systems for swine farms.
- Codify and make permanent performance standards for swine farm animal waste management systems (performance standards) established by the General Assembly in 1998.
- Provide that the Environmental Management Commission (EMC) may issue a permit for the construction, operation, or expansion of an animal waste management system only if the EMC determines that the system meets or exceeds the performance standards.
- Provide that an owner or operator of an animal waste management system that employs a lagoon and sprayfield system that is phased out pursuant to the provisions of the bill must close all of the components of the animal waste management system in compliance with all applicable federal and State laws.

This bill is pending in the House Environment and Natural Resources Committee. (JM)

Catawba River Basin Bi-State Advisory Commission

SB 859 (Second Edition) would establish the Catawba River Basin Bi-State Advisory Commission. The Commission would have no regulatory authority. The purposes of the Commission would be to:

- Provide guidance and make recommendations to local, state, and federal legislative and administrative bodies on the use, stewardship, and enhancement of the water and other natural resources within the Basin.
- Provide a forum for discussion of issues affecting the Basin's water quality, water quantity, and natural resources.

- Promote communication, coordination, and education among stakeholders.
- Undertake studies and publish reports related to water quantity, water quality and other natural resources of the Basin.

This bill is pending in the House Environment and Natural Resources Committee. (TD)

Chapter 12
Finance

Cindy Avrette (CA), Trina Griffin (TG), Martha Harris (MH),
Canaan Huie (CH), Mary Shuping (MS), and Martha Walston (MW)

*(For a more detailed explanation of the finance law changes, see the document **2003 Finance Law Changes**. The document can be found in the Legislative Library, located in Room 500 of the Legislative Office Building.)*

Enacted Legislation

One-Time Rental Car Tax Election Exception

S.L. 2003-5 (SB 235) allows a retailer who leases motor vehicles to elect to begin paying the highway use tax on the gross receipts derived from leasing the vehicles even though the retailer has previously paid the 3% highway use tax on these vehicles. The retailer's election to begin paying the gross receipts tax must have been made by July 1, 2003, and if made, is irrevocable. The election does not relieve the retailer of liability from a tax previously imposed.

This act became effective March 28, 2003. (MS)

IRC Update

S.L. 2003-25 (HB 320) rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from May 1, 2002 to January 1, 2003. Part 37-A of S.L. 2003-284 further updates the reference date to June 1, 2003. Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State law previously tracked federal law.

This act became effective April 24, 2003. (MS)

Deterring SUTA Dumping

S.L. 2003-67 (SB 326). See **Labor and Employment**.

Modify County Tax Certification Authority

S.L. 2003-72 (HB 393) provides that a register of deeds serving in a county where tax collector certification of a deed is normally required prior to registration must accept an uncertified deed if the closing attorney states the intent to pay any delinquent taxes from the closing proceeds. The act also adds Hyde County to the list of counties that have the authority to require tax certification of a deed prior to registration.

This act became effective May 20, 2003. (MH)

Publish Revenue-Neutral Property Tax Rate

S.L. 2003-264 (SB 511) requires a county, in the year in which it conducts a general reappraisal of property, to include in its budget a statement of the revenue-neutral property tax rate for the budget. The revenue-neutral tax rate is the rate that is estimated to produce revenue for the next fiscal year equal to the revenue that would have been produced for the next fiscal year by the current tax rate if no reappraisal had occurred. To calculate the revenue-

neutral tax rate, the budget officer must first determine a rate that would produce revenues equal to those produced for the current fiscal year and then increase the rate by a growth factor equal to the average annual percentage increase in the tax base due to improvements since the last general reappraisal. This growth factor should represent the expected percentage increase in the value of the tax base due to improvements during the next fiscal year. The budget officer must further adjust the rate to account for any annexation, deannexation, merger, or similar event.

This act became effective June 26, 2003. (TG)

2003 Budget Act

S.L. 2003-284, Parts 37 through 47 (HB 397, Parts 37 through 47), as amended by S.L. 2003-416 (SB 97), make the following finance law changes (CH):

Part #	*Description and Effective Dates*	*Fiscal Impact*
37	**Adjust Local Government Hold-Harmless** Effective June 30, 2003, changed the date that sales tax hold-harmless payments are made to local governments each year, from September 15 to August 15. It also provided that the payments will be made in 2003 and 2004, with intent language for the payments to continue through 2012. This part also provided that the estimates used to calculate the hold-harmless payments must be updated to reflect legislative changes.	No significant fiscal impact on the General Fund in the 2003-05 fiscal biennium.
37-A	**Update Internal Revenue Code Reference and Adjust Bonus Depreciation and Estate Tax** Effective June 30, 2003, changed the State tax law reference to the Internal Revenue Code from January 1, 2003 to June 1, 2003. In May 2003, Congress enacted the Jobs and Growth Tax Relief Reconciliation Act of 2003. That legislation increased from 30% to 50% the bonus depreciation allowance originally enacted in March 2002 in response to the September 11 terrorist attacks and moved the sunset for bonus depreciation from September 10, 2004 to December 31, 2004. In addition, the package increased the amount of investment in capital equipment that a business can expense during the acquisition year (instead of depreciating over many years) from $25,000 to $100,000. Continued technical conformity to bonus depreciation so that taxpayers do not have to keep a separate depreciation schedule for State tax purposes for each piece of	The update in the Code reference fully conforms North Carolina law to the federal expensing limit increase at a cost to the General Fund of $29.2 million in FY 2003-04 and $18.0 million in FY 2004-05. This will reduce state revenues in FY 2003-04 by $40.8 million (due to the increase in bonus depreciation from 30% to 50%) but increase revenues by $18.0 million in FY 2004-05. This provision has no impact for the 2003-04 fiscal year because estates have 9 months after a death to file a return. For FY 2004-05, the proposal saves $70.8 million of General Fund

Part #	*Description and Effective Dates*	*Fiscal Impact*
	equipment in addition to the federal schedule. Extended until July 1, 2005, the partial conformity of the State estate tax to changes in the federal estate tax.	revenue that would have disappeared if the 2002 partial conformity had been allowed to sunset on January 1, 2004.
38	**Temporarily Maintain State Sales Tax Rate** Effective June 30, 2003, extended sunset on the half-cent state sales tax enacted in 2001 from July 1, 2003 to July 1, 2005.	Joint estimates provided by Fiscal Research and the Office of State Management and Budget suggest the following revenue stream from this tax extension. FY 2003-04 $341.7 million FY 2004-05 $388.2 million FY 2005-06 $26.5 million
39	**Temporarily Maintain Upper Income Tax Rate** Effective June 30, 2003, extended the sunset of the 8.25% individual income tax bracket from January 1, 2004 to January 1, 2006.	The additional revenue from this extension is calculated using the North Carolina Individual Income Tax Model. The model estimates that $83.3 million in individual income tax payments will be generated in tax year 2004 and $104.2 million in revenue in tax year 2005. This revenue is divided into fiscal years as follows: FY 2003-2004: $37.5 million FY 2004-2005: $92.7 million FY 2005-2006: $57.3 million
39-B	**Conform Child Tax Credit to Federal Credit** Effective for the 2003 tax year, conformed the State definition of a dependent child to the federal definition for purposes of the individual income tax credit for children.	The change will increase General Fund revenue by $16.8 million in FY 2003-04 and by $17 million in FY 2004-05.
43	**Equalize Insurance Tax Rates on Article 65 Corporations** Raised the insurance premiums tax rate on Article 65 corporations from 1.0% to 1.9%, effective for the 2004 tax year. In addition, for the 2004 and 2005 tax years, this act required the affected companies to make estimated tax payments in April and June of each year equal to 50% of the annual liability for that tax year.	This change will increase General Fund revenue by $18.6 million for the 2003-04 fiscal year and $13.9 million for FY 2004-05.

Part #	*Description and Effective Dates*	*Fiscal Impact*
43-A	**Clarify Property Tax Exclusion for Property Used to Reduce Cotton Dust** This part clarified a property tax exclusion	No impact on General Fund. No estimate on the fiscal impact on local governments is possible, but the impact is expected to be small.
44	**Continue Use Tax Line Item on Income Tax Form** Effective June 30, 2003, this part extends for two years the law that provides that consumer use tax is payable on the individual income tax return.	This extension will increase General Fund revenue by $3.1 million in both FY 2003-04 and FY 2004-05.
45	**Conform to Streamlined Sales and Use Tax Agreement** This part made numerous changes to the sales and use tax statutes to bring North Carolina into conformity with the Streamlined Sales Tax Agreement. Various effective dates.	The tax on soft drinks will increase sales tax revenues by $41.4 million in FY 2003-04 and by $45.1 million in FY 2004-05. Conversely, the 50% vending machine exemption will reduce sales tax revenue by $4.05 million in FY 2003-04 and $8.6 million in FY 2004-05. The tax on prepared food will increase revenue by $3.05 million in FY 2003-04 and by $3.3 million in FY 2004-05. The candy exemption will reduce revenue by $400,000 in FY 2003-04 and by $800,000 in FY 2004-05.
45-A	**Eliminate Tobacco and Alcohol Discounts** Effective August 1, 2003, eliminated tax reductions that were allowed to distributors and wholesalers who pay the excise taxes on cigarettes and other tobacco products. Effective August 1, 2003, eliminated tax reductions that were allowed to distributors and wholesalers who pay the excise taxes on wine, beer, and spirituous liquor.	The change will increase General Fund revenue by $1.74 million in FY 2003-04 and by $1.9 million in FY 2004-05. The change will increase General Fund revenue by $3.67 million in FY 2003-04 and by $4.0 million in FY 2004-05.
46	**Repairs and Renovations** Effective July 1, 2003, enacts the procedural and regulatory provisions governing the State's issuance of security interest indebtedness. It also provides the specific legislative authorization for up to $300 million of special indebtedness to be used for the repair and renovation of State facilities and related infrastructure.	The expected debt service is $35 million for 2004-05, $32.5 million for 2005-06, and $31.6 million for 2006-07.

Part #	*Description and Effective Dates*	*Fiscal Impact*
46-A	**State Capital Facilities Finance** Effective July 1, 2003, provides specific legislative authorization for three projects: The purchase of two private prisons currently leased by the State. Up to $6,780,000 for the design, construction drawings, and solicitation of bids for three youth development centers. The construction of a structural pest control training facility to be located at NCSU.	The amount of the issuance is to be negotiated. No other fiscal information available. No fiscal information available, in planning stage. No fiscal information available.
47	**Lease-Purchase Three New Prisons** Effective July 1, 2003, provides specific legislative authorization for the lease-purchase of three new prisons.	The cost of constructing the prisons is expected to be between $344 and $364 million. The annual operating cost is expected to be $18 million.

Waive Deadlines for Troops

S.L. 2003-300 (SB 936). See **Military, Veterans', and Indian Affairs**.

Psychiatric Hospital Financing

S.L. 2003-314 (HB 684), as amended by S.L. 2003-284, Part 46-A (HB 397, Part 46-A), authorizes the issuance of up to $110 million in security interest debt to finance the acquisition, construction, and equipping of an approximately 450,000 square foot, 432-bed new psychiatric hospital to be located in Butner. The act also enacts the procedural and regulatory provisions governing the State's issuance of security interest indebtedness by creating the "State Capital Facilities Financing Act." Security interest indebtedness is debt that is secured by an interest in the property being financed, repaired, or renovated. The act uses the term 'special indebtedness' to cover the three forms that this type of debt can take: installment purchase, lease-purchase, and bonds. In each case, the debt is non-voted.

This act became effective July 10, 2003. (CA)

Water and Sewer Authority Setoff

S.L. 2003-333 (SB 529) adds water and sewer authorities to the Setoff Debt Collection Act, under which the Department of Revenue diverts part or all of an individual's income tax refund to pay a debt the individual owes to a State or local agency. Thus, the debt the individual owes the agency is set off against the individual's income tax refund. Before January 1, 2000, the setoff program was open only to State agencies. Now, counties and municipalities participate through a clearinghouse that submits debts on their behalf to the Department of Revenue. The clearinghouse was established pursuant to an interlocal agreement adopted under Article 20 of Chapter 160A of the General Statutes.

This act becomes effective January 1, 2004, and applies to income tax refunds determined on or after that date. (MW)

Revenue Administrative Changes

S.L. 2003-349 (SB 236) makes the following changes to the revenue laws:

- Modifies the dividends received deduction for regulated investment companies and real estate investment trusts to ensure that all dividends are treated uniformly, effective for taxable years beginning on or after January 1, 2003, as recommended by the Revenue Laws Study Committee.
- Amends the reporting requirements regarding sales of seized property by the Secretary of Revenue to avoid duplicative filing of reports, as recommended by the Revenue Laws Study Committee.
- Extends until October 1, 2005, the Department of Revenue's authority to continue using private collection agencies for the collection of in-state tax debts, as recommended by the Revenue Laws Study Committee.
- Revises the secrecy provision regarding the disclosure of tax information to reflect the transfer of certain functions and personnel from the Division of Motor Vehicles to the Division of the State Highway Patrol of the Department of Crime Control and Public Safety, as recommended by the Revenue Laws Study Committee.
- Ensures that the monthly distribution of local sales and use tax proceeds is based on taxpayer data from filed returns, effective July 1, 2003, as recommended by the Revenue Laws Study Committee.
- Simplifies the process for making the local sales tax hold-harmless calculation by requiring the Department of Revenue, rather than the Office of State Budget and Management, to make the required projection of estimated tax proceeds, as recommended by the Revenue Laws Study Committee.
- Clarifies that the $20 filing fee for corporate annual reports is nonrefundable, as recommended by the Revenue Laws Study Committee.
- Clarifies the Research and Development tax credit, as requested by the Department of Commerce and the Department of Revenue.
- Directs the Revenue Laws Study Committee to form a group of tax professionals to work with the Department of Revenue to gather appropriate data to support an estimate of the fiscal impact of allowing corporations to file consolidated tax returns.
- Makes various changes to the motor fuel laws, as requested by the Motor Fuels Tax Division of the Department of Revenue. These changes include technical changes, conforming changes, and substantive changes.
- Codifies the administrative practice of allowing municipalities that sell electricity to exempt from their gross receipts for sales tax purposes those customer accounts that have been determined to be worthless. The sales tax law clearly allows this exemption for other taxpayers.

Except as otherwise provided, the act became effective July 27, 2003. (MH)

Modify UNC Bond Law

S.L. 2003-357 (SB 633) modifies the special obligation bond law that applies to The University of North Carolina system. The act makes the maximum maturity for special obligation bonds more consistent with other University debt obligations by increasing the maximum maturity of special obligation bonds from 25 years to 30 years. The act also increases the maximum maturity for special obligation bond notes from 2 years to 30 years, which provides UNC with greater flexibility to provide interim financing at lower costs.

This act became effective August 1, 2003. (MH)

UNC – Nonappropriated Capital Projects

S.L. 2003-360 (SB 705) authorizes the construction of numerous projects by The University of North Carolina. The projects will be financed through revenue bonds and special obligation bonds. No funds from the General Fund will be appropriated to finance the projects. In addition to bond-financing, the act authorizes the construction and financing of three capital projects at UNC-Chapel Hill through lease arrangements with nonprofit corporations.

This act became effective August 1, 2003. (MH)

Modify State Financing Laws

S.L. 2003-388 (SB 679) makes the following changes to the State public financing laws, as requested by the State Treasurer's Office:

- Authorizes the use of out-of-state banks as well as in-state banks as trustee under a revenue bond order or a trust agreement securing revenue bonds.
- Allows term bonds with sinking fund redemptions to satisfy the statutory requirements for maturities.
- Exempts refunding bonds from the 'four times' rule.
- Allows local governments to use installment purchase debt to refinance debt for purposes for which installment debt is currently authorized.
- Clarifies and regulates the authority of a local government to enter into an interest rate swap agreement in connection with bond issuance.

This act became effective August 7, 2003. (CA)

Property Tax Certification Procedure

S.L. 2003-399 (HB 972). See **Technology**.

Manufactured Housing

S.L. 2003-400, Secs. 4 and 13-16 (HB 1006, Secs. 4 and 13-16) make changes to the property tax laws and the sales and use tax laws.

Section 4 expands the definition of manufactured homes that qualify as real property under the property tax laws to include manufactured homes on land leased by the manufactured homeowner for a term of at least 20 years and where the lease expressly provides for disposition of the manufactured home upon termination of the lease. This change makes it easier for the owners of manufactured homes placed on the leased land to qualify for Freddie Mac mortgages.

Sections 13 through 16 impose a 2.5% sales and use tax rate on the sales price of each modular home. This replaces the current practice of applying two different sales tax rates based on whether the modular home is built on a steel frame or a wood frame. This change in sales and use tax treatment of modular homes was proposed by the North Carolina Manufactured Housing Institute (NCMHI) and approved by the Department of Revenue. Both the NCMHI and the Department agreed that the change would simplify the administration of sales and use tax on modular home transactions. The act does not amend the sales and use tax treatment of manufactured homes.

Section 4, pertaining to manufactured homes as real property, became effective August 7, 2003. Sections 13 through 16, pertaining to the sales and use tax provisions, become effective January 1, 2004, and apply to sales of modular homes on and after that date.

This act also enhances consumer protections for purchasers of manufactured housing and requires a criminal history record check as a condition for licensure as a manufactured home manufacturer, dealer, salesperson, or set-up contractor. For additional information on the consumer protection provisions, see **Commercial Law and Consumer Protection.** For additional information on the criminal history record check, see **Occupational Boards and Licensing.** (MW)

Local Option Project Development Financing

S.L. 2003-403 (SB 725) will permit the voters of the State to vote on a constitutional amendment in November 2004 that would allow the General Assembly to enact general laws authorizing counties, cities, and towns to borrow money, without voter approval, to finance the public portion of certain economic development projects within a defined territorial area. This development tool, generally known as "tax increment financing" but referred to as "project development financing" in the act, would allow local governments to set aside the additional property taxes that are generated by a new investment to pay for public facilities that support that new investment. The financing, issued in the form of bonds or other debt instruments, could be used for airports, auditoriums and arenas, hospitals, museums, parking facilities, sewer systems, storm sewers and flood control facilities, water systems, street improvements, public transportation facilities, railroads, affordable housing, land development for industrial or commercial purposes, utilities, and redevelopment. Redevelopment includes purchasing and improving property to help local redevelopment commissions. The bonds may also be issued for municipal service district projects.

This act became effective August 7, 2003. However, the Constitutional amendment and the corresponding statutory changes would become effective upon certification of the passage of the constitutional amendment by the Secretary of State. (TG)

ESC Surtax Delay

S.L. 2003-405 (HB 1241) states that the 20% surtax on employer unemployment insurance contributions will not be imposed as long as the Unemployment Insurance Fund balance is at or below $500 million. When the contributions replenish the Fund balance to $500 million, then the 20% surtax will be triggered to start refilling the Reserve Fund. When the Reserve Fund reaches $163 million, the surtax will trigger back off. The intended effect is that the 20% surtax, originally scheduled to go into effect January 1, 2004, because the balance in the Reserve Fund is under $163 million, will not be imposed during the 2004 calendar year.

This act became effective August 12, 2003. (MW)

Qualified Business Credit/Ports Credit

S.L. 2003-414 (HB 1294) extends the sunset on the State ports tax credit from 2004 to 2009 and amends the qualified business investment tax credits as follows:

- Extends the sunset from 2004 to 2007.
- Expands the definition of a qualified grantee business to include those that receive grants from entities such as MCNC-Research and Development Institute, a nonprofit corporation formed to enhance economic development in North Carolina through applied research and technology development and commercialization of these technologies.
- Adds a new type of qualified business: a small business that is commercializing technology developed by a research university.

The extension of the sunset on the state ports tax credit becomes effective for taxable years beginning on or after January 1, 2004, and the remainder of the act became effective August 14, 2003. (MS)

Expand Historic Preservation Credit

S.L. 2003-415 (SB 119) amends the historic preservation tax credit as follows:

- Extends the sunset on the provision that permits a pass-through entity to allocate among its owners the tax credit for income-producing property from January 1, 2004, to January 1, 2008.
- Amends the above-described provision to permit a pass-through entity to allocate the credit to an owner if an owner's adjusted basis in the pass-through entity is at least 40% of the amount of the credit allocated to that owner.

The act also directs the Department of Revenue to modify the income tax forms to provide separate lines for each tax credit claimed by the taxpayer.

This act became effective August 14, 2003. (CA)

Revenue Laws Technical Changes

S.L. 2003-416 (SB 97) makes technical and clarifying changes to the revenue laws and related statutes.

This act became effective August 14, 2003. (CA)

Economic Development District

S.L. 2003-418 (SB 168) authorizes counties to create special tax areas under Section 2(4) of Article V of the North Carolina Constitution. These areas, called economic development and training districts, would be for the purpose of providing a skills training center to prepare county residents to perform manufacturing, research and development, and related service and support jobs in the pharmaceutical, biotech, life science, chemical, telecommunications, and electronics industries. A county may levy property taxes within the district, in addition to those levied throughout the county, in order to finance the skills training center. The act also defines the property that may be initially included within an economic development and training district located in Johnston County should the board of commissioners of Johnston County elect to establish one. The act states that a municipality cannot annex property within a district located in Johnston County.

This act became effective August 14, 2003. (MH)

State Government Sales Tax Exemption/School Cooperative Refund

S.L. 2003-431 (SB 100) allows a sales and use tax exemption, instead of a sales and use tax refund, for purchases by State agencies. The act also allows a refund of State and local sales and use taxes by a joint agency created by interlocal agreement among local school administrative units to jointly purchase food service-related materials, supplies, and equipment on their behalf.

The exemption from State and local sales and use tax for State agencies becomes effective July 1, 2004. The refund of State and local sales and use taxes for school board cooperatives became effective for taxes paid on or after July 1, 2003. (TG)

Studies

Referrals to Existing Commissions/Committees

Study/Impact of Acquisition of Land for Conservation Purposes on Local Government Ad Valorem Tax Revenues

S.L. 2003-284, Sec. 11.7 (HB 397, Sec. 11.7) directs the Property Tax Subcommittee of the Revenue Laws Study Committee to study the positive and negative impacts of the acquisition of land by the State and nonprofit organizations for conservation purposes on local government ad valorem tax revenues. The Subcommittee must report its findings to the Joint Legislative Commission on Governmental Operations, the Revenue Laws Study Committee, and the Fiscal Research Division.

The Subcommittee shall, by January 15, 2004, report its findings to the Joint Legislative Commission on Governmental Operations, the Revenue Law Study Committee and the Fiscal Research Division.

Revenue Administrative Changes

S.L. 2003-349, Sec. 9 (SB 236, Sec. 9) authorizes the Revenue Laws Study Committee to establish a study group to gather data necessary to conduct an analysis of the potential revenue impact of modifying the corporate income tax law to require consolidated returns. This section is effective for taxable years beginning on or after January 1, 2003, and shall expire for taxable years beginning on or after January 1, 2005.

Amortization Moratorium

S.L. 2003-432 (HB 754) directs the Revenue Laws Study Committee to study local government ordinances amortizing off premises outdoor advertising and to report its findings and any recommended legislation to the 2004 Regular Session of the 2003 General Assembly.

This act became effective August 19, 2003.

Major Pending Legislation

Amend Franchise Tax Loophole

SB 51 (Second Edition) would make the following changes to 2001-2002 legislation that established attribution rules intended to close a loophole that allows corporations to escape franchise tax by transferring assets to a controlled limited liability company (LLC):

- Limit attribution rules to assets owned by LLCs that are not treated as partnerships for federal income tax purposes. No attribution is required if the LLC is treated as a partnership.
- Attribute only a proportion of a related entity's LLC assets to the corporation, rather than all of the assets.
- Simplify and correct the definition of indirect ownership, which is the test for determining whether an LLC's assets are attributable to a corporation.
- Remove attribution for "related members" that are not related entities, thereby excluding relationships of less than 50% (was less than 20%) stock ownership between parties.

- Provide for attribution of assets owned through business trusts, and clarifies attribution for assets owned by partnerships and related entities.
- Correct definition of related entity and remove membership in the LLC as an additional condition for attribution.
- Clarify that an adjustment is allowed to avoid any potential double taxation.
- Create an exception to the attribution requirement for related parties if the corporation can demonstrate that the LLC does not own any assets that were previously owned or used by the corporation.

The bill is in the Senate for concurrence in the House changes. A conference committee has been appointed.

Life Sciences Revenue Bond Authority

SB 75 (Second Edition, as amended) would create a Life Sciences Revenue Bond Authority in the Department of State Treasurer. It is step one of a two-step process. First, the Authority would study the best method for establishing a credit enhancement program for construction of infrastructure for life sciences manufacturing facilities. One example of a credit enhancement vehicle would be revenue bonds. After the Authority reports its findings and recommendations to the General Assembly, the bill anticipates that in the second stage the Authority would administer any program enacted by the General Assembly.

As amended by the House, it would set aside money from the collections assistance fee to establish a central taxpayer telecommunications service center for collections and assistance and it would encourage the Golden L.E.A.F., Inc. to promote the biopharmaceutical industry by investing in the establishment of a biopharmaceutical manufacturing training facility, a graduate-level bioprocessing research institute at NCSU and NCCU, and resource and training facilities at six regional community colleges. The House amendment would also allocate money for the planning phase of the following projects:

- A bioinformatics building at UNC-Charlotte;
- A cardiovascular Disease Institute at East Carolina University;
- A facility for the new college of education and allied professions at Western Carolina University;
- A student convocation and conference center at UNC-Asheville; and
- A new cancer treatment facility at UNC-Chapel Hill.

The bill is in the Senate for concurrence with the House amendments. A conference committee has been appointed.

Special Obligation Debt/Purposes

SB 137 (Second Edition, as amended) would authorize municipalities to define a service district for transit-oriented development and it would expand local governments' existing authority to issue special obligation bonds for solid waste, water, and sewer projects to projects within a municipal service district. The House amendment would have added various technical and clarifying changes to the general statutes. The bill is in the Senate for concurrence in the House amendments. A conference committee has been appointed.

Economic Incentives/Committee Changes

SB 944 (Second Edition) would expand the membership of the Revenue Laws Study Committee from 16 to 18 and would authorize an annual refund of State and local sales taxes paid on construction materials and fixtures for facilities that involve the investment of more than $100 million by the taxpayer and are primarily used for any of the following industries:

- Aircraft Manufacturing.
- Bioprocessing.
- Motor Vehicle Manufacturing.
- Pharmaceutical and Medicine Manufacturing.
- Semiconductor Manufacturing.

The bill is in the House Finance Committee.

Technical Corrections Act

HB 281 (Sixth Edition, Sec. 110) would authorize the issuance of up to $180 million of special indebtedness to finance the cost of a new cancer treatment facility within the University of North Carolina Health Care System to replace the North Carolina Clinical Cancer Center. The bill is in the House for concurrence in the Senate changes. A conference committee has been appointed.

No Sales Tax on Certain Free Publications

HB 1149 (Second Edition) would exempt from the sales and use tax paper, ink, and other tangible personal property used by commercial printers and publishers to print free distribution periodicals and the sales by printers of these free distribution periodicals to the publishers. The bill is in the Senate Finance Committee.

Nonprofits Exempt From Admissions Tax

HB 1303 (Second Edition, as amended) would exempt the following amusement from the 3% privilege tax on gross receipts: a youth athletic contest with an admission price that does not exceed $5 and that is sponsored by a person exempt from income tax. A "youth athletic contest" is defined as a contest in which each participating athlete is less than 19 years of age. The Senate amendment changed the effective date from July 1, 2003, to October 1, 2003. The bill is in the House for concurrence in the Senate amendment. It is waiting to be calendared pursuant to Rule 36(b).

NC Travel and Tourism Investment Act

HB 1316 (Fourth Edition) would create the Travel and Tourism Capital Investment Program. The Program would award grants to the owners of qualified projects for the purpose of inducing the creation of new or the expansion or renovation of existing travel and tourism projects. The bill is in the Senate Finance Committee.

Chapter 13
Health and Human Services

Sandra Alley (SA), Amy Compeau (AC), Erika Churchill (EC), and Dianna Jessup (DJ)

Enacted Legislation

Contagious Animal Diseases/Extend Sunset

S.L. 2003-6 (SB 307). See **Animals and Wildlife.**

Repeal Involuntary Sterilization

S.L. 2003-13 (HB 36) repeals the procedure that authorized the sterilization of a mentally ill or a mentally retarded individual, whether or not the individual wishes to be sterilized, upon a petition filed in district court and an order entered by a district court judge. Adults and married minors can continue to request a physician to perform a sterilization procedure. In addition, a minor, upon a finding by a juvenile court that it is in the minor's best interest, can request a physician to perform a sterilization procedure if the minor so chooses.

The act also amends the guardianship statutes to provide a procedure to permit the sterilization of a mentally ill or a mentally retarded ward in the case of medical necessity. Under the provision, a guardian of the person may not consent to the sterilization of a mentally ill or mentally retarded ward unless the guardian obtains an order from the clerk of court that permits the guardian to do so. To obtain the order, the guardian must file a petition that contains the following:

- A sworn statement from a physician licensed in this State who has examined the ward that the proposed procedure is medically necessary and not for the sole purpose of sterilization or for the purpose of hygiene or convenience.
- The name and address of the physician who will perform the procedure.
- A sworn statement from a psychiatrist or psychologist licensed in this State who has examined the ward as to whether the ward is able to comprehend the nature of the proposed procedure and its consequences and is able to give an informed consent to the procedure. If the psychiatrist indicates that the ward is capable of consenting to the procedure, the petition must contain the ward's sworn consent.

A copy of the petition must be served on the ward, and an attorney will be appointed to represent the ward if the ward is unable to comprehend the nature and consequences of the procedure and provide an informed consent. If the ward or the ward's attorney requests a hearing, one must be held. Otherwise, the clerk can rule without a hearing. If the clerk finds either that the ward is capable of consenting to the procedure and consents to it, or the ward is unable to comprehend the procedure and its consequences, and the procedure is medically necessary, the clerk must enter an order permitting the guardian to consent to the procedure. The clerk's order may be appealed to superior court.

The act became effective April 17, 2003 and applies to all petitions for sterilization pending and orders authorizing sterilization that had not been executed as of that effective date. (DJ)

Recognize Retired Nurses/Fees

S.L. 2003-29 (SB 244). See **Occupational Boards and Licensing.**

Reports to Mental Health Oversight Commission

S.L. 2003-58 (HB 80) requires the Secretary and the Department of Health and Human Services to submit annual reports to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (Committee) regarding the use of physical restraints and seclusion in mental health, adult care home, and residential child-care facilities. Current law specifies the submission of these reports to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services.

The act also requires the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (Division) to transmit a copy of any report the Division is required to submit to the General Assembly or to any of its permanent committees or subcommittees on matters affecting mental health, developmental disabilities, and substance abuse services to the cochairs of the Committee.

The act became effective May 20, 2003. (AC)

Registration of Birth & Death Certificates

S.L. 2003-60 (HB 475) adds the color "blue" to the colors of ink in which a birth or death certificate may be written and accepted for recordation by the register of deeds.

The act became effective May 20, 2003. (DJ)

Advance Health Care Directive Registry

S.L. 2003-70 (SB 422) amends the filing requirements so that notarization is no longer required for a declaration of an anatomical gift when that declaration is submitted to the statewide, online central Advance Health Care Directive Registry. The Secretary of State maintains the registry.

This act became effective May 20, 2003. (SA)

Volunteer M.D.s at Therapeutic Recreation Camps

S.L. 2003-109 (HB 1177) permits physicians who are licensed and in good standing in another state to come to North Carolina to practice medicine or surgery at therapeutic recreational camps for individuals with chronic illness without being licensed in this State. In order for a physician to be exempt from the licensure requirements, the following conditions must be satisfied:

- The physician must provide documentation to the medical director of the camp that the physician is licensed and in good standing to practice medicine in another state.
- The physician must provide services only at the camp or in connection with the camp.
- The physician may not receive compensation for the services provided.
- The physician provides services for no more than 30 days a year.
- The camp must have a medical director with an unrestricted license to practice medicine or surgery in North Carolina.

The act became effective May 31, 2003. (SA)

Health Insurance/Marriage & Family Therapists

S.L. 2003-117 (HB 462). See **Insurance**.

Board of Nursing

S.L. 2003-146 (SB 522) does the following:

- Requires health care facilities to verify the licensure status of applicants seeking employment as nurses,
- Decreases the number of members on the North Carolina Board of Nursing (Board) from 15 to 14 members by reducing the number of registered nurse members by one,
- Changes the method by which certain members are elected or appointed to the Board, and
- Makes other technical changes to the Nursing Practice Act.

The act also requires employers in health care facilities to verify the licensure status of a registered nurse (RN) or a licensed practical nurse (LPN) before hiring the applicant. The employers may access, at no cost, the Board's licensure database to verify licensure as required under this part.

The act makes the below changes to Board membership and terms.

Changes to Board Membership		
	Prior Law	**S.L. 2003-146**
# of RNs on Board	9	8
# of LPNs on Board	4	3
# of Public Members on Board	2	3
Total Board Membership	**15**	**14**
Changes to Appointment and Selection of Board Members		
	Prior Law	**S.L. 2003-146**
# of Public Members Appointed by the Governor	2	1
# of Public Members Appointed by the General Assembly	0	2 (1 upon rec. of Pres. Pro. Tem and 1 upon rec. of Speaker)
Changes to Terms and Term Limits		
	Prior Law	**S.L. 2003-146**
Length of Terms	3 years	4-year staggered
Term Limits	No more than two consecutive 3-year terms	No more than two consecutive 4-year terms or 8 consecutive years

The act makes the below changes to qualifications for RN Board members.

Changes to Qualification Criteria for RN Board Members	
Prior Law	**S.L. 2003-146**
3 Nurse educators who hold bachelor's or advanced degrees	**3** Nurse educators as follows: (1) practical nurse educator, (1) associate degree or diploma nurse educator, and (1) bachelor's or higher degree nurse educator
2 RNs employed by a hospital, with at least one being a hospital nursing service director	**2** Staff nurses
1 employed by a licensed physician in private practice	**1** Nurse administrator employed by a hospital or a hospital system
1 employed by a skilled or intermediate care facility	**1** At-large member

Changes to Qualification Criteria for RN Board Members	
Prior Law	**S.L. 2003-146**
1 shall be either a (1) nurse practitioner, (2) nurse anesthetist, (3) nurse midwife, or (4) clinical nurse specialist	**1** shall meet the requirements to practice as either a (1) certified registered nurse anesthetist, (2) certified nurse midwife, (3) clinical nurse specialist, or (4) nurse practitioner
1 community health nurse	
Total of 9 RN members	**Total of 8 RN members**

The act makes other changes affecting Board membership, including:

- Requiring RN Board members and LPN Board members to be residents of North Carolina.
- Requiring RN Board members, except for the at-large member, and the LPN Board members to show evidence of the employer's awareness of the nurse's intent to serve on the Board.
- Clarifying who may not serve as a public member of the Board.
- Deleting the requirement that a RN be elected the chair of the Board.
- Changing the requirement that the Board review all nursing programs from every five years to every eight years.

Current Board members will continue to serve until December 31, 2004, when their terms will expire. The act establishes methods for staggered terms for the appointments of public members and for the election of elected members. All members appointed and elected to the Board will begin serving their terms on January 1, 2005. After staggered terms are established, all subsequent appointments and elections to the Board must be for four-year terms.

The act became effective June 4, 2003. (AC)

Child Lead Poisoning Prevention Program Amendments

S.L. 2003-150 (SB 519). See **Children and Families.**

Mental Health Reform Waiver

S.L. 2003-178 (HB 883) authorizes the Secretary of the Department of Health and Human Services (Secretary) to permit up to five, phase one, mental health local management entities (LME) to substitute for a physician or eligible psychologist, a licensed clinical social worker (LCSW), a masters level psychiatric nurse, or a masters level certified clinical addictions specialist to conduct the initial (first-level) examination of individuals in involuntary commitment proceedings. The act does not expand the scope of practice for LCSWs, masters level psychiatric nurses, or masters level certified clinical addictions specialists. The waiver may be in effect for a period not to exceed three years or the period for which the business plan is approved, whichever is shorter. The LME must ensure that a physician is available at all times to provide back-up services, including telephone consultation and face-to-face evaluation, if necessary.

In order to obtain this waiver, the LME must, as part of its business plan, describe the following:

- How the purpose of the statutory requirement would be better served by waiving the requirement.
- How the waiver will enable the LME to improve the delivery or management of services.
- How the services to be provided by the LCSWs, masters level psychiatric nurses, and masters level certified clinical addictions specialists are within the scope of practice for those professions.
- How the health, safety, and welfare of persons will be protected.

In order to approve the LME's request for the waiver, the Secretary must find that:

- The request meets the requirements of the bill.
- The request furthers the purposes of State policy and mental health, developmental disabilities, and substance abuse (MH/DD/SA) services reform.
- The request improves the delivery of MH/DD/SA services in the counties affected by the waiver and protects the health, safety, and welfare of individuals receiving these services.
- The duties and responsibilities performed by the LCSWs, masters level psychiatric nurses, or the masters level certified clinical addictions specialists are within the scope of practice for these professions.

The act also requires the Secretary to evaluate the services and the protection of health, safety, and welfare under the waiver and to send a report of this evaluation to the Joint Legislative Oversight Committee on MH/DD/SA.

The act became effective July 1, 2003 and expires July 1, 2006. (DJ)

Medicaid Prior Authorization

S.L. 2003-179 (SB 897) statutorily exempts prescription drugs for the treatment of hemophilia and blood disorders from prior authorization requirements under Medicaid where there is no generically equivalent drug available. The Secretary of the Department of Health and Human Services will be able to continue to implement a disease management program.

The act became effective June 12, 2003 and expires July 1, 2006. (DJ)

AMBER Alert

S.L. 2003-191 (HB 478). See **Children and Families.**

Meningitis Immunization Information

S.L. 2003-194 (HB 825). See **Education**.

Summary Requirements/Child Care Facilities

S.L. 2003-196 (HB 1063). See **Children and Families**.

Ovarian Cancer Detection/High Risk Women

S.L. 2003-223 (SB 887). See **Insurance.**

First Responders Vaccination Program

S.L. 2003-227 (HB 916) requires the Department of Health and Human Services (DHHS) and local health departments to offer a vaccination program for first responders who may be exposed to infectious diseases when deployed to disaster locations. The act defines "first responders" as State and local law enforcement personnel and emergency medical personnel who are deployed to disaster locations. Participation in the program is voluntary for most first responders. The program is mandatory for first responders with "occupational exposure" to bloodborne pathogens including but not limited to hepatitis B virus and HIV. Any first responder, except for those with "occupational exposure" to bloodborne pathogens, may be exempt from vaccinations for medical or religious reasons. The act requires the State Health Director to give priority to first responders deployed to a disaster location if there is a shortage of vaccine. DHHS

must notify first responders about the availability of the program and shall provide educational materials about how to prevent exposure to infectious diseases.

The act does not obligate the General Assembly to appropriate State funds to implement the vaccination program. The act does require DHHS to work with local employers to access federal funds to implement the program.

The act became effective June 19, 2003. (SA)

Age/Eligibility/NC Schools for the Deaf

S.L. 2003-253 (SB 503) conforms State law governing the eligibility and admission of deaf children to the North Carolina Schools for the Deaf to current admission policies and practices and makes other technical and clarifying changes. Under the act, children who are deaf and deaf/multidisabled may be considered for admission into the Schools for the Deaf if they have been referred by their local education agency and admission is deemed appropriate by the child's Individualized Education Program (IEP) Team, the child is a resident of North Carolina, and the child is between 5 and 21 years of age. Out-of-state students may be admitted as long as the admission does not prevent the attendance of a resident student. Only resident students are entitled to free tuition and room and board. Rulemaking authority over admissions policies is shifted from the Board of the Directors of the Schools of the Deaf to the Superintendent of the Office of Education Services in DHHS. The Department of Health and Human Services, through the Office of Education Services shall provide unique instructional programs to meet the needs of all students admitted to the school for the deaf.

This act became effective June 26, 2003. (SA)

Office of Policy and Planning

S.L. 2003-284, Sec. 10.2 (HB 397, Sec. 10.2). See **State Government.**

HIPAA Implementation

S.L. 2003-284, Sec. 6.7 (HB 397, Sec. 6.7) requires the Governor or the Governor's designee to coordinate the State's implementation of the federal Health Insurance Portability and Accountability Act (HIPAA), including the following:

- Coordinating correspondence between the State and the United States government on all matters relating to HIPAA Administrative Simplification requirements under Subtitle F of Title II of HIPAA.
- Coordinating official State comments on proposed federal regulations and the federal rule-making process pertaining to HIPAA Administrative Simplification.
- Obtaining from the North Carolina Attorney General legal interpretations of federal rules pertaining to HIPAA Administrative Simplification compliance, implementation, and enforcement.
- Establishing deadlines and benchmarks for State agencies to provide the necessary data required to monitor compliance with HIPAA Administrative Simplification requirements.

This section also authorizes The University of North Carolina System and the Teachers' and State Employees' Comprehensive Major Medical Plan to develop and implement HIPAA Administrative Simplification compliance and report bimonthly to the Governor on the status of implementation.

This act became effective July 1, 2003. (TG)

Weatherization Assistance Program

S.L. 2003-284, Sec. 10.3 (HB 397, Sec. 10.3). See **Children and Families.**

Education and Awareness of Infant Homicide Prevention Act

S.L. 2003-284, Sec. 10.8B (HB 397, Sec. 10.8B). See **Children and Families.**

Unlawful Practice of Pharmacy

S.L. 2003-284, Sec. 10.8D (HB 397, Sec. 10.8D) makes it unlawful for any person, firm, or corporation not licensed or registered under the North Carolina Pharmacy Act to use in a trade name, sign, letter, or advertisement, any term that would imply that person is licensed or registered to practice pharmacy in North Carolina or to hold himself or herself out to others as a person registered to practice pharmacy in North Carolina.

This section became effective July 1, 2003. (SA)

Effective Date of Long-Term Care Criminal Record Checks for Employment Positions

S.L. 2003-284, Sec. 10.8E (HB 397, Sec. 10.8E) continues the suspension of the requirements of G.S. 131E-265 for nursing homes and G.S. 131D-2 for adult care homes to conduct national criminal history checks for certain employees until January 1, 2005. These requirements were also suspended during the last biennium.

This section became effective July 1, 2003. (DJ)

Transfer of Property to Qualify for Medicaid

S.L. 2003-284, Sec. 10.26 (HB 397, Sec. 10.26) amends the statute governing property transfers for purposes of qualifying for Medicaid to provide that federal law will determine the length of the "lookback" period and the period of ineligibility.

This section became effective July 1, 2003. (DJ)

Health Choice

S.L. 2003-284, Sec. 10.29 (HB 397, Sec. 10.29) amends the State Health Insurance Program for Children (Program). Under this section, fluoride varnish is now covered as a dental benefit under the Program. The Department of Health and Human Services (DHHS) may provide services to children aged birth through five years through the State Medicaid managed care program. For families whose income is at or below 150% of the federal poverty level, a co-pay of $1 applies for prescription drugs that are generic or for which no generic is available, and a co-pay of $3 applies for brand-name prescription drugs for which a generic is available. For families whose income is above 150% of the federal poverty level, the co-pay is $1 for prescription drugs that are generic or for which no generic is available and the co-pay is $10 for brand-name prescription drugs for which a generic is available. Services to special needs children under the Program may be limited by DHHS after consultation with the Commission on Children with Special Health Care Needs.

This section became effective July 1, 2003. (SA)

Collaboration among DHHS, DPI, and LEAS to Ensure Medicaid-Related Services for Eligible Public School Students with Disabilities

S.L. 2003-284, Sec. 10.29A (HB 397, Sec. 10.29A) amends the Social Services chapter of the General Statutes to require the Department of Health and Human Services to work with the Department of Public Instruction and local education agencies to develop efficient, effective, and appropriate administrative procedures to provide maximum funding for Medicaid-related services for Medicaid-eligible students with disabilities.

This section became effective July 1, 2003. (SA)

Employees Examined for Asbestosis or Silicosis Under Worker's Compensation Statute

S.L. 2003-284 (HB 397), Sec. 10.33. See **Insurance**.

Rename North Carolina Heart Disease and Stroke Prevention Task Force

S.L. 2003-284, Sec. 10.33B (HB 397, Sec. 10.33B) renames the North Carolina Heart Disease and Stroke Prevention Task Force. The new name is the Justus-Warren Heart Disease and Stroke Prevention Task Force.

This section became effective July 1, 2003. (SA)

Local Health Director Pilot

S.L. 2003-284, Sec. 10.33C (HB 397, Sec. 10.33C) establishes a pilot program to permit one local board of health approved by the Secretary of Health and Human Services to appoint a local health director who meets the following education and experience requirements for that position:

- Graduation from a four-year college or university with a Bachelor of Science in Nursing degree that includes a public health nursing rotation. Bachelor's candidates must have a total of 10 years' public health experience, at least five years of which must be in a supervisory capacity at the agency at which the candidate is an applicant for employment as a local health director; or
- A candidate with an RN, but not a bachelors degree, if the candidate has at least 10 years' experience, seven years of which must be an administrative or supervisory role, and of this seven years, at least five years must be at the agency at which the candidate is an applicant for employment as a local health director.

All candidates must complete at least six contact hours of continuing education annually on the subject of local and State government finance, organization, or budgeting.

All other local boards of health will continue to be required to appoint local health directors with either a masters or a bachelors degree and health program/services experience as provided in G.S. 130A-40.

This section became effective July 1, 2003. (DJ)

Clarify Group Homes Licensure and LEA Reimbursement

S.L. 2003-294, Secs. 2-5 (SB 926, Secs. 2-5) provide that:

- Licensure or new Medicaid enrollment for group home facilities for the mentally ill, the developmentally disabled and substance abusers and for foster homes is to be denied to:
  - Someone who is the owner, principal, or affiliate of a licensable facility that was assessed a penalty for a client's rights violation after October 23, 2002, and any one of the following conditions exist:
    - A single violation has been assessed in the six months prior to the application.
    - Two violations have been assessed in the 18 months prior to the application and 18 months have not passed from the date of the most recent violation.
    - Three violations have been assessed in the 36 months prior to the application and 36 months have not passed from the date of the most recent violation.
    - Four or more violations have been assessed in the 60 months prior to application and 60 months have not passed from the date of the most recent violation.
  - Someone found by the Secretary of the Department of Health and Human Services (Secretary) to have a prior history as a provider under Chapter 122C, Chapter 131D, or Article 7 of Chapter 110 that indicates the applicant will not be able to comply with licensing or enrollment statutes, rules, or regulations promulgated under those statutes. If licensure is denied for this reason, the Secretary must notify the applicant of the reasons why and give notice to the applicant that the applicant can appeal the decision in accordance with Article 3 of Chapter 150B.
- The act also provides that the Secretary may issue a license or enroll a provider if both of the following conditions exist:
  - The applicant is an area program or county program providing services under G.S. 122C-141, and there is no other provider of the service in the catchment area.
  - The Secretary finds that the area program or county program has shown good cause by clear and convincing evidence why the enrollment should be allowed.

This act became effective July 4, 2003. (EC)

Health Care Provider Liens

S.L. 2003-309 (SB 1011). See **Civil Law and Procedure.**

Amend Mental Health Confidentiality Statutes

S.L. 2003-313 (HB 826) amends the confidentiality provisions of the mental health statutes. The act expands the definition of "area facility" as applicable in the mental health statutes to specify that if a facility, by written agreement, agrees to provide services to one or more clients of an area authority or county program, it is an "area facility." The act also deletes the proviso that these facilities are area facilities for purposes of the contracted services only, thereby making all facilities that contract with area authorities or county programs to provide mental health services "area facilities." The effect of these changes is to expand the circumstances under which confidential information may be disclosed.

Confidential information acquired in attending or treating mental health clients is not a public record, and cannot be disclosed except as specifically provided by statute. The act makes the following changes to the confidentiality provisions in the mental health statutes:

- G.S. 122C-54 permits facilities to disclose confidential client information under certain circumstances in court proceedings. To determine whether a defendant is competent to stand trail, the act requires a facility to send the results of a mental examination ordered by the court to the clerk, district attorney, and the defendant's attorney.
- The act make the following changes related to the disclosure of confidential client information by facilities and hospitals:
  - Removes the limitation that permits disclosure of confidential information only when failure to do so would be detrimental to the client's care.
  - Adds a new subsection that permits area or State facilities or the psychiatric service of UNC Hospitals to share with each other confidential information regarding a client when necessary to conduct payment activities, i.e. an extensive list of activities undertaken by a facility to obtain or provide reimbursement for providing services.
  - Adds a new subsection to permit area or State facilities or the psychiatric service of UNC Hospitals and the Secretary to share confidential information regarding a client with each other whenever there is a reason to believe that a client is eligible for benefits through a Department program.
  - Adds a new subsection to permit area authorities and county programs to share confidential information regarding a client when necessary to develop, manage, monitor, or evaluate the area authority's or county program's network of qualified providers.
  - Adds a new subsection to allow area facilities to share with each other confidential information regarding an applicant when necessary to determine the applicant's eligibility for area facility services.
  - Currently, a facility may disclose confidential client information to State or federal agencies whenever there is a reason to believe the client is eligible for financial benefits through a governmental agency. The act permits facilities to disclose information to local agencies under these circumstances.

This act became effective July 10, 2003. (DJ)

Psychiatric Hospital Financing

S.L. 2003-314 (HB 684), as amended by S.L. 2003-284, Part 46-A (HB 397, Part 46-A). See **Finance.**

Controlled Substance/Physician Registration

S.L. 2003-335 (SB 876) requires any physician who prescribes or dispenses Buprenorphine to treat opiate dependence to register with the Department of Health and Human Services (DHHS) every year. Buprenorphine is a narcotic that is a Schedule IV controlled substance. No fee will be required to register. In the application for registration, the applicant will have to document plans to ensure that patients are directly engaged or referred to a qualified provider to receive counseling and case management and acknowledge the application of federal confidentiality regulations to patient information. DHHS will be required to provide assistance to physicians to identify and establish linkages with qualified providers of counseling and case management and to provide the North Carolina Medical Board with any evidence of noncompliance with these requirements prior to rescinding the physician's registration.

This act becomes effective October 1, 2003. (DJ)

Nurse Testimonial Privilege

S.L. 2003-342 (HB 743). See **Civil Law and Procedure.**

Deaf/Hard of Hearing Advisory Council

S.L. 2003-343 (HB 907) amends the laws relating to the Council for the Deaf and the Hard of Hearing (Council) in the following ways: (1) clarifies and changes some of the duties of the Council; (2) increases the membership to the Council; (3) changes the appointing authority and term limits of certain Council members; and (4) specifies commencement dates for the newly appointed members.

The act clarifies and specifies the following duties of the Council:

- The Council must make recommendations to the Secretary of the Department of Health and Human Services (Secretary) for cost-effective provision, coordination, and improvement of services.
- The Council must create public awareness of the specific needs and abilities of people who are deaf, hard of hearing, or deaf-blind and consider the need for new State programs concerning the deaf, hard of hearing, and deaf-blind.
- The Council must advise the Secretary during planning and implementation of services being provided with respect to the quality, extent, and scope of those services.
- The Council must advise the Secretary and the Superintendent of the Department of Public Instruction regarding planning, implementation and cost effective coordination of State programs providing educational services for persons who are deaf, hard of hearing, or deaf-blind.
- The Council must respond to the Secretary's requests for advice or recommendations pertaining to any matter affecting deaf, hard of hearing or deaf-blind citizens.

The act increases membership of the Council from 25 to 28 members. The number of Governor appointees increased from 15 to 20 members, and the number of Secretary appointees decreased from six to four members. The Governor appoints the three new members to the Council as follows: one member recommended by the North Carolina Black Deaf Advocates, one representative from a facility that performs cochlear implants, and one member recommended by a local education agency. In addition, the Governor will now be appointing a member to the Council recommended by the North Carolina Chapter of Self Help for the Hard of Hearing rather than the Secretary. The member's appointment by the Secretary from Statewide Parents' Education and Advocacy for Kids (SPEAK) is eliminated from the Council because SPEAK no longer exists.

The act clarifies that no member may serve more than two successive four-year terms unless the member is an employee of the Department of Health and Human Services or the Department of Public Instruction representing the agency as a specialist in the field of service. The five new Governor appointees commenced their four-year terms July 1, 2003.

This act became effective July 27, 2003. (AC)

Due Process for Physicians

S.L. 2003-366 (HB 886). See **Occupational Boards and Licensing.**

Licensed Psychological Associates/Independent Practice

S.L. 2003-368 (HB 1049). See **Insurance.**

Health Plans Disclose Fee Schedules/Coding

S.L. 2003-369 (HB 1066). See **Insurance.**

Amend Respiratory Care Practice Act/Fees

S.L. 2003-384 (HB 1257). See **Occupational Boards and Licensing.**

Detox Facilities Not Subject to Certificate of Need

S.L. 2003-390 (HB 815) exempts social setting detoxification facilities and medical detoxification facilities from certificate of need requirements. Social setting detoxification facilities and medical detoxification facilities are considered chemical dependency treatment facilities under G.S. 131E-176. A "chemical dependency treatment facility" is a public or private facility, or unit in a facility, which is engaged in providing 24-hour a day treatment for chemical dependency or substance abuse. This treatment may include detoxification, therapy, and related services. With certain exceptions, chemical dependency treatment facilities must obtain a certificate of need prior to offering services or developing facilities. Under this act, persons who want to develop social setting or medical detoxification facilities will not have to obtain a certificate of need from the Department of Health and Human Services prior to developing these facilities.

Licensing requirements will still apply to these facilities. However, the act amends the licensing requirements for social setting detoxification facilities and medical detoxifications facilities to prohibit these facilities from denying admission or treatment to an individual based solely on the individual's inability to pay.

This act became effective August 7, 2003. (DJ)

Prisoner Health Information/Emergency Medical Services Changes

S.L. 2003-392, Secs. 1 and 2 (SB 661, Secs. 1 and 2) do the following:

- Directs prison facilities, when transferring a prisoner from one facility to another to provide the receiving facility with health information and records pertaining to the transferred prisoner.
- Amends the article that regulates emergency medical services by:
  - Defining "emergency medical services instructor" as an individual who has been credentialed by the Department of Health and Human Services.
  - Deleting the definition for "emergency medical technician defibrillation" from the Act.
  - Defining "Emergency Medical Services Peer Review Committee."
  - Making technical changes to EMS credentialing requirements.
- Amends the Statewide Trauma Act of 1973 to establish regional trauma peer review committees to review trauma patient care under the statewide trauma system.
- Amends the Emergency Medical Services Act of 1973 to:
  - Allow trained EMS personnel to administer life-saving treatment to persons who suffer a severe reaction to agents that might cause anaphylaxis.
  - Direct the North Carolina Emergency Services Advisory Council to annually elect a chairperson and vice-chairperson from its membership upon a majority vote.

- Increase the number of persons serving on the Emergency Medical Services Disciplinary Committee from five to seven, and require that one member shall be an EMS educator and two be currently practicing and credentialed EMS personnel, one of whom is an emergency medical technician-paramedic.

These sections became effective August 7, 2003.

This act also increases the criminal penalty for damaging a public building with an explosive or incendiary device, and creates a new arson offense involving injury to a firefighter or emergency medical technician. For more information on these provisions, see **Criminal Law and Procedure**. (SA)

Nursing Home/Medication Errors

S.L. 2003-393 (SB 1016). See **Senior Citizens.**

DWI Provider Authorization Fees

S.L. 2003-396 (SB 934) allows the Department of Health and Human Services (DHHS) to authorize a private facility to provide substance abuse services needed by a person to obtain a certificate of completion. A certificate of completion may be required for persons who have been convicted of driving while impaired to restore their drivers license. It also establishes an annual fee charged to private facilities that provide substance abuse services to these persons. The amount of the fee paid by the facility varies depending on the number of assessments completed by the facility during the prior fiscal year. The collected fees will be used by the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, DHHS, for program monitoring and quality assurance.

The act also limits the fees charged to individuals receiving substance abuse services so that a person may not be charged multiple assessment fees for a single certificate of completion.

The Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services must study the substance abuse services offered by assessing agencies and the adequacy of the fee imposed for a substance abuse assessment. The Committee must report its findings and recommend legislation to the 2004 Regular Session of the 2003 General Assembly.

This act becomes effective October 1, 2003. (SA)

Detector Dog Trainers

S.L. 2003-398 (HB 860) amends the Controlled Substances Act to permit the registration of dog handlers who train and maintain dogs used to detect the presence of illegal narcotics. The maximum fee for a dog handler registration with the Department of Health and Human Services (DHHS) will be $150. Prior to approval of a dog handler's application for registration, DHHS will be required to conduct a background investigation that includes a criminal record check. The act authorizes the Department of Justice to conduct a criminal record check and to charge the applicant a fee. Once registered, the dog handler will be permitted to lawfully obtain and possess specified amounts of controlled substances for the limited purpose of the initial training and maintenance training of drug detection dogs, subject to rules adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

Each registered dog handler will be required to keep records and maintain inventories in conformance with federal and State law. The act requires that all controlled substances be stored in a securely locked cabinet located in an area protected by a monitored alarm system. Dogs to be used in commercial detection services will first be certified by a canine certification association approved by DHHS. When conducting searches, a dog handler, including a nonresident, will be required to contact State or local law enforcement authorities to report any

dog alerts or finds of controlled substances. DHHS has the authority to investigate any complaints, and where violations are found may deny, suspend, or revoke a registration. Registration requirements will not apply to law enforcement agencies, or to dog handlers employed or under contract with law enforcement.

This act became effective August 7, 2003. (DJ)

Prevent SIDS/Child Care/Investigations

S.L. 2003-407 (HB 152). See **Children and Families**.

Studies

New/Independent Studies/Commissions

Traumatic Brain Injury Advisory Council

S.L. 2003-114 (SB 704) creates a 29-member Traumatic Brain Injury (TBI) Advisory Council (Council) in the Department of Health and Human Services (DHHS). The Council has the following duties:

- Review definitions of "traumatic brain injury" as defined by State and federal regulations to determine whether changes should be made to the State definition.
- Promote interagency coordination among State agencies responsible for services and support of individuals that have sustained TBI.
- Study the needs of individuals with TBI and their families.
- Make recommendations to the Governor, the General Assembly, and the Secretary of DHHS regarding the planning, development, funding, and implementation of a comprehensive statewide service delivery system.
- Promote and implement injury prevention strategies across the State.

The table below describes the membership of the Council.

Number	Member Qualification
(3) APPOINTEES OF THE PRESIDENT PRO TEMPORE	
1	Executive Director of the Brain Injury Association of North Carolina, or a designee
1	Nurse with expertise in trauma, neurosurgery, neuropsychology, physical medicine and rehabilitation, or emergency medicine
1	Physician with expertise in trauma, neurosurgery, neuropsychology, physical medicine and rehabilitation, or emergency medicine
(3) APPOINTEES OF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES	
1	Chair of the Board of the Brain Injury Association of North Carolina, or a designee
1	Nurse with expertise in trauma, neurosurgery, neuropsychology, physical medicine and rehabilitation, or emergency medicine
1	Physician with expertise in trauma, neurosurgery, neuropsychology, physical medicine and rehabilitation, or emergency medicine
(11) APPOINTEES OF THE GOVERNOR	
3	Survivors of brain injury, one each from the eastern, central, and western regions of the State
3	Family members of persons with brain injury

Number	Member Qualification
1	Brain injury service provider in private practice
1	Director of an area program or county program of mental health, developmental disabilities, or substance abuse services
1	Executive Director of the North Carolina Academy of Trial Lawyers, or a designee
1	Executive Vice President of the North Carolina Medical Society, or a designee
1	President of the North Carolina Hospital Association, or a designee
(8) APPOINTEES OF THE SECRETARY OF DHHS	
1	Representative from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services
1	Representative from the Division of Vocational Rehabilitation
1	Representative from the Council on Developmental Disabilities
1	Representative from the Division of Medical Assistance
1	Representative from the Division of Facility Services
1	Representative from the Division of Social Services
1	Representative from the Office of Emergency Medical Services
1	Representative from the Division of Public Health
(2) APPOINTEES OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION	
2	At least one appointee shall be from the Division of Exceptional Children
(1) APPOINTEE OF THE COMMISSIONER INSURANCE	
1	N/A
(1) APPOINTEE OF THE SECRETARY OF ADMINISTRATION	
1	Appointee who represents veterans affairs
29	**Total Members**

The terms of the initial members of the Council commence October 1, 2003. The Governor's initial eleven appointees will have staggered terms. After the initial appointees' terms expire, all members will be appointed for 4-year terms. No member appointed by the Governor may serve more than two successive terms.

The Secretary of DHHS designates the chair of the Council from the Council members and will provide clerical and other assistance as needed. The chair may not hold office for more than four years. The Council will meet quarterly and at other times at the call of the chair. A majority of the Council will constitute a quorum.

The act became effective May 31, 2003. (AC)

Cervical Cancer Elimination Task Force

S.L. 2003-176 (SB 648) establishes a 24-member Cervical Cancer Elimination Task Force (Task Force) to serve the Advisory Committee on Cancer Coordination and Control (ACCCC). ACCCC is housed within the Department of Health and Human Services (DHHS) and currently consists of 34 members. ACCCC is charged with recommending to the Secretary of DHHS a coordinated, comprehensive cancer control plan for the State.

The Task Force membership includes the following:

- Chair and Vice-Chair of ACCCC;
- Director of the Division of Public Health, DHHS;
- Director of the Division of Medical Assistance, DHHS;
- Chair and Vice-Chair of the North Carolina's Legislative Women's Caucus, or their designees;
- Six members appointed by the President Pro Tempore of the Senate;
- Six members appointed by the Speaker of the House of Representatives; and
- Six members appointed by the Governor.

The Task Force will have the following duties:

- To obtain a review of statistical and qualitative examination of the prevalence and burden of cervical cancer from the Division of Public Health.
- To collaborate with ACCCC and the Division of Public Health to raise public awareness on the causes and nature of cervical cancer.
- To identify priority strategies, new technologies, or newly introduced vaccines effective in preventing and controlling cervical cancer.
- To identify and examine the limitations of existing laws, regulations, programs, and services with regard to coverage and awareness issues for cervical cancer. As part of this duty, the Task Force will examine whether to amend existing law to require coverage for PAP smears and mammograms in accordance with the most recently published American Cancer Society guidelines.
- To develop a statewide comprehensive Cervical Cancer Prevention Plan (Plan) and strategies for Plan implementation and promotion.
- To facilitate coordination of and communication among State and local agencies and organizations regarding current or future involvement in achieving the aims of the Plan.
- To receive and consider testimony from various individuals, organizations, and agencies to learn their ideas for improving cervical cancer prevention, diagnosis, and treatment. The Task Force will also identify strategies to facilitate specific commitments from these entities to help implement the Plan.

Beginning April 1, 2004, and on April 1 each year thereafter, the Task Force must submit an annual report to ACCCC, the North Carolina's Legislative Women's Caucus, the Governor, and the Joint Legislative Commission on Governmental Operations. Each annual report must address the following:

- Progress being made in fulfilling the duties of the Task Force and in developing the Plan;
- The anticipated time frame for Plan completion; and
- Recommended strategies or actions to reduce the occurrence of and burdens suffered from cervical cancer by citizens of the State.

The Task Force will expire on April 1, 2008, or upon the submission of the Task Force's final report to ACCCC, the Governor, and the 2008 Regular Session of the 2007 General Assembly, whichever occurs earlier.

The act became effective July 1, 2003. (DJ)

Blue Ribbon Commission on Medicaid Reform

S.L. 2003-284, Sec. 6.14A (HB 397, Sec. 6.14A), as amended by S.L. 2003-283, Sec. 1, establishes a Blue Ribbon Commission on Medicaid Reform. The Commission will be comprised of 12 members, six of whom will be appointed by the Speakers of the House of Representatives and six of whom will be appointed by the President Pro Tempore of the Senate. The Commission will examine the State's Medicaid program and make recommendations for reform. Issues that the Commission will consider include: methods to restrain spending growth; best practices for managing and administering health care; maximizing resources while controlling Medicaid costs; services available within the State Medicaid program; federal waivers and other management tools; maximizing federal participation in Medicaid while minimizing State and county share of costs; the role of Medicaid in the State's economy; and any other matter relating to State Medicaid reform.

Any cost savings resulting from measures identified by the North Carolina Blue Ribbon Commission on Medicaid Reform must be used to replenish the Medicaid Trust Fund in order to meet expected federal obligations in the 2004-2005 fiscal year. If cost savings are not

established by July 1, 2004, the General Assembly must identify other funds in revising the 2004-2005 budget to replenish the Medicaid Trust Fund in order to meet federal obligations.

This section became effective July 1, 2003. (SA)

Referrals to Existing Commissions/Committees

DWI Provider Authorization Fees

S.L. 2003-396 (SB 934) requires the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services to study the substance abuse services offered by assessing agencies and the adequacy of the fee imposed for a substance abuse assessment. The Committee must report its findings and recommendations to the 2004 Regular Session of the 2003 General Assembly.

This act becomes effective October 1, 2003. (SA)

Major Pending Legislation

Health Provider Immunity/Terrorist Incidents

HB 1043 (Third Edition) would provide immunity from liability for a health care provider or a person who provides emergency medical services, who renders medical, dental, or other health care treatment to a person injured by a terrorist incident, unless the person was injured by the provider's gross negligence, wanton conduct, or intentional wrongdoing. This immunity would apply only to the extent that the provider's professional liability insurance excludes coverage for treatment rendered during acts of war or terrorist incidents. The immunity would not apply to treatment performed outside the emergency setting of treatment during or immediately after the terrorist incident.

The bill is currently in the Senate Select Committee on Insurance and Civil Justice Reform. (DJ)

Chapter 14
Insurance

Sandra Alley (SA), Kory Goldsmith (KG), and Hal Pell (HP)

Enacted Legislation

Life and Health Insurance

Managed Care Patient Assistance

S.L. 2003-105 (HB 744) requires insurers to inform covered persons of the assistance that is available from the Managed Care Patient Assistance Program (Program). The information, including the Program's telephone number and address, must be provided at the following points of communication between the insurer and the covered person:

- At the time the insurer provides notice of "noncertification." Noncertification is a decision by the insurer not to reimburse a particular covered service or admission due to a determination that the requested covered health care service or admission does not meet the insurer's reimbursement requirements.
- At the time the insurer provides written notification of its decision to deny the covered person's appeal of a noncertification decision.
- In the certificate of coverage and the member's handbook.
- In the insurer's written procedures for receiving and resolving grievances from covered persons.
- At the time the insurer provides written notification of its decision to deny a first-level grievance review.
- At the time the insurer provides written notification of its decision concerning the second level grievance review.

The North Carolina Commissioner of Insurance must also notify the covered person about the Program when the Commissioner informs the covered person whether or not the person's request for external review has been accepted.

This act becomes effective October 1, 2003, and applies to actions taken by the insurer on and after that date. (KG)

Health Insurance/Marriage and Family Therapists

S.L. 2003-117 (HB 462) adds licensed marriage and family therapists to the list of professional services for which an individual has the right to choose the provider and allows those therapists to receive direct third party reimbursements. In addition, licensed marriage and family therapists are recognized under the Professional Corporations Act.

The portion of the act regarding insurance reimbursement becomes effective October 1, 2003. The remainder became effective June 1, 2003. (SA)

Disapprove Certain Life Insurance Rules

S.L. 2003-143 (HB 560) disapproves certain life insurance replacement rules previously proposed by the North Carolina Department of Insurance (DOI). The proposed rules included uniform notice forms. However, during the rule approval process, two words were removed from one of the proposed uniform forms, making them different from the industry standard. Because the approved form and the industry forms would not match, the industry forms would have to be

reviewed and approved by DOI, a costly and time consuming process. By disapproving the proposed rules the existing rules will remain in effect until DOI adopts the corrected "uniform" forms.

This act became effective June 4, 2003. (KG)

Update Cervical Cancer Screening Coverage

S.L. 2003-186 (SB 388) requires that laboratory tests for cervical cancer screening must be covered under health benefit plans, small employer group health insurance plans, health policy and preferred provider benefit plans, hospital and medical service plans, health maintenance organization (HMO) health care plans, and the State Health Plan. The term "PAP smear" is replaced with "examinations and laboratory tests for the screening for the early detection of cervical cancer" throughout the health benefit plan statutes. Coverage for the screening will be in accordance with the most recently published American Cancer Society guidelines or guidelines adopted by the North Carolina Advisory Committee on Cancer Coordination and Control. Reimbursement will be made only if the facility or the laboratory meets accreditation standards adopted by the North Carolina Medical Care Commission. The act also updates mammography reimbursements so that reimbursement is required only if the facility in which the mammogram was performed meets the accreditation standards of the Medical Care Commission.

This act becomes effective January 1, 2004 and applies to all new health benefit plans and renewals of plans on or after that date. (SA)

Ovarian Cancer Detection/High Risk Women

S.L. 2003-223 (SB 887) requires every health benefit plan and every standard health care plan for small employers to include coverage for surveillance tests for women age 25 and older who are at risk of ovarian cancer. A "health benefit plan" means an accident and health insurance policy, a nonprofit hospital or medical service corporation contract, a health maintenance organization subscriber contract, a plan provided by a multiple employer welfare arrangement, or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act (ERISA). It does not include any plan implemented or administered by the State of North Carolina or the United States Department of Health and Human Services. "Surveillance tests" means annual screening using transvaginal ultrasound and rectovaginal pelvic examination. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the plan would apply to coverage for transvaginal ultrasound and rectovaginal pelvic examination. A "small employer" is defined as an employer that employs no more than 50 eligible employees, the majority of whom are employed within North Carolina.

This act becomes effective January 1, 2004, and applies to all health benefit plans delivered, issued for delivery, or renewed on and after that date. (SA)

Licensed Psychological Associates/Insurance Payments

S.L. 2003-368 (HB 1049) expands the definition of a "duly licensed psychologist" to include licensed psychological associates (LPAs) so that LPAs can be reimbursed directly from health insurance plans and the State Health Plan for services rendered. It also allows the Psychology Board to have the fee for the national psychological associate licensure exam set by the vendor and remitted directly to the vendor by the applicant. It also increases the fee the Psychology Board may charge for a temporary license from $25 to $35.

This act becomes effective January 1, 2004. (SA)

Health Plans Disclose Fee Schedules/Coding

S.L. 2003-369 (HB 1066) creates a new statute, G.S. 58-3-227, that requires insurers to provide to contracted health care providers (providers) the insurer's schedule of fees associated with the insurer's top 30 services or procedures. Insurers also must provide to providers and health care facilities (facilities) a description of the insurer's claims submission and reimbursement policies. Insurers also must provide to providers and to facilities advance notice of changes in their fee schedules, and changes in their policies regarding claims submission and reimbursement. Every insurer must submit to the North Carolina Commissioner of Insurance (Commissioner) a written description of the policies and procedures the insurer will use to comply with this act.

The act, except the requirement to provide fee schedules to providers, does not apply to:

- Claims processed by an insurer on a claim adjudication system that was implemented prior to January 1, 1982 provided the insurer verifies to the Commissioner that its claim adjudication system qualified under this exception, the insurer is implementing a new claim adjudication software system, and is making a good faith effort to have the new system in place not later than December 31, 2004; or
- Information the insurer verifies with the Commissioner is required to be provided by the terms of a national settlement agreement between an insurer and trade associations representing certain providers provided the agreement is approved by March 1, 2004.

These exceptions expire January 1, 2005.

The requirement that insurers disclose fee schedules becomes effective January 1, 2004, and applies to the earlier of (i) a contract issued, renewed or modified on or after January 1, 2004; or (ii) any fee schedule request made on or after July 1, 2004. The remainder of the act becomes effective March 1, 2004. (SA)

Motor Vehicle Insurance

Increase Damage Limits for Motor Vehicle Accidents

S.L. 2003-137 (HB 358) increases the property damage amounts that determine whether and by how many insurance points a driver will be charged under the Safe Driver Incentive Plan (SDIP). The new damage limits are:

- Major accident – $3,000 dollars or more (previously $2,500 dollars or more).
- Intermediate accident – Less than $3,000, but more than $1,800 (previously less than $2,500, but more than $1,500).
- Minor accident – $1,800 or less (previously $1,500 or less).

Under the SDIP, the accident classification determines the number of points assessed and therefore the percentage increase for insurance premiums. The point system and corresponding percentage increase in premium was not changed under this act. Thus, the current law remains as follows:

- Major accident = 3 points = 65% rate of increase.
- Intermediate accident = 2 points = 45% rate of increase.
- Minor accident = 1 point = 25% rate of increase.

This act becomes effective January 1, 2004, and applies to accidents occurring on and after that date. (KG)

Prelitigation Mediation of Insurance Claims

S.L. 2003-307 (SB 775) establishes a method by which a party who is injured or who has suffered property damage as the result of an automobile accident may obtain information regarding insurance policy limits prior to litigation in exchange for being willing to enter into mediation prior to filing suit. The act requires an insurer to furnish information concerning the policy limits to a person who claims to have been injured or damaged by another covered by the insurance policy provided that the injured person:

- Agrees to participate in mediation of the claim prior to litigation;
- Authorizes release to the insurance company of the person's medical records for the prior three years; and
- Submits a copy of the accident report containing the financial responsibility information of the insurer's policyholder.

Once the injured person has submitted this information to the insurer, the insurer is required to furnish the information about the policy within 30 days. Disclosure of the policy limits does not constitute an admission that the injury or damage is subject to the policy. The act does not apply in medical malpractice claims.

The act also establishes the procedures for prelitigation mediation of insurance claims. The insurer initiates the mediation after providing the insurance policy limits to the injured party. The costs of mediation are to be paid by the insurer. The mediation is conducted according to the standard mediation procedures for civil cases adopted by the North Carolina Supreme Court. Time periods, including any statutes of limitation, are suspended during the mediation and for a period of 30 days after the mediation concludes.

This act becomes effective January 1, 2004, and applies to claims regarding physical injury or property damage that arise on or after that date. (SA)

Uninsured/Underinsured Motorist Coverage

S.L. 2003-311 (HB 1023) provides that in an auto accident where more than one person is injured, an injured person may have an underinsured motorist claim if the total amount actually paid to the injured person under the bodily injury liability insurance is less than the limit of underinsured motorist coverage. The act also clarifies that if there are multiple injured parties, the injured parties in the vehicle that caused the accident (the "at-fault" vehicle) may not assert an underinsured motor vehicle claim against the "at-fault" vehicle unless that vehicle's underinsured policy limits exceed the liability policy limits. The act also allows a claimant to combine the coverages, or "stack," under separate uninsured motorist insurance policies.

This act becomes effective January 1, 2004, and applies to accidents occurring on or after that date. (KG)

Motor Vehicle Insurer to Disclose Financial Interest

S.L. 2003-395 (HB 986) requires an insurer or insurer's representative to disclose any financial interest they have in an auto repair service to an auto insurance claimant prior to recommending that the claimant use that particular auto repair service. Insurers are also prohibited from requiring that the insured or the claimant must have the damaged vehicle repaired at the insurer-owned repair service.

The act also creates a new statute, G.S. 58-36-95, regarding the use of nonoriginal crash repair parts. The new law requires an insurer to disclose to a claimant in writing when a crash repair estimate is based upon the use of nonoriginal crash repair parts. "Nonoriginal crash repair part" refers to sheet metal and/or plastic parts that are generally components of the exterior of a motor vehicle and that are not manufactured by or for the original equipment manufacturer of the vehicle. The nonoriginal crash repair parts must be at least equivalent in terms of fit, quality,

performance and warranty to the original part. It is insurance fraud for an automobile repair facility to use nonoriginal crash repair parts on a motor vehicle and submit an invoice for original repair parts.

Finally, the North Carolina Rate Bureau must develop and submit to the North Carolina Commissioner of Insurance an optional policy endorsement that would allow policyholders to elect motor vehicle physical damage coverage specifying the exclusive use of original equipment manufactured crash parts.

The portion of the act that requires insurers to disclose their financial interest in motor vehicle repair services became effective August 7, 2003. The remainder of the act becomes effective January 1, 2004. (KG)

Property and Casualty Insurance

Beach Plan Homeowners Policy Rate Setting

S.L. 2003-158 (SB 769) makes various changes to the statutes governing rate setting for beach plan homeowners. The North Carolina Insurance Underwriting Association (Association) was created to provide an adequate market for property insurance in the beach and coastal areas of the state. The Association consists of insurers authorized to write property insurance. The Association is popularly known as the Beach Plan.

The act provides that homeowners' insurance policies issued by the Beach Plan are subject to underwriting guidelines established by the Association and approved by the North Carolina Commissioner of Insurance (Commissioner). An applicant must be issued a homeowners' policy under the Beach Plan upon payment of the premium in whole or in part and if the Association determines that: a property is insurable, no unpaid premium is due for prior insurance on the property, and underwriting guidelines established by the Association and approved by the Commissioner are met. The act also authorizes the Association to impose special surcharges to homeowners' policies issued under the Beach Plan, subject to the prior approval of a special surcharge schedule by the Commissioner.

This act became effective June 5, 2003. (KG)

Property and Casualty Insurance Omnibus

S.L. 2003-290 (HB 283), introduced at the request of the North Carolina Department of Insurance (DOI), makes the following changes to the laws regarding property and casualty insurance:

- Requires persons or companies selling real property warranties to carry contractual liability insurance.
- Expands the applicability of the home appliance service agreement companies' provisions by applying it to dealers of home exercise and fitness equipment, home healthcare equipment, power tools, and other consumer goods.
- Clarifies that service agreement and warranty companies are subject to the enforcement authority of the North Carolina Commissioner of Insurance (Commissioner) and the DOI.
- Requires motor vehicle, home appliance service agreement companies, and other insurance companies, when submitting required documentation in paper form, to do so on 8 1/2' x 11' format with pamphlets and brochures unbound or unstapled.
- Creates G.S. 58-1-40 to define "mechanical breakdown service agreement companies" and "mechanical breakdown service agreements" and to clarify that mechanical breakdown service agreement companies are subject to the requirements for motor vehicle and home appliance service agreement companies in G.S. 58-1-35.

- Creates G.S. 58-33-18 to authorize DOI to issue limited licenses to self-service storage companies to sell coverage for personal property stored in self-service storage units.

The provisions that allow a limited license to sell insurance for property stored in self storage units became effective July 4, 2003. The remainder of the act becomes effective October 1, 2003. (KG)

Workers' Compensation

Amend Self-Insurance Guaranty Association Laws

S.L. 2003-115 (SB 471) makes changes to the laws governing the North Carolina Self-Insurance Guaranty Association (NCSIGA).

The act restores the NCSIGA's authority to collect annual assessments from 0.25% to 2% of the annual gross workers' compensation premiums. The act also changes the deadline for annual assessment payments to be made to the NCSIGA from September 15 to May 15. It removes the requirement that the NCSIGA pay claims against self-insurers that became insolvent before the NCSIGA was created in 1986.

It also amends G.S. 97-185, which requires every insurer to post a security deposit with the North Carolina Department of Insurance (DOI). It makes letters of credit an acceptable form of a security deposit. However, the letter of credit must be in a form acceptable to the North Carolina Commissioner of Insurance (Commissioner). The Commissioner may require a bank to reimburse the DOI any costs, including attorney fees, incurred in the collection of the proceeds of the letter. The Commissioner is authorized to require a higher deposit depending upon the financial condition of the self-insurer and the self-insurer's outstanding and potential claims liability. The act increases, from 25% to 100%, the amount each self-insurer must post as a deposit of its outstanding claims liability. The increase will be phased in over a three-year period beginning in 2004 and ending in 2006. The act also allows a member self-insurer with a debt rating of BBB or better to deposit not less than 25% of the self-insurer's total undiscounted outstanding claim liability, provided that amount is not less than $500,000. However, the Commissioner may require a greater or lesser amount based upon the self-insurer's financial strength.

The act also amends G.S. 97-141, which provides a 60-day stay of proceedings in claims against self-insured member employers of the NCSIGA. The stay begins on the later of the date of notice of the insolvency or the time the NCSIGA receives notice of a claim after the original notice of the insolvency.

Except for the incremental increases in the required reserves, this act became effective June 1, 2003, and applies to claims and assessments filed on or after that date. (KG)

Workers' Compensation/Definition of Employee

S.L. 2003-156 (SB 776) amends the Workers' Compensation Act (Act) by creating a rebuttable presumption that certain persons selling newspapers or magazines to the public are not 'employees' for the purposes of the Act. The provision applies if the seller retains the excess of the sale price to the ultimate consumer over the amount that the seller was charged for the newspapers or magazines. The effect of the law is to exclude persons who deliver newspapers or magazines to the ultimate consumer from collecting workers' compensation if they are injured while delivering the newspapers or magazines. The exclusion would not apply if the persons making the delivery can prove that they did have an employer-employee relationship with the person who charged them for the newspapers or magazines.

This act became effective June 4, 2003. (HP)

Technical Amendments/Insurance Guaranty Association

S.L. 2003-167 (HB 1093). See **Miscellaneous** subheading in this chapter.

Adverse Reactions to Smallpox Vaccination

S.L. 2003-169 (HB 273). See **Labor and Employment**.

Insurance Financial Amendments Omnibus

S.L. 2003-212 (HB 276). See **Miscellaneous** subheading in this chapter.

Workers' Compensation/Carrier Drivers

S.L. 2003-235 (HB 892) adds a new section to the Workers' Compensation Act (Act). The new law applies to persons who contract with a person who operates a truck, tractor, or truck tractor-trailer that is licensed by a governmental motor vehicle regulatory agency. If the truck operator does not have workers' compensation coverage for himself, or his employees, then the person contracting with the operator is liable as the operator's employer under the Act for payment of any compensation or benefits due to the injury or death of the operator or his employees. A person contracting with independent operators may insure any and all of them under a blanket policy. Any contract with an independent contractor may include an agreement for the independent contractor to reimburse the person providing the coverage for the cost of the policy.

This act became effective June 19, 2003, and applies to claims arising on or after October 1, 2003. (HP)

Employees Examined for Asbestosis or Silicosis Under Workers' Compensation Statute

S.L. 2003-284, Sec. 10.33 (HB 397, Sec. 10.33) makes several changes to the procedures for examining employees for asbestosis or silicosis, and for the storage or disposal of X-ray files in the possession of the Department of Health and Human Services (DHHS). It repeals G.S. 97-60, which had provided for a compulsory physical examination of persons engaged in, or about to engage in, an industry that had been found by the North Carolina Industrial Commission (Commission) to subject employees to asbestosis or silicosis hazards. It amends the procedures for examination of an employee when the Commission is notified that the employee has, or allegedly has, asbestosis or silicosis. The new provision allows for the examination to be conducted by a designated qualified physician, as an alternative to examination by the advisory medical committee. It repeals G.S. 97-72(b), which had provided that members of the advisory medical committee were to receive $100 per month, plus not more than $40 per film examined. DHHS must develop a plan for the future storage or disposal of X-ray files, taking into consideration the disposal, digital archiving, or return of the X-ray file to the facility that conducted the X ray. DHHS must report its actions no later than March 1, 2004, to the Senate and House Appropriations committees, and to the Fiscal Research Division.

This section became effective July 1, 2003. (HP)

Miscellaneous

Annuity Nonforfeiture Rate Change

S.L. 2003-144 (HB 829) revises North Carolina's law regarding the nonforfeiture rate for deferred annuity contracts. A deferred annuity is a contract that accumulates a sum of money over time in order to provide future installment payments. The nonforfeiture value is the value of an insurance policy or annuity contract if it is cancelled, if the required premium payments are not paid, if an annuity is prematurely surrendered, or if the annuity holder dies before the payments begin. In all of these circumstances, the law guarantees a minimum interest rate to the contract holder.

From 1979 to 2002, North Carolina law guaranteed a minimum interest rate of 3% (G.S. 58-58-60). In 2002, the General Assembly reduced the statutory minimum guaranteed rate to 1½%. This was intended to be a temporary measure while the National Association of Insurance Commissioners (NAIC) developed an interest rate index. In 2003, the NAIC adopted a model act, which was enacted by the General Assembly as G.S. 58-58-61. Under the new law, the guarantied minimum interest rate is determined by comparing the index calculation with a 3% nonforfeiture rate, and the lesser of the two applies, with an absolute minimum interest rate of 1%.

On and after October 1, 2003, an insurance company may elect to apply the provisions of G.S. 58-58-61 to annuity contracts or the company may continue to use the rate provided in G.S. 58-58-60. Beginning October 1, 2004, all annuity contracts are subject to G.S. 58-58-61.

G.S. 58-58-61 as enacted by this law becomes effective October 1, 2003. G.S. 58-58-60 is repealed effective October 1, 2004. (KG)

Require Affidavits of Bail Bondsmen

S.L. 2003-148 (SB 962) provides that a surety bondsman must file an affidavit with the North Carolina Commissioner of Insurance before being appointed by a new insurer. The affidavit must state that the bondsman does not owe any premium or unsatisfied judgment to any insurer and the bondsman agrees to discharge all outstanding forfeitures and judgments on bonds previously written. If those obligations are not satisfied, the former insurer shall notify the Commissioner and the new appointing insurer that the bondsman has failed to satisfy the outstanding obligations. The new insurer must revoke any appointment until the former insurer certifies that the obligations have been satisfied. The Commissioner is directed to adopt rules to implement the act.

This act becomes effective October 1, 2003, and applies to all appointments of bondsmen on or after that date. (SA)

Technical Amendments/Insurance Guaranty Association

S.L. 2003-167 (HB 1093) makes technical corrections to the laws regarding the Insurance Guaranty Association (Association), the statutory nonprofit association that pays covered claims when an insurer become insolvent. The changes are as follows:

- Clarifies that fines or penalties, including attorneys fees, imposed against an insolvent insurer or its insured or claims of high-net worth companies are excluded from covered claims.
- Clarifies the definition of "ocean marine insurance."
- Specifies that high-net worth companies have to repay not only the amounts paid for the claims against them, but also the costs incurred in defending the claims.
- Clarifies that the Association is the payor of last resort.

- Clarifies that the current stay of court proceedings also apply to proceedings before the North Carolina Industrial Commission and other administrative agencies.

This act became effective June 10, 2003, and applies to claims associated with insurers that become insolvent on or after that date. (KG)

Insurance Financial Amendments Omnibus

S.L. 2003-212 (HB 276) amends various provisions in the Insurance Chapter regarding financial matters.

The act increases the initial deposits for various types of insurers as follows:

- From $25,000 to $100,000 for foreign or alien fire, marine, and fire and marine insurers.
- From $50,000 to $200,000 for foreign or alien fidelity, surety or casualty insurers.
- From $100,000 to $400,000 for foreign life insurers and an additional $200,000 rather than $100,000 when the insurer cannot show three years of operational gains before admission.

The act also makes conforming changes so that Article 7 of Chapter 58 complies with the Statements of Statutory Accounting Principles adopted by the National Association of Insurance Commissioners (NAIC).

The act makes amendments to Article 8 regarding Mutual Insurance companies:

- Amends G.S. 58-8-15, governing directors of mutual insurers, to prohibit more than one-half of the directors of guaranty capital companies from being elected by guaranty capital holders (investors) unless those guaranty capital holders are also policyholders. The act further provides that, for guaranty capital companies, policyholders who are also guaranty capital holders are entitled to one vote for each policy the person holds and one vote for each unit of guaranty capital the person holds.
- Amends G.S. 58-8-20 regarding special rules for mutual insurers with guaranty capital, to only allow a domestic mutual insurer to issue guaranty capital if:
  - it will aid a financially troubled insurer otherwise facing rehabilitation or liquidation by the North Carolina Department of Insurance (DOI); or
  - for any reason presented in a petition to the North Carolina Commissioner of Insurance (Commissioner) and which the Commissioner finds to be reasonable, justifiable and in the best interest of policyholders.
- Clarifies that holders of guaranty capital receive 'interest' not 'dividends' and that the distribution of interest must be in accordance with the insurer filing with the Commissioner.
- Increases the penalty from a maximum fine of $100 to $1000 for a director, officer, or agent of a guaranty capital insurer who gives a policyholder a guaranty against an assessment in violation of G.S. 58-8-50.

The act also makes changes in Article 65 regarding Hospital, Medical, and Dental Service Corporations as well as Article 67 regarding Health Maintenance Organizations (HMOs) as follows:

- Amends G.S. 58-65-1, setting forth regulations and definitions applicable to the insurance laws governing hospital, medical, and dental service corporations to clarify that the definitions of "hospital service plan," "medical service plan," "dental service plan," "hospital service corporation," and "preferred provider" in Article 65 also apply in Article 66 – Readable Insurance Certificates. Also clarifies that a preferred provider's special reimbursement terms and conditions must be consistent both with Article 65 and Article 66 provisions.
- Limits the kinds of assets and investments that a hospital, medical and dental service corporation may hold to those permitted for life and health insurance companies.

- Removes the provision governing the allowance of office furniture as part of net worth to the extent it is less than 10% of an HMOs net worth.
- Repeals the reserve requirements for HMOs under G.S. 58-67-40.
- Amends G.S. 58-67-110, governing protection against HMO insolvency to require that a full service HMO must maintain a net worth equal to the greater of $1 million or the amount required under the risk-based capital provisions of Article 12 (RBC). A single service HMO must maintain a net worth equal to the greater of $50,000 or the amount required under RBC.
- Corrects various incorrect or out-dated cross-references.

The act also amends the Workers' Compensation Self Insurance Licensing provisions to codify DOI policy that the initial licensing requirements for groups and employers that self-insure for workers' compensation do not apply to entities that existed prior to the adoption of the new laws but do apply if the entity has subsequently terminated and later seeks to reactivate.

The act also converts the licensure of insurance companies from annual licensing to perpetual licensing.

Finally, the act prohibits State and local government officials from requiring that bidders on public construction contracts must obtain their bonds from designated surety companies or surety agents or brokers.

The provisions changing annual licenses to perpetual licenses become effective January 1, 2004, and apply to all company licenses issued or otherwise eligible for renewal or continuation after that date. The remainder of the act becomes effective October 1, 2003. (KG)

Credit Scoring Limitation

S.L. 2003-216 (SB 771) prohibits the use of "credit scoring" by insurers as the sole basis for terminating or reducing coverage in an existing passenger motor vehicle or residential property policy, or as the sole basis for subjecting a policy to consent to rate. An insurer may use credit scoring to discount rates. Insurers are required to provide written notice to applicants or policyholders if a credit report is used as the grounds for denial or cancellation, an increase in any charge, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of insurance. The notification must include the following:

- The reason for the action, including factors primarily influencing a credit score if the action was based upon a credit score.
- The name, address, and toll-free telephone of the credit bureau providing the information.
- The fact that the consumer has the right to obtain a free copy of his or her credit report.
- The fact that the consumer has the right to challenge information in his or her credit report.

Under federal law, a consumer may dispute information in the credit report. If the information is found to be incorrect and if the policyholder or applicant notifies the insurer of the correction, the insurer must rewrite or re-rate the policy within 30 days.

This act becomes effective January 1, 2004, and applies to policies issued or renewed on or after that date, and to applications for coverage made on or after that date. (KG)

Insurance Technical Corrections

S.L. 2003-221 (HB 270) makes the following technical changes and corrections to the laws governing insurance:

- Amends S.L. 2002-144 to correct the introductory clause.
- Clarifies G.S. 58-26-31 (which creates a trust account from premium reserves of real estate title companies to be held in favor of title policy holders in case of insolvency)

by providing that this trust account is not subject to the statutory rule against perpetuities.

- Deletes outdated references to Article 17A of Chapter 58 of the General Statutes, and replaces these references with Article 30.
- Replaces various statutory references to the "Department of Insurance Fund" with the fund's correct name, the "Insurance Regulatory Fund."
- Corrects a reference to the percentage of funds to be paid by the Commissioner of Insurance to the North Carolina State Firemen's Association. G.S. 58-85-30 incorrectly referred to a percentage of 5% of the fire tax to be remitted by the Commissioner of Insurance to the Firemen's Association. The correct amount is 3% of the tax.
- Clarifies that the 90-day deadline for adding employees to group accident and health insurance coverage does not apply to disability income insurance.
- Corrects the reference to "Commission" in G.S. 58-33-83. The word is now "Commissioner."
- Corrects a reference in Article 30 of Chapter 58 governing recommendations to a court upon liquidation of an insurer. G.S. 58-30-200, Special provisions for third party claims, incorrectly referred to G.S. 58-30-125, Notice to creditors and others. This reference should be to G.S. 58-30-225, Liquidator's recommendations to the court.
- Repeals G.S. 97-195(b)(4) which authorized the revocation of a workers' compensation license if a self-insurer failed to pay the maintenance fund tax under G.S.97-100(j). The maintenance fund tax was repealed in 1995 (S.L. 1995-360).

This act became effective June 19, 2003. (KG)

Insurance Personal Information Safeguards

S.L. 2003-262 (SB 966) requires insurers to establish standards for developing and implementing safeguards to protect the security of personal information, as required by the federal Gramm-Leach-Bliley Act of 1999 (Gramm-Leach-Bliley). Gramm-Leach-Bliley places restrictions on financial institutions regarding the disclosure of a consumer's financial information to third parties and requires financial institutions to provide notice to customers about their information collection and sharing practices. "Financial institutions" under the federal law includes insurance companies.

The act requires insurers to implement a comprehensive written information security program that includes safeguards for the protection of personal information. The program must be designed to:

- Ensure the security and confidentiality of personal information.
- Protect against anticipated threats to security.
- Protect against unauthorized access to or use of information in violation of the act.

Failure to implement an information security program as required by the act subjects an insurer to the sanctions and remedies available to the North Carolina Commissioner of Insurance.

This act became effective June 26, 2003. (KG)

Major Pending Legislation

Life and Health Insurance Omnibus

HB 339 (Fourth Edition) is an agency bill that would make numerous technical and substantive changes to the laws governing insurance. As approved by the House, the bill also would have required insurers to use issuance age, not attained age, as the structure for determining rates and rating schedules for Medicare supplemental insurance policies. The bill is currently in a conference committee. (KG)

Utilization Review & Grievance Amendments

HB 1107 (Second Edition) would make revisions to North Carolina's laws regarding the review and appeal of decisions made by any type of health benefit plan. The two primary changes would be that the type of decisions that are subject to Utilization Review (UR) would be expanded, and that decisions regarding UR must be made within a specified timeframe. The proposed changes would make North Carolina law consistent with regulations adopted by the United States Department of Labor that became effective January 1, 2003. The bill is currently in the Senate Commerce Committee. (KG)

More Small Employer Health Insurance Available

SB 758 (Second Edition) would permit a trade organization to form a trade association group health insurance plan without being subject to the restrictions and limitations of the Small Employer Group Health Insurance Reform Act. The bill would also allow an insurance carrier to offer health insurance to the members of a bona fide trade organization without having to offer coverage to all other similar types of businesses and employees who are not members of the trade organization. The bill is currently in the House Insurance Committee. (KG)

Chapter 15
Labor and Employment

Karen Cochrane-Brown (KCB), Bill Gilkeson (BG),
Theresa Matula (TM), and Hal Pell (HP)

Enacted Legislation

General

Industrial Disaster Unemployment Benefits

S.L. 2003-1 (SB 8) amends G.S. 96-13 by removing the waiting period for unemployment claims filed on or after January 29, 2003, if all of the following conditions are met:

- The unemployment is due directly to a major industrial disaster that destroys substantially all of the physical facilities of a manufacturing plant.
- The Governor has acknowledged the disaster through the creation of a task force to coordinate State assistance to the manufacturer and its employees.
- The Governor has issued an Executive Order directing and authorizing Employment Security Commission to waive the waiting week for employees of the manufacturer.

This legislation was introduced in response to the January 29, 2003 explosion of the West Pharmaceutical plant in Kinston, North Carolina.

The act became effective February 27, 2003. (TM)

Deterring SUTA Dumping

S.L. 2003-67 (SB 326) clarifies that an employer cannot avoid an undesirable Unemployment Insurance (UI) tax rate by shifting employees to a newly created company with a more desirable tax rate. This practice is known as State Unemployment Tax Avoidance or "SUTA dumping" since once the new company is created, the bulk of the old company's employees are moved to the new company and the higher tax rate of the older company is "dumped." Specifically, the act provides that the Employment Security Commission may not assign a discrete employer number to a new employing unit when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is continuity of control of the business enterprise. Additionally, the act specifies the following penalties:

- Any person who willfully attempts, or aids and abets an attempt to defeat or evade a UI tax will in addition to other penalties of law, be guilty of a Class H felony if the following conditions are met in connection with a violation:
  - Any employing units with more than 10 employees.
  - A contribution of more than $2,000 has not been paid.
  - An experience rating account balance has been overdrawn by more than $5,000.
- A deficiency or delinquency in the payment of a contribution because of fraud with intent to evade the tax will result in a penalty equal to 50% of the total deficiency.
- A contribution tax return preparer who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent is guilty of a Class H felony. A "contribution tax return preparer" is a person who prepares, or who employs one or more individuals to prepare, for compensation, any employment-security related

return of tax or claim for refund. The term does not include a person who does any of the following:

- Furnishes typing, reproducing, or other mechanical assistance.
- Prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed.
- Prepares as a fiduciary a return or claim for refund for any person.
- Represents a taxpayer in a hearing regarding a proposed assessment.

The portion of the act clarifying the business practices that are and are not legal became effective May 20, 2003. The portion of the act changing penalties becomes effective December 1, 2003. (BG)

Disaster Leave/Volunteer Emergency Personnel

S.L. 2003-103 (SB 940) provides job protection for volunteer firefighters, rescue squad workers, and emergency medical services personnel called into service in response to a state of disaster proclaimed by the Governor or General Assembly; or the activation of the State Emergency Response Team in response to a disaster or emergency. Newly created G.S. 166A-17 prevents a member of a volunteer fire department, rescue squad, or emergency medical services agency from being forced to use or exhaust vacation, or other accrued leave, for a period of active service; and provides a member the right to take leave without pay from his or her civilian employment if called into action pursuant to the conditions above, if the following provisions apply:

- His or her services must be requested in writing by the Director of the Division of Emergency Management or by the head of a local Emergency Management Agency; and
- The request must be directed to the chief of the member's volunteer fire department, rescue squad, or emergency medical services agency and a copy shall be provided to the member's employer.

This provision does not apply to those members whose services have been certified by their employer to the Director of the Division of Emergency Management, or to the head of a local Emergency Management Agency, as essential to the employer's own ongoing emergency or disaster relief activities.

The act provides that for purposes of this section, a disaster or emergency requiring the activation of the State Emergency Response Team, means a disaster or emergency at Activation Level 2 or greater according to the North Carolina State Emergency Operations Plan of November 2002. Activation Level 2 requires the State Emergency Operations Center to be fully activated with 24-hours staffing from all State Emergency Response Team members.

The Commissioner of Labor is directed to enforce the provisions of this act.

This act became effective May 31, 2003, and applies to volunteer firefighters, rescue squad workers, or emergency medical services personnel called into service of the State after the proclamation of a state of disaster or the activation of the State Emergency Response Team occurring on or after that date. (TM)

Workers Compensation/Definition of Employee

S.L. 2003-156 (SB 776). See **Insurance**.

Adverse Reactions to Smallpox Vaccination

S.L. 2003-169 (HB 273) amends the laws to address the smallpox vaccination provisions included in the federal Homeland Security Act. The law makes certain definitional changes, and provides that:

- State employees receive sick leave and pay coverage resulting from their receipt, or a household member's receipt, of an employment smallpox vaccination incident to the Administration of Smallpox Countermeasures by Health Professionals, Sec. 304 of the Homeland Security Act.
- A person who suffers damages due to an employee's receiving a smallpox vaccination may bring a tort claim against the State.
- Units of local government that employ first responders must adopt sick leave and pay policies when employees have adverse reactions to smallpox vaccinations.

The act also does the following:

- Adds adverse medical reactions as a result of smallpox vaccination to the list of covered expenses under the Teachers' and State Employees' Comprehensive Major Medical Plan.
- Adds adverse medical reactions due to employment smallpox vaccinations to the list of occupational illnesses covered by workers' compensation.
- Provides a method for injured persons to bring an action against the State when they are living in the home of a State employee, community college employee, or employee of The University of North Carolina or its affiliates, and suffer damages that are directly attributable to the employee's receiving an employment smallpox vaccination. There is no requirement that the injured person show negligence on the part of the State or the State employee. The defense of contributory negligence is not allowed. The North Carolina Industrial Commission hears the claim and the maximum recovery is $500,000.
- Provides that absence from work by a State employee, community college employee, or UNC or UNC affiliate employee due to an adverse medical reaction from smallpox vaccination shall not be counted against sick leave and that the employee's full salary shall continue to be paid. It also provides that these State employees will have the same protections from loss of sick leave or salary if they are out of work because a person in the household (who may or may not be a State employee) receives a smallpox vaccination and causes the State employee to have an adverse reaction, or because the employee needs to care for a person who received an employment vaccination. These provisions are limited to a maximum of 480 employment hours.
- Requires all municipalities that employ firefighters, police officers, paramedics, or other first responders to enact a policy regarding sick leave and salary continuation for employees absent due to adverse medical reactions to smallpox vaccinations. The policy must be enacted within 90 days from June 12, 2003, when the act became law.
- Requires all counties that employ firefighters, police officers, paramedics, or other first responders to enact a policy regarding sick leave and salary continuation for employees absent due to adverse medical reactions to smallpox vaccinations. The policy must be enacted within 90 days from June 12, 2003, when the act became law.
- Provides that persons seeking redress under the act first seek compensation and benefits under any existing federal legislation. Federal provisions are the primary recourse; to the extent that federal coverage is insufficient, State coverage up to available limits can be used.

The act became effective June 12, 2003, and applies retroactively as well as prospectively. (HP)

Enhance Amusement Device Safety

S.L. 2003-170 (HB 609) removes exemptions for some amusement devices from regulation under the Amusement Device Safety Act (Act), modifies provisions relating to record keeping and notification of use of devices, prohibits operation of devices by operators who are impaired, and adds penalties for certain violations.

Specific provisions include:

- Deletes an exemption from regulation for certain rides. The Act does not apply to rides that do not require the supervision of an operator. Prior to the passage of this act, the listed rides were exempt if they were not located in an amusement park or carnival area. The effect of the law is to require regulation of all rides that require the supervision of an operator whether located in an amusement park or not.
- Requires device owners to maintain records of required pre-opening inspections for at least the previous 12 months (increase from 30 days).
- Amends G.S. 95-111.8 to require ten days notice of the planned schedule of operation, rather than five days, and eliminate an exception allowing unscheduled operation of a device if notice is given to the Commissioner immediately by telephone or telegraph.
- Prohibits any person from operating an amusement device while under the influence of alcohol or any other impairing substance. "Impairing substance" is defined as alcohol, controlled substances under Chapter 90 of the General Statutes, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances.
- Provides that any person who operates an amusement device while impaired is subject to a penalty not to exceed $1,000. Any person who knowingly permits any of the following is subject to a penalty not to exceed $500: operation of a device by a person under 18 years of age; operation of more than one device at a time by the same operator; or running a device without the operator being present. The act also provides criminal penalties for persons who violate the provisions of the Act when the violation causes the death of any person. A first violation causing death would be punishable as a Class 2 misdemeanor, including a fine not to exceed $10,000. A Class 2 misdemeanor would otherwise be punishable by a maximum fine of $1,000. Any subsequent violation causing death would be punishable as a Class 1 misdemeanor, including a fine not to exceed $20,000. This provision places a cap on the amount of the fine; the fine for a Class 1 misdemeanor is normally within the discretion of the court.

The provisions pertaining to operation of an amusement device while impaired become effective December 1, 2003, and apply to offenses committed on or after that date. The provision requiring device owners to maintain records of required pre-opening inspections becomes effective June 12, 2004. The remainder of the act became effective June 12, 2003. (HP)

Workplace Safety/Reinspections

S.L. 2003-174 (HB 1181) requires the North Carolina Department of Labor to re-inspect a workplace where a willful serious violation was found to exist during a previous inspection. The inspection would take place after all appeals have been resolved and the employer was found to have willfully violated the Occupational Safety and Health Act.

This act becomes effective January 1, 2004, and applies to all inspections conducted on or after that date. (HP)

Fire Department Criminal Background Checks

S.L. 2003-182 (SB 708) allows local Homeland Security directors, or local law enforcement agencies, to request criminal background checks on any applicant for a paid or volunteer position with a fire department in a unit of local government.

As provided in the act, "criminal history" means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for holding a paid or volunteer position with a fire department. Crimes include, but are not limited to, those outlined in G.S. 114-19.12.(1)(2). Other provisions of the act include the following:

- The local fire department may extend a conditional offer of the position pending the results of a criminal history record check.
- The check may be conducted only if the applicant consents to the check. A refusal to consent constitutes just cause for the denial of the position or the dismissal from the position.
- The Department of Justice shall charge a reasonable fee for conducting these checks.
- The release of criminal history information shall be in compliance with the rules adopted by the North Carolina Division of Criminal Information. All information received through the criminal history check is privileged information and for the exclusive use of the director or agency.

This act became effective June 12, 2003. (TM)

Omnibus ESC Changes

S.L. 2003-220 (SB 439) makes several changes to the unemployment laws regarding the following: availability for part-time work; family member health or disability; exemptions for domestic violence, sexual offense, and stalking; tax refunds that convert to reimbursable status; and moving with a spouse.

Available for Part-Time Work. – One of the main elements of qualification for Unemployment Insurance (UI) benefits is that the unemployed person must be "available for work." Under prior law, that meant actively willing to accept a full-time job. This act provides that the qualification is met when a person is available for only part-time work under the following conditions:

- Was working part-time during the period when they earned the wages that met their wage threshold for benefits.
- Is actively seeking and willing to accept work, under essentially the same conditions as existed while the claimant's reported wages were accrued.
- Puts no other conditions on their job search and is in a labor market that has a reasonable demand for part-time work.

Health/Disability in Family. – Under prior law, an individual was disqualified from UI benefits if the individual left work "without good cause attributable to the employer." But the individual was not disqualified who left work due solely to a disability or health condition. The prior law was written as if the disability or health condition had to be the individual's own. This act removes the disqualification from benefits if the disability or health condition were that of a minor child in the employee's custody, of an aged or disabled parent of the employee, or of any member of the employee's immediate family. "Immediate family" is defined in the UI law as "wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, granddaughter, whether the relationship is a biological, step-, half-, or in-law relationship."

Broader Exemption for Domestic Violence, Sexual Offense, Stalking. – Under prior law, a person's UI disqualification is removed if they have been given a protective order under Chapter 50B concerning domestic violence. This act broadens the exemption from disqualification to include a person who has qualified for the new Address Confidentiality Program in Chapter 15C or who can demonstrate domestic violence, sexual offense, or stalking through a number of means. Those means include law enforcement, court, or agency records, documentation from a domestic violence or sexual assault program, or documentation from a professional from whom the claimant has sought help.

No Tax Refunds to Employers that Convert to Reimbursable Status. – Most employers pay UI taxes based on their experience rating in the UI system. Some nonprofit employers, however, pay no taxes but reimburse the system for each tax benefit that is paid. At the request of the U.S. Department of Labor, this act provides that employers converting from taxable to reimbursable status will not be refunded previous balances.

Moving With Spouse. – Under prior law, a person who left work to move out of town with a spouse was only temporarily disqualified for UI benefits. Qualification lasted five weeks. This act drops that qualification to two weeks and provides that moving with a spouse who has been reassigned by the military is no disqualification at all.

This act became effective June 19, 2003. (BG)

Workers' Compensation/Carrier Drivers

S.L. 2003-235 (HB 892). See **Insurance**.

Employees Examined for Asbestosis or Silicosis Under Workers Compensation Statute

S.L. 2003-284, Sec. 10.33 (HB 397, Sec. 10.33). See **Insurance**.

Ferry Employee Positions

S.L. 2003-284, Sec. 29.15 (HB 397, Sec. 29.15). See **Transportation**.

Incident Management Assistance Patrol Program Personnel

S.L. 2003-284, Sec. 29.16 (HB 397, Sec. 29.16). See **Transportation**.

2003 Omnibus Labor Law Changes

S.L. 2003-308 (HB 1129) amends labor laws to allow notice by other kinds of carriers than mail, to abolish the Private Personnel Services Advisory Council, and to charge applicants for private personnel services licenses some of the cost of processing the licenses.

Other Carriers. – The act amends several labor statutes to allow notice to be served, not only by certified mail, but also by a delivery service designated by the U.S. Secretary of the Treasury under the Internal Revenue Code. The Code authorizes the Secretary to designate any service that meets at least three criteria:

- Is available to the general public.
- Is at least as timely and reliable on a regular basis as the U.S. mail.
- Records electronically or on its cover the date on which the item to be delivered was given to the delivery service.

The General Assembly has adopted this U.S. Treasury-designated delivery in Rule 4 of the North Carolina Rules of Civil Procedure.

Abolishing Advisory Council. – The act abolishes the Private Personnel Service Advisory Council, a 12-member body charged with advising the Commissioner of Labor (Commissioner) on the regulation of private personnel services and approving rules adopted by the Commissioner.

Fees for Private Personnel Services Licenses. – The act amends the licensing statute for private personnel services to:

- Charge the applicant for the newspaper notice the Commissioner must have published and the background investigation the Department must make as part of processing each application; and to
- Extend from 30 to 60 days the time period allotted to the Department for processing an application once it has been received. If the background investigation is ongoing at the end of 60 days, the Department may have up to a maximum of 75 days to determine whether a license should be issued.

This act became effective July 1, 2003. (BG)

ESC Surtax Delay

S.L. 2003-405 (HB 1241). See **Finance**.

State Government

Community College Shared Leave

S.L. 2003-9 (HB 432). See **Education**.

State Employee Payroll Deduction/Parental Savings

S.L. 2003-224 (HB 1155) enables State employees to authorize payroll deductions for deposit in the Parental Savings Trust Fund administered by the State Education Assistance Authority.

This act became effective June 19, 2003. (TM)

Return Overpayments of State Funds

S.L. 2003-263 (HB 1221) requires any entity that provided an overpayment of State funds to any person in a State-funded position to recoup the funds. This requirement applies whether the funds were paid in the form of salary or otherwise, and allows the amount of overpayment to be offset by the individual's net wages. The law specifically forbids a State agency from forgiving any repayment of the funds and requires the agency to seek repayment of overpaid funds by all lawful means, including filing a civil action against the individual.

This act became effective June 26, 2003. (HP)

Shift Pay for Security Staff

S.L. 2003-284, Sec. 16.3 (HB 397, Sec. 16.3) allows the Department of Correction to use funds available for the 2003-2004 fiscal year to pay security staff a special supplemental weekend shift premium pay that exceeds standard weekend shift pay by up to ten percent (10%). In an effort to hold down the cost of shift pay, the Department is required to convert prisons from three eight-hour shifts to two 12-hour shifts whenever practical. The Department shall report to the Senate and House of Representatives Appropriations Subcommittees on Justice

and Public Safety by April 1, 2004, on its progress in converting prison work shifts to 12 hours, on actual and potential savings, and on the effect on morale and leave usage.

This section became effective July 1, 2003. (TM)

Department of Correction Security Staffing Formulas

S.L. 2003-284, Sec. 16.4 (HB 397, Sec. 16.4) requires the Department of Correction to conduct annual security staffing postaudits of each prison and to annually update the security staffing relief formula. The Department shall report to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by February 1, 2004, on its progress in implementing the staffing recommendations of the National Institute of Corrections, including a status report on the implementation of a centralized postaudit control system and the automation of leave records.

This section became effective July 1, 2003. (TM)

Department of Transportation Productivity Pilot Programs

S.L. 2003-284, Sec. 29.3 (HB 397, Sec. 29.3). See **Transportation.**

Special Annual Leave Bonus

S.L. 2003-284, Sec. 30.12B (HB 397, Sec. 30.12B) grants a one-time additional 10 days of annual leave to be credited on July 1, 2003, to any person who is (i) a full-time permanent employee of the State, a community college institution, or a local board of education and (ii) who is eligible to earn annual leave. The additional leave shall be accounted for either separately or together with the leave provided by Section 28.3A of S.L. 2002-126. Part-time permanent employees shall receive a pro rata amount of the 10 days. The following persons are not eligible to receive the special annual leave bonus authorized by this section: (1) any employee or officer who does not earn annual leave; (2) employees who receive during the 2003-2004 fiscal year an automatic or step increase under G.S. 7A-102(c), 7A-171.1, or 20-187.3; or (3) any public school employee or State employee paid on the Teacher Salary Schedule or the School Based Administrator Salary Schedule.

This section became effective July 1, 2003. (TM)

Employees May Voluntarily Share Leave With A Coworker's Immediate Family Member

S.L. 2003-284, Sec. 30.14A (HB 397, Sec. 30.14A) amends G.S. 126-8.3, G.S. 115C-12.2, and G.S. 115D-25.3, as amended by S.L. 2003-9; to require the State Personnel Commission, the State Board of Community Colleges, and the State Board of Education, to adopt rules and policies to allow any employee at a State agency, community college, or public school to share leave voluntarily with a coworker's immediate family member who is an employee of a State agency, community college, or public school. Current law specifies that the term "immediate family member" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. The new amendments provide that the term "coworker" means that the employee donating the leave is employed by the same agency, department, institution, university, local school administrative unit, or community college as the employee whose immediate family member is receiving the leave.

This section became effective July 1, 2003. (TM)

State Employee Health Benefit Plan/Benefit Changes

S.L. 2003-284, Sec. 30.19C (HB 397, Sec. 30.19C) specifies that the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan:

- Will pay 100% of the remaining covered expenses once deductible and coinsurance maximums have been met when using providers outside of the preferred network.
- Will ensure that the Plan member is not held financially responsible for excess charges when qualified out-of-state preferred providers are not available in medical emergencies. Under this section, a medical emergency is defined as the sudden and unexpected onset of a condition manifesting itself by acute symptoms of sufficient severity that, in the absence of immediate medical care, could imminently result in injury or danger to self or others.

This section became effective July 1, 2003. (TM)

Amend Definition of Disability Applicable to the State Disability Income Plan

S.L. 2003-284, Sec. 30.20(j)-(l) (HB 397, Sec. 30.20(j)-(l)) rewrites the definition of "disability" in the Disability Income Plan from "mental or physical incapacity for the further performance of duty of a participant or beneficiary" to "physical or cognitive limitations that prevent working as determined by the Department of State Treasurer and the Board of Trustees." It also changes the definition of short-term disability from "no longer able to perform his usual occupation" to "unable to perform the duties of the participant's job or any other available jobs with the State." The definition of long-term disability is changed from "mentally or physically incapacitated for the further performance of duty" to "unable to perform any occupation for which the beneficiary or participant is reasonably qualified for by training or experience."

The changes in the definition of disability apply only to persons who are not vested in the Disability Income Plan on July 1, 2003. This section became effective July 1, 2003. (KCB)

For amendments to the Study Commission on State Disability Income Plan, the Death Benefit Plan, and Separate Insurance Benefits Plan for Law Enforcement Officers, see **Labor and Employment.**

Studies

Referrals to Departments, Agencies, Etc.

Probation and Parole Caseloads

S.L. 2003-284, Sec. 16.18 (b) and (c) (HB 397, Sec. 16.18(b) and (c)) requires the Department of Correction to conduct a study of probation/parole officer workload at least biannually. The initial study, to be completed during the 2003-2004 fiscal year, shall be conducted jointly by the Department staff and an external consultant and must include an analysis of the type of offenders supervised, the distribution of the probation/parole officers' time by type of activity, the caseload carried by the officers, and the comparisons to practices in other states. The study shall be used to determine whether the caseload goals established by the Structured Sentencing Act are still appropriate, based on the nature of the offenders supervised and the time required to supervise those offenders. The Department must report the results of

the initial study and recommendations for any adjustments to caseload goals to the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety by April 1, 2004.

This section became effective July 1, 2003. (TM)

ALE Agents Subject to State Personnel Act

S.L. 2003-284, Sec. 17.6 (HB 397, Sec. 17.6) states that Chapter 126 of the General Statutes (State Personnel System) applies to all Alcohol Law Enforcement agents of the Department of Crime Control and Public Safety, and requires the Office of State Personnel to study salary classifications of Alcohol Law Enforcement agents. The Office is required to determine the appropriate classifications and salary ranges for those agents and report the results of the study, including any recommendations or legislative proposals, to the Chairs of the Senate and House of Representatives Appropriations Subcommittees on Justice and Public Safety.

This section became effective July 1, 2003. (TM)

Staffing Analysis Follow-Up

S.L. 2003-284, Sec. 28.4 (HB 397, Sec. 28.4) requires the Office of State Budget and Management to conduct, by October 1 and April 1 of each year, semiannual follow-up analyses to the Staffing Analysis that was completed in April 2003, on the Retirement Systems Division within the Department of State Treasurer. The semiannual analyses will assure that the staffing levels remain appropriate, and must be conducted throughout the implementation of the enhancements to the information technology infrastructure within the Retirement Systems Division that were authorized. The follow-up analyses shall also continue for a reasonable time after the completion of the enhancements to ensure that the staffing levels are adjusted based on the increased efficiency provided by the enhancements. The Retirement Systems Division must maintain monthly workload statistics and productivity data for the various functions within the Division. The Department of State Treasurer must report the workload statistics and productivity data to the Fiscal Research Division and to the Office of State Budget and Management on a quarterly basis.

This section became effective July 1, 2003. (TM)

Study Compensation of Certain High-Level Officers

S.L. 2003-284, Sec. 30.15 (HB 397, Sec. 30.15) requires the Office of State Personnel and the Office of State Budget and Management to jointly study the relative compensation of members of the Council of State, State department heads, and other high-ranking elected and nonelected public officials whose salaries are set by the General Assembly. Findings and recommendations must be reported by April 1, 2004 to the Joint Legislative Commission on Governmental Operations.

This section became effective July 1, 2003. (TM)

New/Independent Studies/Commissions

Study Commission on State Disability Income Plan, the Death Benefit Plan, and Separate Insurance Benefits Plan for Law Enforcement Officers

S.L. 2003-284, Sec. 30.20(a)-(i) (HB 397, Sec. 30.20(a)-(i)) establishes a study commission to study the plan design, funding, and administration of the Disability Income Plan, the Death Benefit Plan, and the Separate Insurance Benefits Plan for Law Enforcement Officers to determine what changes could be made to the plans to enhance the efficiency and reduce the cost of the plans to the State and its employees. The Commission must submit its report to the General Assembly no later than January 1, 2005.

This section became effective July 1, 2003. (KCB)

For amendments to the Disability Income Plan, see **Retirement.**

Study Establishment of Statewide Benefit Committee to Provide a Menu of Portable Supplemental Benefits for All State Employees

S.L. 2003-284, Sec. 30.21 (HB 397, Sec. 30.21) establishes the Study Commission on Establishment of a Statewide Benefit Committee to Provide a Menu of Portable Supplemental Benefits for all State Employees. The Commission shall be comprised of nine members: four persons appointed by the President Pro Tempore of the Senate (at least one of these appointees must be a State employee); Four persons appointed by the Speaker of the House of Representatives (at least one of these appointees must be a State employee); and the Director of the Office of State Personnel. The Commission shall study whether there should be established a Statewide Benefit Committee to provide a menu of portable supplemental benefits for all State employees, rather than the current system of a committee in each payroll unit. The Commission may meet during a regular or extra session of the General Assembly, subject to approval of the President Pro Tempore of the Senate and the Speaker of the House of Representatives, and shall submit a report, including any legislative recommendations, to the General Assembly not later than January 1, 2005.

This section became effective July 1, 2003. (TM)

Chapter 16
Local Government

Erika Churchill (EC), Judy Collier (JC), Kory Goldsmith (KG),
Giles Perry (GSP) and Barbara Riley (BR)

Enacted Legislation

Remove Sunset/Municipal Electric Service

S.L. 2003-24 (SB 338). See **Utilities**.

Registration of Birth & Death Certificates

S.L. 2003-60 (HB 475). See **Health and Human Services**.

Redevelopment Commission Property Conveyance

S.L. 2003-66 (HB 1065) permits a redevelopment commission to convey its property by sale to entities carrying out a public purpose. Cities currently have this authority under G.S. 160A-279. A redevelopment commission may attach covenants or conditions to ensure that the recipient will put the property to a public use.

This act became effective May 20, 2003. (BR)

Modify County Tax Certification Authority

S.L. 2003-72 (HB 393). See **Finance**.

Spring Lake and Newton Red Light Cameras

S.L. 2003-86 (HB 68). See **Transportation**.

Honor Retiring Firefighters

S.L. 2003-145 (HB 55) allows a fire department established by a county or municipality, at the discretion of the governing body of the county or municipality, to award upon request, the fire helmet of a deceased or retiring firefighter to the firefighter or a surviving relative. The price of the helmet is to be determined by the governing board of the county or municipality and may be less than the fair market value of the helmet.

This act became effective June 4, 2003. (BR)

County Appeals of Certain Juvenile Orders

S.L. 2003-171 (HB 925) allows counties to appeal court orders in juvenile delinquent and undisciplined cases in which the county has been ordered to pay for medical, surgical, psychiatric, psychological, or other evaluation or treatment of the juvenile in certain circumstances.

This act becomes effective October 1, 2003, and applies to petitions for appeal filed on or after that date. (EC)

Self-Insured Localities

S.L. 2003-175 (SB 647) authorizes all cities and counties to waive sovereign immunity for negligence claims through the creation of a funded reserve as is currently permitted for Charlotte and Raleigh. The reserve must be created by resolution adopted by the city council or the county commissioners and must set out the limit of liability that is further limited by the amount of funds available in the funded reserve. Cities and counties have sovereign immunity from liability claims arising out of the performance of governmental functions unless that immunity is waived by the purchase of liability insurance or participation in a local government risk pool. Participation in a self-funded plan does not waive sovereign immunity.

This act became effective June 12, 2003. (EC)

Fire Department Criminal Background Checks

S.L. 2003-182 (SB 708). See **Labor and Employment.**

Sanitary District Compensation

S.L. 2003-185 (SB 90) removes the cap on the monthly compensation and allows sanitary district boards to set their compensation in the same manner as other local elected boards. In 1985, the General Assembly restricted sanitary boards in their ability to set compensation for themselves, limiting monthly compensation to $150. Other local elected boards, set their compensation in the annual budget ordinance.

This act became effective June 12, 2003. (EC)

Research and Production Service District Deannexation

S.L. 2003-187 (SB 214) establishes a procedure to remove property from a research and production service district. The board of county commissioners may remove property from a district by resolution after notice and a public hearing. For property to be removed from a district, the board of county commissioners must find the following:

- The owners of the property to be removed contemplate placing residential uses on some of the property to be removed.
- All of the owners of property in the area to be removed have petitioned for removal.
- The area to be removed no longer requires the services, facilities, or functions financed, provided, or maintained for the district.

Once property has been removed from the district, it is subject to the general law concerning annexation. A resolution removing property from a district takes effect at the beginning of a fiscal year commencing after its passage.

This act became effective June 12, 2003. (EC)

Bikeway Funding

S.L. 2003-256 (SB 232) authorizes the Department of Transportation to grant funds to counties for bikeways, and authorizes counties to expend funds to establish bikeways.

This act became effective June 26, 2003. (GSP)

Airport Financing and Leases/Dam Assessments

S.L. 2003-259 (SB 652) gives airport authorities created by a local act of the General Assembly the authority to finance real and personal property by installment contracts and other means of indebtedness authorized by G.S. 160A-20 (Security Interests). Installment purchase financing is a type of local government debt in which the local unit enters into an installment contract secured by a security interest in the building constructed or renovated. Unlike the issuance of general obligation bonds, installment purchase financing is not subject to a vote of the people.

This act became effective June 26, 2003. (KG)

Several Counties Unpaid Fees Collection

S.L. 2003-270 (HB 469) permits the counties of Columbus, Davie, Duplin, and Lenoir; any municipality located wholly or partly in those counties; or a water or sewer authority located in those counties to collect a water or sewer fee owed to the local government that is 90 days past due as if it were a property tax. The act requires the local government to enact an ordinance stating this is a method of collection in that local government's jurisdiction, and must exempt ambulance and solid waste fees.

This act became effective July 1, 2003. (EC)

Charlotte Photo Speed-Measuring Systems

S.L. 2003-280 (HB 562). See **Transportation**.

Certain Local Governments Condemnation

S.L. 2003-282 (HB 542) adds the Towns of Oak Island, Caswell Beach, and Ocean Isle Beach, as well as the Village of Bald Head Island, to those coastal counties and municipalities that may exercise the power of "quick-take" condemnation to acquire property for beach erosion control, flood and hurricane protection works, and public beach access. Under quick-take condemnation procedures, title to the property and the right to immediate possession vests upon the filing of the complaint and the making of a deposit in an amount estimated by the condemnor to be just compensation for the taking, unless an action for injunctive relief has been initiated.

This act became effective June 30, 2003. (KG)

Use of Closed Prison Facilities

S.L. 2003-284, Sec. 16.5 (HB 397, Sec. 16.5). See **Courts, Justice, and Corrections**.

Adjust Local Government Hold Harmless

S.L. 2003-284, Sec. 37.1 (HB 397, Sec. 37.1). See *2003 Budget Act* in **Finance**.

Amend Public Enterprise Customer Billing Privacy

S.L. 2003-287 (SB 537) removes airports operated as a public enterprise from the provision of G.S. 132-1.1 that excludes public enterprise billing information from the definition of public records. G.S. 132-1 defines "public records" and states that those records are the property

of the people and shall be made available to the public unless otherwise specified by law. G.S. 132-1.1 excludes certain types of records from the definition of public records, including attorney-client communications, state and local tax information, and public enterprise billing information.

This act became effective July 4, 2003. (BR)

Water and Sewer Authority Setoff

S.L. 2003-333 (SB 529). See **Finance**.

Liability at Public Skateboard Parks

S.L. 2003-334 (SB 774). See **Civil Law and Procedure.**

School Acquisition by Counties Statewide

S.L. 2003-355 (SB 301) extends to all 100 counties the authority to acquire school property using installment purchase financing on behalf of their boards of education. The 12 counties affected by these changes are Beaufort, Buncombe, Caswell, Cleveland, Granville, Hertford, Northampton, Swain, Tyrell, Warren, Washington, and Yancey.

The changes authorize:

- These counties to acquire real or personal property for use by a school administrative unit located in the county when requested to do so by the unit.
- The local boards of education in these counties to contract with the county for the erection or repair of a public school building that is located on a site owned by the county.
- The local boards of education in these counties to transfer to the county any property on which a school building in need of renovation or repair is located for any price agreed to by the board of education and the county.

This act became effective August 1, 2003. (KG)

Handgun Permit Fee/Retired Law Officers

S.L. 2003-379 (HB 1030) reduces the concealed handgun permit application and renewal fee by $35 for law enforcement officers. In order to qualify for the fee reduction, the law enforcement officer is required to produce the following documentation to the sheriff when applying for the permit:

- A copy of the officer's letter of retirement from either the North Carolina Teachers' and State Employees' Retirement System or the North Carolina Local Governmental Employees' Retirement System.
- Written documentation from the head of the agency where the person was previously employed indicating that the person was neither involuntarily terminated nor under administrative or criminal investigation within six months of retirement.

This act became effective September 1, 2003, and applies to applications and renewals submitted on or after that date. (KG)

Parking/Red Light Camera Rules

S.L. 2003-380 (HB 786). See **Transportation**.

Local Water Supply Plans

S.L. 2003-387 (HB 1062). See **Environment and Natural Resources**.

Local Option Project Development Financing

S.L. 2003-403 (SB 725). See **Finance**.

Interlocal Economic Development Cooperation

S.L. 2003-417 (HB 1301) authorizes local governments jointly undertaking development projects to enter into agreements to finance the project. The act provides that local governments entering into a joint undertaking may adopt interlocal agreements regarding financing, expenditures, and revenues related to the undertaking. Monies collected by a participating government unit may be transferred to and expended by any other government unit consistent with the terms of the agreement. The maximum term of such agreements is 99 years.

The act also provides that local governments may enter into contracts or agreements wherein they agree to provide resources to jointly develop industrial or commercial property for public purposes. In return for the provision of resources, the unit or units of local government in which the property is located may agree to share the proceeds from the property taxes on the developed property among the participating units of local governments. The maximum length of any such agreement is 40 years.

This act became effective August 14, 2003. (BR)

Economic Development District

S.L. 2003-418 (SB 168). See **Finance**.

Amortization Moratorium

S.L. 2003-432 (HB 754) places a moratorium until December 31, 2004 on the enactment by a local government of any new ordinance, or the extension or expansion of any existing ordinance, amortizing off premises outdoor advertising. The act also directs the Revenue Laws Study Committee to study local government ordinances amortizing off premises outdoor advertising, and report to the 2004 Regular Session of the 2003 General Assembly.

This act became effective August 19, 2003. (GSP)

Chapter 17
Military, Veterans' & Indian Affairs

Theresa Matula (TM) and Hal Pell (HP)

Enacted Legislation

Indian Affairs

Amend Indian Recognition

S.L. 2003-54 (HB 746) makes several changes in the statutes relating to State Indian recognition:

- Recognizes the tribe that has previously been known as "Croatan Indians," "Indians of Robeson County," and "Cherokee Indians of Robeson County," as the "Lumbee Tribe of North Carolina."
- Officially recognizes the Indians residing in small communities in Hertford, Bertie, Gates, and Northampton Counties, who had been granted reservational lands in 1726 at the mouth of the Meherrin River, as the "Meherrin Tribe of North Carolina." The Meherrin Tribe was officially recognized on July 20, 1971.
- Officially recognizes the Indians now primarily residing in the old settlement of Little Texas in Pleasant Grove Township, Alamance County, as the "Occaneechi Band of the Saponi Nation of North Carolina."

This act became effective May 20, 2003. (HP)

Occaneechi Band of Saponi/Indian Cultural Center

S.L. 2003-55 (HB 710) adds a member of the Occaneechi Band of the Saponi Nation of Alamance and Orange Counties to the Board of the North Carolina Indian Cultural Center.

This act became effective July 1, 2003. (HP)

Redesignate Indians of Person County as Sappony

S.L. 2003-87 (HB 355) recognizes the tribe known as the "Indians of Person County" as the "Sappony." The Sappony have been officially recognized as a tribe since February 3, 1913 (former recognition date as Indians of Person County was July 20, 1971).

This act became effective May 29, 2003. (HP)

Indian Cultural Center Changes

S.L. 2003-260 (HB 745) changes the membership on the Board of the North Carolina Indian Cultural Center as follows:

- Increases the number of members from the education community in the State to two (previously one member), and requires that they reside in Bladen, Columbus, Cumberland, Hoke, Robeson, or Scotland Counties.
- Increases the number of members from the business community in the State to three (previously two members), and requires that they reside in Bladen, Columbus, Cumberland, Hoke, Robeson, or Scotland Counties.

This act became effective July 1, 2003. (HP)

Military and Veterans' Affairs

Veterans Administration Police Officers

S.L. 2003-36 (HB 24) amends G.S. 15A-406(a) by adding Veterans Administration police officers to the list of federal law enforcement officers authorized to carry firearms in the performance of their duties. Under the existing statutes, federal law enforcement officers are authorized to enforce criminal laws in the State when providing temporary assistance to State or local law enforcement agencies; have the same legal immunity from personal civil liability and the same powers as those invested by statute or common law to North Carolina law enforcement officers; shall not be considered an officer, employee or agent of any State or local law enforcement agency; and do not possess expanded authority to initiate or conduct independent investigations into violations of State law.

This act became effective May 14, 2003. (TM)

Veterans Day a Holiday for School Staff

S.L. 2003-131 (HB 421). See **Education**.

Military Expiration of Drivers License

S.L. 2003-152 (HB 1159) allows the Division of Motor Vehicles to establish a military designation for drivers licenses that, upon request, may be issued to North Carolina residents on active duty, their spouses, and their dependent children. The military designation will:

- Allow renewal by mail no more than two times during the license holder's lifetime;
- Provide that a license renewed by mail is a permanent license that does not expire when the license holder returns to the State; and
- Allow renewal up to one year prior to expiration upon presentation of appropriate credentials.

The act exempts from a required eye exam members of the U.S. Armed Forces and members of the National Guard or a reserve component of the U.S. Armed Forces that are serving in a combat zone or a qualified hazardous duty zone at the time of renewal, when renewing a drivers license by mail. Additionally, this act provides that certain agents of the Department of Defense may obtain confidential license plates, and motor vehicle drivers licenses and license plates under assumed names using false or fictitious addresses.

The drivers license renewal provisions pertaining to military service, become effective January 1, 2004. The remainder of the act, pertaining to fictitious and confidential drivers licenses and plates, became effective June 4, 2003. (TM)

Safekeeping Military Discharge Documents

S.L. 2003-248 (HB 818) repeals and rewrites the provisions of an act passed during the previous Session. The 2001 General Assembly, 2002 Regular Session, had enacted G.S. 47-113.1 to allow veterans, surviving spouses of veterans, and certain legal representatives of veterans or their estates to request the register of deeds to remove specified military forms from their official records. The act required the register of deeds to redact certain personal identifying information, including social security numbers, when supplying certified copies of those documents to persons other than those who are authorized to request removal of the forms. G.S. 47-113.1 became effective in Craven, Nash, and Pamlico Counties on August 28, 2002, and was to become effective in all other counties on July 1, 2003.

This new act:

- Repeals G.S. 47-113.1.
- Rewrites the provisions of G.S. 47-113.1 into a new section, G.S. 47-113.2. The section provides that there will be limited public access to military discharge documents filed after the effective date of the act. Four entities will have inspection and access to the document:
  - The person who is the subject of the document.
  - Agents and representatives of that person.
  - Authorized agents of State and federal governmental agencies, or court officials, with an interest in assisting the subject person or the subject person's beneficiaries.
  - Agents or representatives of the North Carolina State Archives.

The act specifies procedures for filing the documents with the register of deeds and the provision of copies to authorized parties. Documents filed prior to the effective date that have not been commingled with other documents are covered under the act. A register of deeds is authorized to take appropriate protective actions with regard to documents that are filed prior to the effective date of the act. The act provides that certified copies are available at no cost. Documents filed over 50 years ago are not subject to the act's restricted access provisions, and uncertified copies may be provided with payment of a fee.

The act becomes effective January 1, 2004. Rules and forms necessary for implementation were authorized for adoption at any time subsequent to June 6, 2003. (HP)

Tuition Modifications

S.L. 2003-284, Sec. 8.16 (HB 397, Sec. 8.16). See **Education**.

Veterans Scholarships Partially Funded from Escheat Fund

S.L. 2003-284, Sec. 18.5 (HB 397, Sec. 18.5) amends the statutes pertaining to scholarships for children of war veterans and the distribution of income from the Escheat Fund to assist in funding scholarships for children of war veterans. The section provides that funds from the Escheat Fund to support the scholarship program may be used only for worthy and needy residents of the State who are enrolled in public institutions of higher education in the State.

This section became effective June 30, 2003. (HP)

Waive Deadlines for Troops

S.L. 2003-300 (SB 936) provides assistance to members of the U.S. Armed Forces or the Armed Forces Reserves, and members of the North Carolina Army National Guard or the Air National Guard, called to active duty in support of Operation Iraqi Freedom on or after January 1, 2003. For these military personnel, the act waives deadlines, fees, and penalties in the following areas:

- Extends for up to 90 days from the end of deployment, the validity of a permanent or temporary drivers license.
- Waives civil penalties and restoration fees for motor vehicle liability insurance that lapsed during the period of deployment or within 90 days after return, if the military member certifies that the motor vehicle was not driven on the highway by anyone during the period it was uninsured and that the owner now has liability insurance.
- Allows up to 90 days from the end of deployment to renew an occupational license and requires that any renewal fee be prorated over the period of time covered and reduced for the period of time that the licensee was deployed outside the State.

- Allows 90 days after the end of deployment to pay property taxes at par for any property taxes that became due or delinquent during the term of deployment.
- Allows 90 days after the end of deployment to list property for taxation.
- Grants, upon student request, a full refund of curriculum tuition and fees and extension registration fees from community colleges to military reserve and national guard personnel called to active duty or active personnel who have received temporary or permanent reassignments as a result of military operations that make it impossible for them to complete their course requirements.
- Requires, upon student request, that community colleges buy back textbooks through the colleges' bookstore operations to the extent possible.
- Requires community colleges to use distance-learning technologies and other educational methodologies to help students complete their course requirements.
- Allows, upon student request, constituent institutions of The University of North Carolina to issue a full refund of tuition and fees because of involuntary or voluntary service in the military or because of circumstances related to national emergencies. It also encourages constituent institutions to have a process for determining the circumstances related to military service or a national emergency under which they will grant a refund of tuition and required and optional fees to students, and under what circumstances students will be given incompletes in courses rather than refunds.
- Provides that students who are receiving North Carolina Legislative Tuition Grants who lose their full-time student status due to a call to active military duty, or circumstances related to national emergencies, shall not be required to repay the Grant for that semester.

This act became effective July 4, 2003 and the sections affecting the community colleges and constituent institutions of The University of North Carolina apply to 2002-2003 and 2003-2004 academic years only. (TM)

Compensation/Public School Employees/Active Duty

S.L. 2003-301 (SB 714). See **Education**.

Chapter 18
Occupational Boards and Licensing

Cindy Avrette (CA), Trina Griffin (TG), and Mary Shuping (MS)

*(For summaries of legislation related to nonoccupational boards and commissions, see **State Government.**)*

Enacted Legislation

Extend Date Retailers Exempt Plumbing/Heating Laws

S.L. 2003-2 (SB 29) delayed the effective date of Section 36(a) of S.L. 2002-159 (codified as G.S. 87-21(i)) from March 1, 2003 to May 1, 2003. In 2002, the General Assembly enacted G.S. 87-21(i) which provided that, effective March 1, 2003, the licensure requirements for plumbing and heating contractors did not apply to a retailer who, in the ordinary course of business, enters into a transaction with a buyer in which the retailer of the goods and services necessary for the installation, contracts with a licensed plumbing or heating contractor to provide installation services to the buyer. This act delays the effective date to May 1, 2003.

This act became effective February 27, 2003. (MS)

Recognize Retired Nurses/Fees

S.L. 2003-29 (SB 244) establishes a one-time fee for the issuance of a special license to recognize retired registered nurses or retired licensed practical nurses. The retired registered nurse and retired licensed practical nurse categories allow retirees to obtain title recognition after retirement. Under prior law, the retiree was required to either become inactive and be considered unlicensed and prohibited from using the RN or LPN title, or pay a renewal fee every two years of up to $100 to maintain an active license, even though the person was no longer practicing as a registered nurse or licensed practical nurse. The act sets the maximum fee the Board of Nursing may charge at $50 and sets the initial fee at $25, until such time as the Board amends the fee.

This act also established procedures whereby a retired registered nurse or licensed practical nurse may be reinstated to active practice and sets the fee at a maximum of $100 for a two-year period.

This act became effective April 30, 2003. (MS)

Clarify Certain Plumbing and HVAC Laws

S.L. 2003-31 (SB 772). See **Commercial Law and Consumer Protection**.

Interpreter Licensure Effective Date

S.L. 2003-56 (HB 461) delays the effective date of the Interpreter and Transliterator Licensure Act. In 2002, the General Assembly enacted S.L. 2002-182, which required licensure for persons who practice manual or oral interpreting or transliterating services to persons who are deaf or hard-of-hearing.

The prior act also established the North Carolina Interpreter and Transliterator Licensing Board, effective January 1, 2003. This act delayed the date by which the Board must be appointed from January 1, 2003 until July 1, 2003.

In addition, the prior act, S.L. 2002-182, required that anyone practicing interpreter or transliterator services as of October 31, 2002 (the effective date of S.L. 2002-182) would be licensed without having to satisfy the standard licensure requirements so long as the person met certain qualifications, including being at least 18 years of age, being of good moral character, having engaged in active practice of interpreting or transliterating services for at least 200 hours during the two years prior to October 31, 2002, providing letters of recommendation, and paying a $75 fee. In order to qualify for licensure without satisfying the standard licensure requirements, the person must have made application to the Board within 18 months of the effective date of the act. This act extends the time period to December 31, 2004.

This act also extends the time all other interpreters and transliterators must be licensed from July 1, 2003 until January 1, 2004.

This act became effective May 20, 2003. (MS)

Require Drug Test Before Licensure/Cab Driver

S.L. 2003-65 (SB 557) allows cities to impose an additional requirement on taxicab drivers prior to licensure by requiring that they pass a controlled substance examination. Pursuant to their current general authority to regulate all vehicles operated for hire, cities may already require that applicants consent to a criminal history background check and that taxicab drivers obtain a license or permit from the city.

This act became effective May 20, 2003. (MS)

State Bar Amendments

S.L. 2003-116 (SB 539) amends the law governing the limited practice of out-of-state attorneys and the operation of the Council of the North Carolina State Bar and the Disciplinary Hearing Commission of the North Carolina State Bar.

Limited Out-of-State Practice Changes. – Pursuant to G.S. 84-4.1, any attorney domiciled, admitted to practice, and in good standing in another state may be admitted to practice in a North Carolina forum for the sole purpose of appearing for a client in the litigation. Under current law, the motion for limited practice must contain the following:

- The attorney's name, bar membership number, and address.
- A statement signed by the client confirming that the client has retained the attorney.
- A statement that, unless permitted to withdraw, the attorney will continue to represent the client in the proceeding until a final determination, and that the attorney agrees to be amenable to orders and any disciplinary action in North Carolina.
- A statement that the state in which the attorney is licensed to practice grants like privileges to members of the Bar of North Carolina in good standing.
- A statement that the attorney has associated and is appearing in the proceeding with an attorney who is admitted to practice in North Carolina.

This act adds the requirement that the statement be signed by the attorney and that the attorney also provide a statement disclosing the attorney's disciplinary history, including public discipline by any court or lawyer regulatory organization, and revocation of any pro hac vice admission.

Council of North Carolina State Bar May Subpoena Financial Records. – The act also authorizes the Council or any of its committees to subpoena financial records of any licensed attorneys, attorneys whose licenses have been suspended, or disbarred attorneys, relating to any account into which client or fiduciary funds have been deposited.

Increase in Membership of Disciplinary Hearing Commission. – The act increases the membership of the Disciplinary Hearing Commission from 15 to 20 members. Twelve members must be members of the North Carolina State Bar and appointed by the Council. The

remaining eight members must be citizens of North Carolina and not licensed to practice law. Four of the citizen members are appointed by the Governor, and four citizen members are appointed by the General Assembly.

This act becomes effective October 1, 2003. (MS)

Veterinary Board Agreements/Impaired Vets

S.L. 2003-139 (HB 978) authorizes the North Carolina Veterinary Medical Board to enter into agreements with organizations that have developed programs for impaired veterinary personnel. The act specifies the following:

Agreements. – The act authorizes the Board to enter into agreements and provides that activities that may be covered by these agreements include investigation, review, and evaluation of information about the practices or practice patterns of veterinary personnel as the matters may relate to impaired veterinary personnel. The agreements must include provisions for the impaired veterinary personnel organizations to:

- Receive relevant information from the Board and other sources.
- Conduct any investigation, review, or evaluation in an expeditious manner.
- Provide assurance of confidentiality of nonpublic information.
- Make reports of investigations and evaluations to the Board.
- Implement any other related activities for operating and promoting a coordinated and effective process.

Organizations Entering into Agreements. – The act requires that organizations entering into agreements with the Board must:

- Establish and maintain a program for impaired veterinary personnel for the purpose of identifying, reviewing, and evaluating the ability of those veterinary personnel to function in the profession.
- Provide for treatment and rehabilitation.
- Provide detailed information about veterinary personnel upon investigation and review by the Board or upon receipt of a complaint or other information, if:
  - The veterinary personnel is an imminent danger to the public, to patients, or himself or herself.
  - The veterinary personnel refuses to cooperate with the program, submit to treatment, or is still impaired after treatment and exhibits professional incompetence.
  - It reasonably appears there are other grounds for disciplinary action.

Board Authority. – The act authorizes the Board to adopt rules for:

- Definitions of "impairment."
- Program elements.
- Receipt and use of information of suspected impairment.
- Procedures for intervention and referral.
- Arrangements for monitoring treatment, rehabilitation, post-treatment support, and performance.
- Reporting individual cases to the Board.
- Periodic reporting of statistical information.
- Assurance of confidentiality of nonpublic information.

Confidential Information. – The act requires that:

- Any confidential or nonpublic information acquired in good faith by an organization or the Board remains confidential and is not subject to discovery or subpoena in a civil case, nor subject to disclosure as a public document.
- No person participating in good faith in an impaired veterinary personnel program shall be required to disclose any information, including opinions, recommendations, or evaluations, acquired or developed solely in the course of participating in the program.

No Civil Liability. – The act provides that impaired veterinary personnel activities conducted in good faith are not grounds for civil action, and the activities are deemed to be State-directed and sanctioned and constitute "State action" for purposes of application of antitrust laws.

This act became effective June 4, 2003. (MS)

Board of Nursing

S.L. 2003-146 (SB 522) changes the method by which certain members on the North Carolina Board of Nursing are elected or appointed and requires that health care facilities verify the licensure status of applicants seeking employment as nurses.

Membership Changes. – The act makes the following changes to the statutes governing the membership of the North Carolina Board of Nursing:

- Reduces Board membership from 15 to 14.
- Provides that the General Assembly appoints two public members and the Governor appoints one public member. Under prior law, only the Governor appointed the public members. Additionally, public members cannot be providers of health services, employed in the health services field, or hold a vested interest in the provision of health services. Finally, no public member or immediate family member can be currently employed as a licensed nurse or been previously employed as a licensed nurse.
- Requires that all unexpired terms of Board members appointed by the General Assembly must be filled within 45 days of the vacancy.
- The eight registered nurses on the Board must represent the following:
  - One nurse administrator employed by a hospital or hospital system and not directly involved in patient care.
  - One certified registered nurse anesthetist, certified nurse midwife, clinical nurse specialist, or nurse practitioner.
  - Two staff nurses primarily involved in patient care.
  - One at-large member who is a registered nurse and who is not an educator.
  - Three nurse educators who are either an associate degree educator, practical nurse educator, or bachelor's or higher degree nurse educator.
- Requires each registered nurse or licensed practical nurse member to:
  - Hold a current, unencumbered license.
  - Show evidence that his or her employer is aware that he or she intends to serve on the Board.
  - Be a North Carolina resident.
- Increases the membership term from three to four years. The act also provides that a member may not serve more than two consecutive four-year terms or eight consecutive years after January 1, 2005.
- Allows any member to serve as chair. Under prior law, only a registered nurse could serve as chair.
- Transitions from current Board membership to new Board membership by providing that members serving on the Board as of June 4, 2003 will continue to serve until December 31, 2004. Thereafter, the act establishes methods for staggered terms.

Mandatory Employer Verification of Licensure Status. – The act also requires health care facilities to verify that an applicant for employment as a registered nurse or a licensed practical nurse hold a current, valid license. The term "health care facilities" includes adult care homes, hospitals, home care agencies, nursing pools, hospices, nursing facilities, State-operated facilities, residential facilities, and 24-hour facilities. Also included are public health departments, physicians' offices, ambulatory care facilities, and rural health clinics.

Approval of Nursing Programs. - The act decreases the frequency with which the Board must review nursing programs in the State from every five years to every eight years.

This act became effective June 4, 2003. (MS)

Board of Chiropractic Examiners/Examination

S.L. 2003-155 (HB 278) expands the areas of examination for licensure to practice chiropractic by authorizing the Board to test applicants on any other related studies the Board considers necessary to determine the applicant's fitness to practice. The act further authorizes the Board to include as part of the examination, any examination developed and administered by the National Board of Chiropractic Examiners. Finally, the act also authorizes the Board to set the passing scores for all parts of the examination.

This act became effective June 4, 2003. (MS)

Raise Ceiling/Speech Pathologists/Audiologist Fees

S.L. 2003-222 (HB 1260) changes the fee structure for the Board of Examiners for Speech and Language Pathologists and Audiologists. The act changes the statutorily set fees to maximum fees, thus providing the Board with some discretion in its fee setting. The act also increases the set fee of $40 for initial license and renewal to a fee not to exceed $100.

This act became effective June 19, 2003. (MS)

General Contractors Board/Bidding

S.L. 2003-231 (SB 437) authorizes licensed plumbing and heating contractors and licensed electrical contractors to bid and contract directly with the owner of a public building project if both of the following apply:

- A licensed general contractor performs all of the work that falls within the classifications for licensed general contractors, as set out in G.S. 87-10(b), and the Board's rules.
- The total amount of work to be performed by a general contractor does not exceed a specific percentage, as established by the Board, of the total bid price.

This act became effective June 19, 2003. (GSP)

Amend Dealer Licensing Law

S.L. 2003-254 (SB 777) amends the motor vehicle dealers and manufacturers licensing law concerning the manufacture, sale, and distribution of trailers and semi-trailers. Prior law exempted persons from the definition of "motor vehicle dealer" if the person manufactured, distributed, or sold trailers and semi-trailers weighing more than 750 pounds and carrying not more than a 1,500 pound load. The act changes pound limit to 2,500 pounds unloaded weight. Also, under prior law, a person who sold or distributed only trailers or semi-trailers of less than 2,500 pounds unloaded weight must have a place of business in North Carolina. The act changes the weight limit to trailers or semi-trailers of more than 2,500 pounds.

This act became effective July 1, 2003, and applies to licenses issued or renewed on or after that date. (MS)

Auto Auctioneers – No Dealer License Needed

S.L. 2003-265 (HB 692). See **Transportation**.

Private Protective Services and Alarm Systems Licensing Boards Pay for Use of State Facilities and Services.

S.L. 2003-284, Sec. 14.2 (HB 1397, Sec. 14.2) requires the Private Protective Services Board and the Alarm Systems Licensing Board to pay the appropriate State agency for the use of physical facilities and services provided to those boards by the State.

This section became effective July 1, 2003. (MS)

Waive Deadlines for Troops

S.L. 2003-300 (SB 936). See **Military, Veterans' and Indian Affairs**.

Engineers/Acquire Property/Raise Civil Penalty

S.L. 2003-347 (SB 592) authorizes the Board of Examiners for Engineers and Surveyors to acquire real property, to raise the civil penalty for engineers, and to clarify the late fee for reinstatement of licenses.

Acquisition of Real Property. – This act authorizes the Board to acquire, hold, rent, encumber, alienate and otherwise deal with real property in the same manner as a private person or corporation. However, prior to entering into any real property transactions, the Board is required to obtain approval from the Governor and the Council of State. Collateral pledged by the Board for encumbrance is limited to the assets, income, and revenues of the Board.

Raise Civil Penalties. – The act increases the amount of civil penalty the Board may levy for engineers from $2,000 to $5,000. However, the act maintains the current $2,000 cap for land surveyors. Under current law, the Board may assess a civil penalty for any engineer or land surveyor who is found guilty of:

- The practice of any fraud or deceit in obtaining a certificate of licensure or certificate of authorization.
- Any gross negligence or misconduct in the practice of the profession.
- Any felony or any crime involving moral turpitude.
- Any violation of the Rules of Professional Conduct, as adopted by the Board.

Clarification of Reinstatement Fee. – Currently, Board requires licensees to renew their licenses annually by January 1st; however, the Board also grants a 30-day grace period. Renewal after the grace period required the payment of an additional $100 "penalty" in addition to the renewal fee. The act clarifies that the $100 payment is a reinstatement fee, rather than a penalty.

This act became effective July 27, 2003. (MS)

Licensing Board Changes

S.L. 2003-348 (SB 800) raises the maximum fees that may be charged by the Board of Dental Examiners. The act also makes various changes to the massage and bodywork therapy laws, including authorizing the Board of Massage and Bodywork Therapy to charge disciplinary costs and assess a civil penalty of up to $1,000.

Board of Dental Examiners. - The act increases the maximum fees the Board may charge dentist and dental hygienists, as set out in the tables below:

- Dentists:

Fee Type	Previous Maximum Fee	Enacted Maximum Fee
Application for exam	$500	$1,200
License Renewal	$140	$600
Late renewal	$50	$100
Provisional license	$150	$300
Intern permit or renewal	$150	$500
Certificate of license to resident dentist changing to another state	$30	$75
License to resume practice for retiree	$300	$500
Instructor's License	$140	$500
Fee for special peer review organizations for impaired dentists	$50	$100
Duplicate License	$25	$75
Office inspection for anesthesia permit	$350	$750
Anesthesia renewal permit	$50	$100
License by credential	$2,000	$3,000
Limited volunteer license	$100	$200
Limited volunteer license renewal	$25	$50

- Dental Hygienists

Fee Type	Previous Maximum Fee	Enacted Maximum Fee
Application for exam	$125	$350
License Renewal	$60	$250
Restoration of license	$60	$150
Provisional license	$60	$150
Certificate of license to resident dental hygienist changing to another state	$25	$50
Fee for special peer review organizations for impaired dental hygienists	$40	$80
License by credential	$1,000	$1,500

Massage & Bodywork Licensure. - The act authorizes the Board of Massage and Bodywork Therapy to assess civil penalties for violations of the statutes and Board rules and also authorizes the Board to recover costs incurred in disciplinary proceedings. Specifically, the act does the following:

- *Civil Penalties.* The act authorizes the Board to assess a civil penalty. Specifically, the act:
  - Allows the Board to assess a civil penalty not to exceed $1,000 for violations of the statute or rules adopted by the Board.
  - All civil penalties must be remitted to the school fund in the county in which the violation occurred.
  - Before assessing a civil penalty, the Board must consider the following factors:
    - Nature, gravity, and persistence of the violation.

- Appropriateness of imposing a civil penalty when considered alone or in combination with other punishment.
- Whether other factors would tend to mitigate or aggravate the violations found to exist.

➢ *Disciplinary Costs.* The act authorizes the Board to assess the costs of disciplinary actions against a person found to be in violation of the law or rules adopted by the Board. Disciplinary actions for which the Board can deny, suspend, revoke, or refuse to license a person are set forth in G.S. 90-633 and include the following:

- Use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license.
- Use of drugs or alcohol to the extent it affects professional competency.
- Conviction of an offense involving use of narcotics or controlled substances.
- Conviction of a felony or other public offense involving moral turpitude.
- Adjudication of insanity or incompetency.
- Engaging in act or practice of violating Massage and Bodywork Therapy Act or rules of the Board, or aiding, abetting, or assisting any other person in violation of the Act or rules.
- Malpractice, gross negligence, or incompetence.
- Practicing without a valid license.
- Engaging in conduct that could result in harm to the general public.
- Use of fraud, deceit, or misrepresentation when communicating with the general public, health care professionals, or other business professionals.
- Falsely holding self out as licensed or certified in any discipline of massage and bodywork therapy without successfully completing Board-approved training in that specialty.

The portions of this act, affecting the Board of Dental Examiners became effective August 1, 2003. The portions of this act affecting massage and bodywork licensure became effective August 1, 2003 and apply to violations occurring on or after that date. (MS)

Amend Locksmith Act/Criminal Checks/Fees

S.L. 2003-350 (SB 655) makes clarifying changes to the definition of "locksmith" and the exemption for towing services and general contractors, allows the North Carolina Locksmith Licensing Board to employ an attorney, authorizes the Board to conduct criminal history record checks on applicants, and authorizes the Board to regulate and discipline apprentice locksmiths.

Effective January 1, 2003, no person can perform locksmith services without being licensed. This act makes the following changes to the Locksmith Licensing Act:

Apprenticeship Designations. –

➢ *Apprenticeship Requirements.* The act authorizes the Board to regulate and discipline apprentice locksmiths. In order for a person to be designated an apprentice, the person:

- Must be of good moral character as evidenced in part by a criminal history record check, be at least 18 years old, and pay a $100 fee.
- Must practice under the supervision of a licensed locksmith.
- May not hold an apprentice designation for more than three years. If the apprentice does not become licensed by the end of the three-year period, the apprentice will not be granted another apprenticeship.
- May transfer employment from one locksmith to another upon payment of a $25 transfer fee.

➢ *Locksmith Supervision.* A licensed locksmith may not supervise more than two apprentices at one time. However, a locksmith has a 90-day grace period to supervise more than two apprentices if the apprentice is newly hired as a result of a

previous termination of employment or the inability of a licensed locksmith to supervise the apprentice.

- *Disciplinary Actions.* The act also authorizes the Board to deny, suspend, or revoke an apprenticeship designation. The act also clarifies that a disciplinary action may be taken against a licensee, applicant, or apprentice for any of the crimes included in the criminal history record check.
- *Exemption from Licensure for Apprentices.* The act clarifies that a person who has been designated an apprentice is exempt from licensure.

Criminal History Record Checks. – The act makes the criminal history record check a condition for licensure. "Criminal history" is defined in the act as a conviction of a state or federal crime, whether a misdemeanor or felony, that bears on the applicant's fitness for licensure. The act further authorizes the Board to conduct the criminal history record checks for applicants for apprenticeship designation or licensure. Applicants are required to consent to the criminal history record check, and refusal may constitute grounds for denial of apprenticeship designation or licensure. Conviction of a crime does not automatically bar licensure or apprenticeship designation. The Board must consider certain factors in determining whether to grant or deny licensure or apprenticeship designation. An applicant who is denied apprenticeship designation or licensure based on the criminal history record check has a right to appear before the Board to appeal the denial. Finally, the Board, its officers, and employees, acting in good faith are immune from civil liability for denial of licensure to an applicant based on information provided in the applicant's criminal history record check.

Board May Employ an Attorney. – The act authorizes the Board to employ an attorney to assist or represent the Board in the enforcement of its laws.

Clarifying Changes. – The act also makes the following clarifying changes:

- Deletes the reference to "safes" in the definition of "locksmith services."
- Clarifies that an employee of an automotive repair business opening automotive locks in the normal course of its business is exempt from licensure, so long as the employee does not represent himself or herself as a locksmith.
- Clarifies that an agent or subcontractor of a licensed general contractor is also exempt from licensure when acting within the ordinary course of business.

This act became effective August 1, 2003. (MS)

Amend Real Estate Licensing Laws/Fees

S.L. 2003-361 (HB 328) makes the following changes to the laws regarding real estate brokers and salespersons:

Computerized Examinations. – The act clarifies the authority of the Real Estate Commission to allow applicants for licensure to take the exam orally, by computer, or by any other method the Commission deems appropriate. The act also authorizes the Commission to require the applicant to pay the actual cost of the exam and its administration regardless of the method of administration.

Criminal Record Check. – The act also requires the applicant to provide the Commission with a criminal record report from one or more reporting services designated by the Commission at the expense of the applicant.

Continuing Education. – The act clarifies that failure to complete the continuing education requirements for brokers and salespersons will prevent the licensee from acting as a broker or salesperson. This portion of the act does not change the continuing education requirements, but merely allows the Commission to have the flexibility of designating the 12-month period in which they will be completed. This change is necessary for the annual continuing education requirements to fit with changes in the licensing year for brokers and salespersons that may occur if the Commission goes to staggered licensing periods, which it is already authorized to do.

Limited License for Out-of-State Brokers and Salespersons. – The act authorizes the Commission to issue a limited license to a broker or salesperson residing in a state that does not provide reciprocity to North Carolina brokers and salesperson. The following requirements must be satisfied prior to issuance of the limited license:

- The applicant must be of good moral character and licensed as a real estate broker or salesperson in good standing in another state or U.S. territory.
- The applicant may only engage in transactions involving commercial real estate in North Carolina and while the applicant is affiliated with a resident North Carolina real estate broker or salesperson. The North Carolina broker or salesperson must actively and personally supervise the applicant.
- The applicant complies with North Carolina laws and rules regulating brokers and salespersons.

The Commission may charge a fee not to exceed $300 for the limited license. The limited license will expire each year on June 30 unless it is renewed.

Service of Process for Nonresident Applicants. – The act requires that consent for service of process on nonresident applicants be signed by an officer of the corporation. Prior law required a nonresident applicant to file consent that actions may be commenced against the applicant in North Carolina courts by serving the Executive Director of the Commission. The consent of a corporate applicant requires authentication by corporate seal.

This act became effective August 1, 2003. (MS)

Due Process for Physicians

S.L. 2003-366 (HB 886) makes the following four changes pertaining to the North Carolina Medical Board:

Modifies Membership of North Carolina Medical Board. – The act amends the statute relating to the appointment and removal of members of the North Carolina Medical Board to provide that of the five members of the Board not nominated by the Medical Society, one must be (1) a duly licensed physician who is a doctor of osteopathy, or (2) a full-time faculty member of one of the medical schools in North Carolina who utilizes integrative medicine in their clinical practice, or (3) a member of The Old North State Medical Society. The new language requires the nominating and appointing authorities to endeavor to see, insofar as possible, that its appointees and nominees to the Board reflect the composition of the State with regard to gender, ethnic, racial, and age composition.

Defines "Integrative Medicine." – The act adds a definition of "integrative medicine" as it applies to the practice of medicine to mean a diagnostic or therapeutic treatment that may not be considered a conventionally accepted medical treatment and that a licensed physician in the physician's professional opinion believes may be of potential benefit to the patient, so long as the treatment poses no greater risk of harm to the patient than the comparable conventional treatments.

Modifies Grounds for License Sanctions. – The act amends the law relating to the grounds for denying, annulling, suspending, or revoking a license as follows:

- In order to annul, suspend, deny, or revoke a license of an accused person for lack of professional competence, the Board must find that the facts satisfy, by the greater weight of the evidence that the care provided was not in accordance with the standards of practice for the procedures or treatments administered.
- Prior to taking action against any licensee who practices integrative medicine for providing care not in accordance with the standards of practice for the procedures or treatments administered, the Board must consult with a licensee who practices integrative medicine.

Amends Statute Governing Admissibility of Evidence at Board Hearings. – The act adds language to the statute governing admissibility of evidence at Board hearings to provide that:

- Licensees may call witnesses with expertise in the same field of practice as the licensee under investigation, and witnesses cannot be restricted to experts certified by the American Board of Medical Specialties.
- Statements contained in medical or scientific literature will be competent evidence.

The section of this act modifying the membership provisions for the Medical Board becomes effective October 1, 2003, and applies to positions on the Board only upon their expiration. The remainder of the act became effective August 1, 2003. (TG)

Amend Respiratory Care Practice Act/Fees

S.L. 2003-384 (HB 1257) amends various provisions of the Respiratory Care Practice Act, as follows:

Background Investigations on Applicants. – The act authorizes the Board of Respiratory Care at its discretion to investigate the background of an applicant to determine the applicant's qualifications for licensure, including the applicant's competency, honesty, truthfulness, and integrity.

Organizations Recognized by the Board. – The act expands the organizations, which are recognized by the Board as providers of respiratory care education and Basic Cardiac Life Support. Specifically, the act adds the Canadian Council on Accreditation for Respiratory Therapy Education, the American Red Cross, and the American Safety and Health Institute to the list of approved organizations.

Temporary Licenses. – The act authorizes the Board to issue temporary license for up to 90 days from the date of application for licensure. In order to obtain a temporary license, the person must apply to the Board, provide notarized copies of completion of education requirements, completion of Basic Cardiac Life Support requirements, and have passed the entry level examination, and pay the licensure fee. The temporary license allows the person to practice respiratory care for no longer than 90 days, and permanent licensure is granted when the person provides the verification by oath of completion of education requirements and cardiac life support requirements.

Disciplinary Costs & Civil Penalties. – The act authorizes the Board to assess a civil penalty of up to $1,000 and to assess disciplinary costs, as follows:

- *Disciplinary Costs*. Disciplinary costs may be assessed only if the person is found to be in violation of Board law or rules.
- *Civil Penalties*. The act authorizes the Board to assess a civil penalty. Specifically, the act:
  - Allows the Board to assess a civil penalty not to exceed $1,000 for violations of the statute or rules adopted by the Board.
  - All civil penalties must be remitted to the school fund in the county in which the violation occurred.
  - Before assessing a civil penalty, the Board must consider the following factors:
  - Nature, gravity, and persistence of the violation.
  - Appropriateness of imposing a civil penalty when considered alone or in combination with other punishment.
  - Whether other factors would tend to mitigate or aggravate the violations found to exist.

Supervision of Provisional Licensees. – The act clarifies that provisional licensees must be directly supervised by licensed respiratory care practitioners.

Fees. – The act establishes a maximum fee of $20 for official verification of licensure status, and a maximum fee of $150 for approval of continuing education programs. The Board will set the amount of the fee.

This act becomes effective December 1, 2003, and applies to civil penalties assessed on or after that date. (MS)

Manufactured Housing

S.L. 2003-400, Sec. 8 (HB 1006, Sec. 8) makes the criminal history record check a condition for licensure as a manufactured home manufacturer, dealer, salesperson, or set-up contractor. "Criminal history" is defined in the act as a conviction of a state or federal crime, whether a misdemeanor or felony, that bears on the applicant's fitness for licensure. The act further authorizes the Manufactured Housing Board to conduct the criminal history record checks for applicants for licensure. Applicants are required to consent to the criminal history record check, and refusal may constitute grounds for denial of licensure. However, conviction of a crime does not automatically bar licensure. The Board must consider certain factors in determining whether to grant or deny an applicant's license. An applicant who is denied licensure based on the criminal history record check has a right to appear before the Board to appeal the denial. Finally, the Board, its officers, and employees, acting in good faith are immune from civil liability for denial of licensure to an applicant based on information provided in the applicant's criminal history record check.

This section becomes effective January 1, 2004. (MS)

This act also enhances consumer protections for purchasers of manufactured housing and amends the property tax laws and the sales and use tax laws with regard to manufactured housing. For additional information on the consumer protection provisions, see **Commercial Law and Consumer Protection.** For additional information on the tax changes, see **Finance**.

Crematory Act Changes

S.L. 2003-420 (SB 550) revises and reorganizes the cremation law. Specifically, the act does the following:

Adds Definitions. – Definitions for the following terms are added to the North Carolina Crematory Act: 'Body Part'; 'Casket'; 'Certificate of Cremation'; 'Cremation Interment Container'; 'Crematory Licensee' (a 'crematory operator' under prior law); 'Crematory Manager'; 'Crematory Technician'; 'Final Disposition'; 'Holding and Processing Facility'; 'Processing'; 'Pulverization'; 'Scattering Area'; 'Temporary Container'; 'Urn' (replaces the prior definition of 'closed container').

Board Changes. –

- *Board Name.* The act changes the name of the Board of Mortuary Science to the "Board of Funeral Service."
- *Required Board Meetings.* The act requires that the Board meet at least four meetings a year. Previously, the Board was required to hold only two meetings per year.
- *Real Property and Employment of Staff.* The act authorizes the Board to acquire and deal with property in the same manner as a private person or corporation, subject to approval of the Governor and Council of State. The Board is also authorized to employ legal counsel and clerical and technical staff.
- *Crematory Authority Quorum.* The North Carolina Crematory Authority is a committee within the Board. The act provides that four members of the Committee constitute a quorum.
- *New Fees.* The act authorizes the Board to charge a maximum of $150 for a crematory manager permit application and a maximum of $40 for an annual crematory manager permit renewal.

- *Continuing Education*. The act authorizes the Board to specify the content for up to two hours of the required ten hours of continuing education.

Revises Licensing Requirements. –

- *Crematory Managers*. A crematory manager is responsible for the operations of a crematory. The crematory manager must be licensed to practice either funeral directing or funeral service and must be qualified as a crematory technician or obtain a crematory manager permit. In order to receive a crematory manager permit, the person must be at least 18 years old; of good moral character; and be qualified as a crematory technician. However, a crematory that is licensed prior to January 1, 2004 and whose crematory manager does not meet the definition of crematory manager as defined in the act may continue to be managed by that crematory manager so long as there is no transfer of a controlling interest in the crematory.
- *Crematory Technicians*. A crematory technician must be an employee of a crematory licensee who has attended a training course approved by the Board.
- *Funeral Directing*. To be licensed for the practice of funeral directing, the act adds the requirements that an applicant must be a graduate of a Funeral Directing Program at an approved school of mortuary science and have passed an examination on pathology. Finally, in order to engage in the practice of funeral directing, the person must own or be employed by a licensed funeral establishment, except under certain specified circumstances.
- *Funeral Service*. To be licensed for the practice of funeral service, the act requires that the applicant must hold an associate degree from an approved school of mortuary science and complete a minimum of 60 semester hours (previously 32 semester hours) or 90 quarter hours (previously 32 quarter hours) of instruction. Finally, in order to engage in the practice of funeral service, the person must own or be employed by a licensed funeral establishment, except under certain specified circumstances.

Disciplinary Actions. – The act adds the following grounds for suspending, revoking, or refusing to issue a license:

- Solicitation of bodies.
- Employing persons for the purpose of influencing others to turn bodies over to the licensee.
- Paying a commission to secure business.
- Aiding or abetting an unlicensed person to perform cremation services.
- Practicing funeral directing, embalming, or funeral service without a license.

The act also authorizes the Board to place a licensee on probation.

Specifies Authorizing Agents for Cremation. – The act specifies who is legally competent to authorize the cremation of human remains. Persons competent to be authorizing agents, listed in order of priority, are:

- The individual being cremated through a valid written instrument. The act allows individuals to execute a form authorizing the cremation and disposition of their own remains upon death. Copies of the executed form are sent to the funeral establishment or crematory licensee. The authorization may be cancelled at any time prior to the individual's death.
- A surviving spouse.
- Surviving children.
- Surviving parents.
- Surviving siblings.
- Other relatives.
- A person who has exhibited special care for the decedent.
- A public official charged with making arrangements for final disposition.
- Any person willing to assume responsibility in the absence of another authorizing agent.

Sets Out Authorizations to Cremate. – The act prohibits a crematory licensee from cremating human remains until the licensee has received an authorization form that includes specific statutory information and which is signed by the authorizing agent. The authorizing agent is deemed to warrant the truthfulness of the facts set forth on the authorization form. Crematory licensees and funeral establishments are not subject to liability for cremating human remains pursuant to an authorization, in the absence of gross negligence, so long as the licensee complies with the requirements.

Increased Record Keeping Requirements. – The act expands the statutory record keeping requirements by requiring crematory licensees to keep detailed records whenever human remains are delivered to the crematory licensee and whenever cremated remains are released. Records must be retained for a minimum of three years.

Cremation Procedure Changes. – The act prohibits the cremation of bodies with pacemakers, defibrillators, or other potentially hazardous implants or conditions. The authorizing agent is responsible for taking the necessary steps to ensure that the device is removed or the condition corrected prior to cremation.

Cremation Containers Restricted. – The act prohibits crematory licensees from requiring that human remains be placed in a casket, or that they be placed in an urn after cremation.

Authorizes Storage Fees. – The act allows a crematory licensee to charge a reasonable storage fee in the case of a dispute concerning the release or disposition of cremated remains.

Limitation on Ownership of Funeral Chapels. – The act prohibits funeral establishments or other licensees from owning more than two funeral chapels, or owning or maintaining a funeral chapel outside of a radius of 50 miles from the funeral establishment. However, a licensee may use a funeral chapel for making arrangements for funeral service, selling funeral supplies to the public, or making financial arrangements for the rendering of those services or sale of supplies, provided that these uses are secondary and incidental to and do not interfere with the reposing of dead human bodies, visitation, or funeral ceremony.

Use of Unregistered or Misleading Names Prohibited. – The act prohibits a funeral establishment from using an unregistered or misleading name, or any name other than the name registered with the Board.

Assessments Against Burial Associations. – The act allows the Board to annually assess each burial association a maximum of 50¢ per member.

This act becomes effective October 1, 2003. (MS)

Chapter 19
Property, Trusts, and Estates

Karen Cochrane-Brown (KCB), Kory Goldsmith (KG),
Trina Griffin (TG), Walker Reagan (WR), and Steve Rose (SR)

Enacted Legislation

Clarify Irrevocable Trust Law

S.L. 2003-93 (SB 468) clarifies that an irrevocable trust may not be modified in a manner that is inconsistent with the trust's material purpose unless the court determines the circumstances substantially outweigh the interest in accomplishing the purpose of the trust. The prior law was subject to the construction that a modification could be made if it did not affect the continuance of the trust even though it may be inconsistent with the material purpose of the trust.

The act specifies that either a beneficiary or a trustee may commence an action to modify or terminate an irrevocable trust where:

- The settlor and the beneficiaries agree.
- The beneficiaries agree.
- The trust is a small trust.
- There is a change in circumstances.

The act also specifies that the trustee must be made a party to all proceedings to approve or disapprove a proposed modification or termination commenced by a beneficiary.

This act became effective May 30, 2003. (TG)

Fair Housing Complaints

S.L. 2003-136 (HB 1175). See **Civil Law and Procedure**.

Equitable Distribution Claim Survive Death Spouse/Limit

S.L. 2003-168 (SB 394) amends the current law to allow a claim for equitable distribution to not only survive death of one of the spouses, but also to be filed after the death of one of the spouses if the spouses were living separate and apart at the time of death. The claim against the estate is subject to the same filing and notice requirements with the personal representative of the deceased spouse's estate that as all other creditors of the estate are subject to under Article 19 of Chapter 28A. Under this law, a surviving spouse will be required to file a notice of claim for equitable distribution with the personal representative within 90 days of the date the notice to creditors is delivered or published. If the personal representative rejects the claim, the surviving spouse has to bring an action against the estate within three months after the date of the notice of the rejection. If the estate is bringing an action for equitable distribution, it must be filed within one year of the date of death.

The act also modifies the normal estate administration procedure as it relates to equitable distribution actions. The provisions of the estate administration law applicable to contingent claims, and satisfaction of claims other than by payment, do not apply to these equitable distribution actions. The personal representative is permitted to negotiate a settlement of the equitable distribution claim on behalf of the estate. Unless all of the parties agree to another dispute resolution process, the personal representative may bring an action for equitable

distribution in accordance with the requirements and limitations set forth in Chapter 50 of the General Statutes.

This act became effective June 12, 2003. (WR)

Clarify Subordination Agreement Requirements

S.L. 2003-219 (SB 629) clarifies the law on subordination agreements, as well as their effect and recording. The act provides that a subordination agreement is to be made effective in accordance with its terms and does not require that any of the financial terms of the interest in real property be included. This clarification makes it clear that subordination agreements also apply to statutory liens and judgments, not just written interests in land. In addition, the act provides that a trustee does not need to sign a subordination agreement unless specifically required by the deed of trust. Under the act, a subordination agreement is an interest in real property to which the 10-year statute of limitation under G.S. 1-47 applies. The act makes it clear that this process is not exclusive and that no agreement that is otherwise valid is invalid because it fails to comply with the provisions of this law.

The act also adds identical language clarifying the priority of instruments recorded in the public record. This clarification provides that priority is presumptively determined according to the date and time order in which the instruments are filed. If instruments are recorded simultaneously, then the order of recordation shall be presumed to be the earliest document number set forth on the recorded instrument, or if no document number is set forth on the recorded instrument then the sequential book and page number set forth on the document.

This act becomes effective October 1, 2003, and applies to instruments filed on or after that date. (WR)

Amend Powers/Settlor of Revocable Trust

S.L. 2003-225 (HB 637) authorizes the settlor of a revocable trust to relieve the trustee of any and all duties, restrictions, and liabilities imposed by the Uniform Trusts Act and authorizes an additional method by which the settlor may relieve the trustee of those duties and liabilities.

The Uniform Trusts Act, originally enacted in North Carolina in 1939, provides rules about certain trustee responsibilities and obligations. These include the duty of loyalty, the registration and voting of securities, and trustee liability to persons other than beneficiaries. In addition, the Act authorizes a settlor to modify certain rules pertaining to the trustee's powers, duties, and liabilities. Prior to the passage of this act, the law provided three methods by which this modification could be made: (i) by express statement in the original trust document; (ii) by an amendment to the trust, if the settlor retained the right to amend; or (iii) by oral statement, if the trust was created orally. In addition to these three methods, the act authorizes the settlor of a revocable trust to relieve a trustee from any and all duties, restrictions, or liabilities imposed by the Uniform Trusts Act by written instrument delivered to the trustee.

This act also eliminates the prohibition against the settlor of a revocable trust from relieving a trustee from the duties, restrictions, and liabilities imposed regarding the following activities:

- Loaning trust funds to itself, its employees, or any affiliate.
- Holding funds uninvested longer than reasonable.
- If a bank, depositing funds in its own savings or commercial department unless adequate security is given.
- Buying or selling any property, directly or indirectly, for the trust from or to itself or an affiliate.

The removal of this limitation on a settlor's powers is consistent with the law in the vast majority of other states and with the principles embodied in the Uniform Trust Code, approved and recommended by the National Conference of Commissioners on Uniform State Laws in 2000 for

adoption by the states. Those principles include the concept that while a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

This act became effective June 19, 2003. (TG)

Uniform Principal and Income Act

S.L. 2003-232 (SB 549) repeals Chapter 37 of the General Statutes, entitled "Allocation of Principal and Income," and creates a new Chapter 37A entitled "Uniform Principal and Income Act." Chapter 37, enacted in 1973 and repealed by this act, was based on the Uniform Principal and Income Act of 1962. It provides procedures for trustees (administering trusts) and personal administrators (of a decedent's estate) in allocating property as principal and income.

This act creates a new Chapter 37A, which is based on the Uniform Principal and Income Act of 1997. The National Conference of Commissioners on Uniform State Laws approved and recommended this new act for enactment by the states. To date it has been adopted in 30 states. According to the prefatory notes of the 1997 act, it has two primary purposes:

- To take into account the use of the revocable living trust, to alter rules that experience has been shown to need change and to establish new rules to cover situations not covered by the previous acts, such as financial instruments that did not exist in 1962.
- To provide a transition to the "investment regime" based on the principles embodied in the Prudent Investor Rule and the Uniform Prudent Investor Act.

Among its provisions, the act sets forth the duties of fiduciaries (trustees and administrators); gives trustees the power to adjust between principal and income in specific circumstances; provides for the conversion of trusts from income trusts to total return unitrusts and for reconversion to income trusts; provides authority for the courts to order a fiduciary to change a discretionary decision if the court determines that a fiduciary abused his or her discretion; and provides for the allocation of income related to administered estates and to trusts.

The act makes conforming changes to other parts of the General Statutes and provides for the Revisor of Statutes to print relevant portions of the official comments of the Uniform Act, and explanatory comments of the drafters of this act.

This act becomes effective January 1, 2004, and applies to every trust or decedent's estate existing or coming into existence on or after that date, unless otherwise provided in a will or trust or in a specific provision of Chapter 37A. (SR)

Access to Decedent's Safe-Deposit Box

S.L. 2003-255 (SB 502) amends the law governing the access to a decedent's safe-deposit box to authorize a person named as a "deputy" to gain access to the safe-deposit box to make an inventory of its contents and furnish the inventory to the person possessing the key to the box. The act defines a "deputy" as a person appointed in writing by a lessee or cotenant of a safe-deposit box as having right of access without further authority or permission of the lessee or cotenant. The act adds a person named as a "deputy" to the list of "qualified persons" who may gain access to the safe-deposit box. The list also includes a person possessing a letter of authority, or a lessee or cotenant of the safe-deposit box.

This act became effective June 26, 2003. (KCB)

Amend Trust Administration Act

S.L. 2003-261 (HB 656) makes the following changes to the Trust Administration Act:

- Amends the statute governing the clerk of superior court's jurisdiction in trust proceedings to specify that a trust proceeding concerning the internal affairs of trusts, such as the modification or termination of a trust, fall outside the clerk's jurisdiction. The changes also specify that the clerk has original jurisdiction over proceedings to permit a trustee to resign or renounce as well as proceedings to review trustees fees, including the fees of attorneys serving as trustees.
- Provides that for the administration of a testamentary trust not requiring an accounting, venue lies in any county in which the testator's estate was administered.
- Broadens the category of persons who must be joined in the proceeding to include all trustees and interested persons. An "interested person" is defined to include creditors, beneficiaries, and any others having a property right in or a claim against a trust estate. The changes also specify to whom the clerk must issue a summons, the contents of the summons, when the clerk must set the hearing, and finally which parties would be bound by a subsequent order entered by the clerk.
- Provides that no trustee is required to account to the clerk unless the governing instrument affirmatively requires an accounting or unless the trustee is otherwise required by law to account to the clerk.
- Shifts the presumption regarding whether a trustee must post bond. It provides that if the trust was created before January 1, 2004, and is silent as to the need for a bond, the trustee is required to post bond. If the trust was created on or after January 1, 2004, and is silent as to the need for a bond, the trustee is not required to post a bond. A superior court judge is no longer required to approve a clerk's decision not to require a bond or to excuse or reduce a bond.
- Specifies that successor trustees appointed by the clerk succeed to all the powers and duties of the original trustee unless the order appointing the successor trustee provides otherwise.
- Shifts the presumption regarding the requirement for a trustee under a testamentary trust to provide an accounting of the trust. If the trust was created under a will of a decedent and the will was executed before January 1, 2004, and is silent as to the requirement for an accounting, the trustee would be required to provide an accounting regarding the trust to the clerk. If the trust was created under a will of a decedent executed on or after January 1, 2004, and is silent as to the need for an accounting, the trustee would not be required to provide an accounting to the clerk.

This act becomes effective January 1, 2004, and applies to all trusts created before or after that date. (KG)

Permit Tobacco Payment Without Reopening Estate

S.L. 2003-295 (SB 881) provides that a Phase II payment under the National Tobacco Grower Settlement Trust shall be the property of distributees paid in accordance with new G.S. 28A-21-3.1.

G.S. 28A-21-3 establishes the procedure for Phase II payments to be paid to a decedent's devisees or heirs after a solvent estate is closed without reopening the estate. At the time of filing a final accounting and before the estate is closed, the personal representative or collector may prepare a list of devisees or heirs who would be entitled to any Phase II payments. The list must be signed under oath and must contain identifying information about the personal representative or collector, the decedent, and each of the devisees and heirs entitled to receive Phase II payments as well as the percentage of Phase II payments to be received by each.

The clerk of superior court must review the list to determine if the list of distributees and their shares of potential Phase II payments are in accordance with the decedent's will or with the Intestate Succession Act. When the North Carolina Phase II Tobacco Certification Entity, Inc., determines that the estate of a decedent has been closed, and the decedent was entitled to any Phase II payment covering a time period when the decedent was alive, the payment may be paid to the distributees on the list without reopening the estate. The act also provides that an estate may be reopened in order to file a list of Phase II distributees. Finally, the act provides that Phase II payments are deemed cash and do not pass by virtue of any devise or inheritance of the decedent's real property.

This act became effective July 4, 2003, and applies to payments made on or after that date. (KG)

Elective Share Amendments

S.L. 2003-296 (HB 807) makes changes regarding the right of a surviving spouse to dissent from the deceased spouse's will and take an elective share instead. The specific changes are as follows:

- Amends an incorrect citation, and clarifies the method of determining the effect of death taxes on the calculation of total net assets available for the elective share. This is not intended to change the results of the calculation.
- Amends the definition of "nonadverse trustee" by clarifying that a corporate trustee qualifies, as well as an individual who does not possess a beneficial interest, or who serves at the pleasure of the surviving spouse.
- Amends the definition of "total net assets," which is the amount upon which the elective share is calculated. The amendment substitutes "gifts" for the phrase "donative transfers" to clarify that charitable donations are not included as part of total net assets.
- Amends the definition of "property passing to surviving spouse" to clarify that the entire value of certain trusts is includable in the definition, and thus includable in the calculation of net asset value. The act also contains a clarifying amendment as to the spousal trusts to be included as passing to the surviving spouse.
- Amends the six-month statute of limitations for making the election to provide that the six months run from the filing of each will. Thus the spouse, who does not elect because he or she thought the will was adequate, will not be taken by surprise if a later will is discovered after the six months has run.
- Specifies when a surviving spouse waives the right to an elective share. The amendment makes it clear that a written waiver is still valid if executed prior to January 1, 2001, when the predecessor to Article 1A was in force. A written waiver is typically a prenuptial agreement.

The amendment to the written waiver provision and the effective date clause became effective on July 4, 2003. The remainder of this act becomes effective January 1, 2004, and applies to estates of persons dying on or after that date. (SR)

Chapter 20
Resolutions

Joint Resolutions

Founders of Bladenboro/Centennial

Res. 2003-1 (SJR 21).

Inviting Governor/State of the State

Res. 2003-2 (SJR 138).

Honor Tom Joyner

Res. 2003-3 (HJR 59).

Honoring Founders of Wendell/100th Anniversary

Res. 2003-4 (SJR 264).

Honor Harlan Boyles

Res. 2003-5 (SJR 171).

Honor Mary Lewis Wyche

Res. 2003-6 (HJR 472).

Honor J. Frank Bryant

Res. 2003-7 (HJR 392).

Rowan 250th

Res. 2003-8 (HJR 681).

Honor Bonnie Cone

Res. 2003-9 (HJR 813).

Memorializing Former Superintendent/Henderson Co. Education Foundation

Res. 2003-10 (SJR 1019).

NASCAR

Res. 2003-11 (HJR 1161).

Joint Session/State Board of Education Appointments

Res. 2003-12 (SJR 366).

Confirmation/State Board of Education

Res. 2003-13 (SJR 365).

North Carolina Community College System 40th Anniversary/Honor Creators

Res. 2003-14 (SJR 1024).

Honor Elmer Wilkins

Res. 2003-15 (HJR 844).

Confirm Jo Anne Sanford Utilities Commission

Res. 2003-16 (SJR 1021).

Joint Session First Flight/Invite Governor Easley

Res. 2003-17 (SJR 1026).

Honoring Alexander Lillington/Town of Lillington

Res. 2003-18 (HJR 1329).

Memorializing Edward Nelson Warren

Res. 2003-19 (SJR 1023).

Honor Wright Brothers/Aviation Centennial Year

Res. 2003-20 (SJR 1027).

Honor Clarence Lightner

Res. 2003-21 (HJR 606).

Memorializing Jane Hurley Mosley

Res. 2003-22 (HJR 1331).

Memorializing Tim McLaurin

Res. 2003-23 (SJR 608).

Honor Thomas B. Hunter

Res. 2003-24 (HJR 69).

Honor C.B. Deane

Res. 2003-25 (HJR 231).

Memorializing Samuel Koonce

Res. 2003-26 (SJR 1022).

Memorializing Adolpheus Nussman and Gottfried Arends

Res. 2003-27 (HJR 1328).

Memorializing Alan Preston Neely

Res. 2003-28 (HJR 1338).

Setting Date/Election of Community College Board Members

Res. 2003-29 (SJR 416).

Confirming Joseph A. Smith, Jr./Commissioner of Banks

Res. 2003-30 (SJR 327).

Adjournment of 2003 General Assembly

Res. 2003-31 (HJR 1335).

Adjourn Reconvened Session

Res. 2003-32 (SJR 1030).

Chapter 21
Retirement

Karen Cochrane-Brown (KCB) and Theresa Matula (TM)

Enacted Legislation

Retirement COLAS

S.L. 2003-284, Sec. 30.17 (HB 397, Sec. 30.17) provides a 1.28% increase in the allowances of beneficiaries of the Teachers' and State Employees' Retirement System and the Consolidated Judicial Retirement System who retired on or before July 1, 2002. The increase for beneficiaries who retired after July 1, 2002, but before June 30, 2003, is prorated accordingly. The section also provides a 1.28% increase in the allowances for beneficiaries of the Legislative Retirement System who retired on or before January 1, 2003. The increase for beneficiaries who retired after January 1, 2003, but before June 30, 2003, is prorated accordingly.

This section became effective July 1, 2003. (KCB)

Transfer of Service in the Legislative Retirement System to the Teachers' and State Employees' Retirement System and the Judicial Retirement System

S.L. 2003-284, Sec. 30.18 (HB 397, Sec. 30.18) authorizes the accumulated contributions and creditable service of a member of the Legislative Retirement System whose service is terminated other than by retirement or death and who becomes a member of the Teachers' and State Employees' Retirement System or the Consolidated Judicial Retirement System for at least five years to be transferred from the Legislative Retirement System to the Teachers' and State Employees' Retirement System or the Consolidated Judicial Retirement System. The section also authorizes the Teachers' and State Employees' Retirement System and the Consolidated Judicial Retirement System to accept the accumulated contributions and reserves of a membership which has been transferred from the Legislative Retirement System and to treat membership service with the Legislative Retirement System as membership service with those systems.

The portion of the service retirement allowance of a member of the Consolidated Judicial Retirement System attributable to service transferred from the Legislative Retirement System is computed in accordance with the formula for members of the Teachers' and State Employees' Retirement System using the average final compensation as defined in the Consolidated Judicial Retirement System.

The Retirement Systems Division of the Department of State Treasurer is directed to study the feasibility and cost implications of applying the provisions of this section to present retirees of the Legislative Retirement System. The Retirement Systems Division is also directed to submit a report to the General Assembly no later than April 1, 2004.

This section becomes effective January 1, 2004. (KCB)

Increase the Amount of the Death Benefit Paid When a Law Enforcement Officer, Firefighter, Rescue Squad Worker, or Senior Civil Air Patrol Member is Killed in the Line of Duty and Provide that the Death of a Fireman by Heart Attack While on Duty or Within Twenty-Four Hours After Participating in a Training Exercise or Responding to an Emergency Situation is a Qualifying Event

S.L. 2003-284, Sec. 30.18A (HB 397, Sec. 30.18A) increases the maximum death benefit for law enforcement officers, firemen, rescue squad workers, or senior Civil Air Patrol members who are killed or die as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the line of duty from $25,000 to $50,000. The initial payment after death is increased from $10,000 to $20,000 and the subsequent annual payments are increased from $5,000 to $10,000 up to the maximum of $50,000.

This section also extends coverage to firemen who die as the direct and proximate result of a myocardial infarction suffered while on duty or within 24 hours after participating in a training exercise or responding to an emergency situation.

This section became effective July 1, 2003. (KCB)

Increase Monthly Pension for Members of the Firemen's and Rescue Squad Workers' Pension Fund

S.L. 2003-284, Sec. 30.19 (HB 397, Sec. 30.19) increases the pension paid to a retired member of the North Carolina Firemen's and Rescue Squad Workers' Pension Fund from $156 to $158 per month. The section also makes a conforming change to increase from $156 to $158 the monthly benefit paid to members who become totally and permanently disabled in the line of duty.

This section became effective July 1, 2003. (KCB)

Equalize Longevity Service for District Attorneys, Assistant District Attorneys, Public Defenders, and Assistant Public Defenders

S.L. 2003-284, Sec. 30.19A (HB 397, Sec. 30.19A) equalizes the eligible types of service that district attorneys, assistant district attorneys, public defenders, and assistant public defenders may use to qualify for longevity payments. These employees are eligible for longevity pay at the rate of 4.8% after five years of service, 9.6% after ten years of service, 14.4% after fifteen years of service and 19.2% after twenty years of service. This section allows service in any combination of these positions or in a judicial office to qualify for longevity pay.

This section became effective July 1, 2003. (KCB)

Amend Definition of Disability Applicable to the State Disability Income Plan

S.L. 2003-284, Sec. 30.20(j)-(l) (HB 397, Sec. 30.20(j)-(l)). See **Labor and Employment.**

Enhance Local Retirement Benefits

S.L. 2003-319 (HB 1170) amends provisions relating to the Local Governmental Employees Retirement System (LGERS). The act increases the accrual rate to 1.85% (from 1.82%) for LGERS members retiring on or after July 1, 2003. The act increases the retirement allowance by 2.0% for beneficiaries whose retirement commenced on or before July 1, 2002. The retirement allowance of beneficiaries whose retirement commenced after July 1, 2002, but before June 30, 2003 shall be increased by a prorated amount. An adjusting increase of 6.0% is given to beneficiaries whose retirement commenced on or before June 1, 1982. For beneficiaries whose retirement commenced on or after July 1, 1982, but before July 1, 1993, the retirement allowance is increased 1.1%. The allowance shall be calculated on the allowance payable and in effect on June 30, 2003, to avoid compounding any other increase payable under G.S. 128-27(k), or otherwise granted by act of the 2003 Regular Session of the 2003 General Assembly. Additionally, a 1.5% increase is granted to beneficiaries on the retirement rolls as of June 1, 2003. This allowance shall also be calculated on the allowance payable and in effect on June 30, 2003, to avoid compounding any other increase payable under G.S. 128-27(k), or otherwise granted by act of the 2003 Regular Session of the 2003 General Assembly.

This act became effective July 1, 2003. (TM)

Modify Optional Retirement Program

S.L. 2003-356 (HB 1000) amends the law relating to participation in the Optional Retirement Program (Program) to extend eligibility for participation in the Program to nonfaculty instructional and research staff who are exempt from the State Personnel Act. However, the participants still must be eligible for membership in the Teachers' and State Employees' Retirement System. The Program is a defined contribution plan which was established as an alternative to the Teachers' and State Employees' Retirement System for certain employees of the University of North Carolina. The Program is underwritten by the purchase of annuity contracts on behalf of participants. Eligible employees are required to make an irrevocable election to participate in either the Program or the Teachers' and State Employees' Retirement System.

This act became effective August 1, 2003. G.S. 135-5.1(a)(3) applies to eligible employees who commence employment on or after August 1, 2003. (KCB)

Retirement System Technical Changes

S.L. 2003-359 (HB 331) makes technical and clarifying changes to the laws governing the Teachers' and State Employees' Retirement System, the Local Governmental Employees' Retirement System, and the Disability Income Plan of North Carolina. The act makes the following changes to both the State and Local Systems:

- Clarifies the definition of the term "compensation" to include all salary-based payments, regardless of form. The definition excludes other types of payments such as business expense and moving reimbursements and early retirement incentive payments.
- Clarifies the definition of the term "creditable service" to provide that it may not be used to determine eligibility for a benefit.
- Amends the law relating to payments at the death of a retiree to provide that creditable service that had been purchased by the retiree may be returned proportionally to the designated beneficiary.
- Clarifies that a designated beneficiary may not elect to receive the Survivor's Alternate Benefit if the member had actually retired and begun receiving a retirement allowance before death.

- Clarifies the definition of "active duty" in relation to the purchase of military service credit, by reference to federal law.
- Adds a definition of "current membership service" in relation to the purchase of out-of-state and other governmental service. Allows a member to purchase this service with less current membership service in certain cases, and at the rate of one year of out-of-state service to one year (previously two) of membership service, up to a maximum of 10 years.
- Adds a new provision authorizing the purchase of retroactive membership service for members who are reinstated after having been involuntarily terminated. Also allows a member to return withdrawn accumulated contributions within 90 days of reinstatement.
- Adds a new provision authorizing retroactive adjustments in compensation for members who are awarded back pay in cases of denied promotional opportunities, and when the compensation has been erroneously underreported. The retroactive adjustment can be included in the member's average final compensation (AFC) only if the full contributions are paid. Underreported compensation can be included in the AFC only if the increase resulted from a wrongfully denied promotional opportunity and the member is promoted retroactively.
- Amends the provision that requires a disability retirement beneficiary to file an earnings statement with the Retirement Board. If the beneficiary does not provide the statement within 60 days, the benefit can be suspended. If the beneficiary does not provide the statement within 240 days, the benefit can be terminated.
- Amends the provision relating to the purchase omitted membership service for members who were erroneously omitted from membership. This provision changes the interest rate calculation for purchases made more than 90 days but less than 3 years after the omission.

The act makes the following change to the Disability Income Plan: (Note: as opposed to the changes to both State and local systems above.)

- Amends the provision relating to the earnings report in the disability income plan. As with disability retirement, beneficiaries must file an earnings report. This amendment deletes the requirement of filing an income tax return and requires a statement of income received similar to the statement required under the disability retirement statutes. The amendment also extends the time after which benefits may be terminated from 180 days to 240 days.

  This act became effective August 1, 2003. (KCB)

Broaden Coverage/Fire and Rescue Pension

S.L. 2003-362 (HB 543) broadens the definition of "eligible firemen" under the North Carolina Firemen's and Rescue Squad Workers' Pension Fund to include an employee of a county whose sole duty is to act as the deputy fire marshal, assistant fire marshal, or firefighter of the county, provided the board of county commissioners certifies the employee's attendance at no less than 36 hours of all drills and meetings each calendar year. S.L. 2000-67, Section 26.22 (HB 1840) amended the definition of "eligible firemen" to include fire marshal.

This act became effective July 1, 2003. (TM)

Studies

New/Independent Studies/Commissions

Study Commission on State Disability Income Plan, the Death Benefit Plan, and Separate Insurance Benefits Plan for Law Enforcement Officers

S.L. 2003-284, Sec. 30.20(a)-(i) (HB 397, Sec. 30.20(a)-(i)). See **Labor and Employment.**

Study Establishment of Statewide Benefit Committee to Provide a Menu of Portable Supplemental Benefits for All State Employees

S.L. 2003-284, Sec. 30.21 (HB 397, Sec. 30.21). See **Labor and Employment.**

Chapter 22
Senior Citizens

Dianna Jessup (DJ) and Theresa Matula (TM)

Enacted Legislation

Continuing Care Retirement/Technical Changes

S.L. 2003-193 (HB 253) makes various technical changes to the statutes that regulate continuing care retirement communities (CCRCs). These facilities provide housing and health-related services either for life or for a period in excess of one year. CCRCs provide independent living and also offer nursing home or adult care home level of care. Because CCRCs include contractual requirements where, for certain fees, the facility agrees to provide health care coverage over a given period of time, they are considered an insurance product and are regulated by the Department of Insurance under Article 64 of Chapter 58.

The act makes the following changes to the statutes:

- Repeals an unused, and likely unusable, provision allowing for a continuing care retirement facility that is accredited under a process approved by the Commissioner to be issued a license based on that accreditation.
- Replaces the word "facility" with "provider" to clarify that it is the provider that operates the facility that is responsible for meeting the various statutory requirements.
- Clarifies language governing operating reserves for continuing care retirement facilities and providers, including:
  - Changing the wording to reflect the fact that a provider is to calculate and maintain a separate operating reserve for each continuing care facility operated by the provider.
  - Changing the words "annual statement" to "disclosure statement."
  - Changing the words "invested cash" to "cash equivalents."
- Makes the following changes governing the rights of residents of continuing care retirement facilities to organize:
  - Changes "registered under this Article" to "operated by a provider licensed under this Article" in G.S. 58-64-40(a). No entity is "registered" under G.S. 58-64.
  - Makes gender neutral corrections.
  - Clarifies that the governing body of a provider must hold semi-annual meetings with the residents of each facility operated by the provider.
- Makes various changes governing supervision, rehabilitation and liquidation of continuing care retirement providers including:
  - Replacing the word "projected" with "forecasted".
  - Amending the statute as necessary to accommodate the fact that a provider can own or operate more than one facility.
- Amends the provision on receiverships, to reflect the fact that the Commissioner would be appointed as receiver for a provider not a facility.
- Replaces the word "agreements" with "contracts" for consistency of wording within Article 64.
- Removes unnecessary language to conform with the removal of the "accredited facility" provision.

- Amends the provision, governing civil liability, to:
  - Remove the misleading words "facility, or person violating this Article" because the provider is the entity entering into a contract for continuing care, not the facility or other person.
  - Remove the words "or person liable" because the provider is the only entity that is required to deliver a disclosure statement to the contracting party.
  - Remove the words "facility, or person" since payment is made to the provider, and the provider is the entity responsible for the dissemination of the disclosure statement.

This act became effective June 12, 2003. (DJ)

Senior Cares Program Administration

S.L. 2003-284, Sec. 10.5 (HB 397, Sec. 10.5) provides that the Department of Health and Human Services may administer the "Senior Cares" prescription drug access program approved by the Health and Wellness Trust Fund Commission and funded from the Health and Wellness Trust Fund.

This section became effective July 1, 2003. (TM)

Effective Date of Long-Term Care Criminal Record Checks for Employment Positions

S.L. 2003-284, Sec. 10.8E (H397, Sec. 10.8E). See **Health and Human Services**.

Implement a Pilot Project for Long-Term Care Community Service Coordination

S.L. 2003-284, Sec. 10.8F (HB 397, Sec. 10.8F) requires the Department of Health and Human Services to implement a communications and coordination initiative to support local coordination of long-term care, and to pilot the establishment of local lead agencies to facilitate the long-term care coordination process at the county or regional level. The initiative must eliminate fragmentation and barriers to information and services; provide a seamless connection among State agencies and local entities, regardless of funding sources; and allow consumers to efficiently and effectively navigate among long-term care services. For those counties that voluntarily participate, the local long-term care coordination initiative must aid in the development of core services, coordinate local services, and streamline access to services. The Department of Health and Human Services must submit an interim report on the pilot project for local long-term care coordination to the North Carolina Study Commission on Aging by October 1, 2004 and a final report by October 1, 2005.

The Institute of Medicine Long-Term Care Task Force found that "long-term care services are often fragmented, duplicative, complex, and not consumer-friendly and that many counties lack needed core long-term care services." In response to this finding, and a report presented in accordance with S.L. 2001-491, Part XXII, the North Carolina Study Commission on Aging's 2003 report to the General Assembly and the Governor made a recommendation that the General Assembly fund a pilot project on long-term care local lead agencies. This provision is in response to that recommendation.

This section became effective July 1, 2003. (TM)

Medicare Enrollment Required

S.L. 2003-284, Sec. 10.27 (HB 397, Sec. 10.27) directs the Department of Health and Human Services to require Medicaid recipients who qualify for Medicare to enroll in Medicare in order to pay medical expenses that qualify for payment under Medicare Part B. Medicare is the federally sponsored health insurance program for persons aged 65 or older and for certain disabled persons under age 65. Medicare Part B pays for doctors' services, outpatient hospital care, and some other medical services that Part A does not cover, such as the services of physical and occupational therapists, and some home health care. In order to obtain coverage under Medicare Part B, an eligible person must pay a premium. Requiring eligible persons to enroll in Medicare will shift health care costs from the Medicaid program (which is paid in part with State and local funds) to the Medicare program (which is paid entirely with federal funds).

This section became effective July 1, 2003. (DJ)

Medicaid Assessment Program for Skilled Nursing Facilities

S.L. 2003-284, Sec. 10.28 (HB 397, Sec. 10.28) directs the Secretary of Health and Human Services to implement a Medicaid assessment program for skilled nursing facilities effective October 1, 2003. The assessment program applies to skilled nursing facilities licensed under Chapter 131E of the General Statutes and must be imposed in a manner consistent with federal regulations under 42 C.F.R. Part 433, Subpart B. Funds realized from assessments imposed shall:

- Be used only to draw down federal Medicaid matching funds for implementing the new reimbursement plan for nursing homes and for increasing nursing facility rates in accordance with the plan,
- Be used to pay 100% of the nonfederal share for the new reimbursement plan for nursing homes; and
- Not be used to supplant State funds appropriated for nursing facility services.

This section became effective July 1, 2003. (TM)

Rename North Carolina Heart Disease and Stroke Prevention Task Force

S.L. 2003-284, Sec. 10.33B (HB 397, Sec. 10.33B). See **Health and Human Services**.

Senior Center Outreach

S.L. 2003-284, Sec. 10.42 (HB 397, Sec. 10.42) provides that the funds appropriated to the Department of Health and Human Services, Division of Aging, for the 2003-2005 fiscal biennium, shall be allocated by October 1 of each fiscal year and used by the Division of Aging to enhance senior center programs in the following ways:

- To expand the outreach capacity of senior centers to reach unserved or underserved areas; or
- To provide start-up funds for new senior centers. However, prior to funds being allocated for start-up funds for a new senior center, the county commissioners of the county in which the new center will be located shall:
  - Formally endorse the need for such a center;
  - Formally agree on the sponsoring agency for the center; and
  - Make a formal commitment to use local funds to support the ongoing operation of the center.

Additionally, State funding shall not exceed 75% of reimbursable costs.

This section became effective July 1, 2003. (TM)

Adult Care Home Model for Community-Based Services

S.L. 2003-284, Sec. 10.43 (HB 397, Sec. 10.43) requires the Department of Health and Human Services to develop a model project for delivering community-based mental health, developmental disabilities, and substance abuse housing and services through adult care homes that have excess capacity. The model must be designed for implementation on a pilot basis and address the following:

- Services that will be provided by the facility or under contract with the facility, including assistance with daily medication.
- Access of clients to mental health, developmental disabilities, and substance abuse services provided in the community, including transportation to services outside of the client's residence in the adult care home facility.
- Physical plant additions or changes necessary to provide for independent living of residents.
- Methods for assuring quality of services, resident safety, and cost-effectiveness.
- Consistency with the Department's Olmstead plan, other policies on community-integration, and disability plans adopted by the State.

The Department must submit a final report on the development of the model to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division on or before March 1, 2004. The report shall address the following:

- Proposed time and location for implementation of the pilot.
- Proposed number of residents to be placed and services to be provided directly by the facility or under contract with the facility.
- Method for evaluating the pilot, including services provided, on a regular basis.
- A description of the living environment for each resident and a comparison of how the living environment compares to that of other residents in the adult care home.
- Changes to State law necessary to implement the pilot.
- Projected cost to the State for pilot and statewide implementation.

This section provides that the development of this model is in response to the State policy to provide appropriate services to clients in the least restrictive and most appropriate environment and with the United States Supreme Court Decision in Olmstead vs. L.C. & E.W.

This section became effective July 1, 2003. (TM)

Special Assistance In-Home Program

S.L. 2003-284, Sec. 10.51 (HB 397, Sec. 10.51) allows the Department of Health and Human Services to use funds from the existing State-County Special Assistance for Adults budget to provide Special Assistance payments to eligible individuals with in-home living arrangements. These payments may be made for up to 800 individuals during the 2003-2004 fiscal year and the 2004-2005 fiscal year. The standard monthly payment to individuals enrolled in the Special Assistance in-home program shall be 50% of the monthly payment the individual would receive, if the individual resided in an adult care home and qualified for Special Assistance, except if a lesser payment amount is appropriate for the individual as determined by the local case manager. For State fiscal year 2003-2004, qualified individuals shall not receive payments at rates less than they would have been eligible to receive in State fiscal year 2002-2003. The Department must implement Special Assistance in-home eligibility policies and procedures to assure that in-home program participants are those individuals who need and, but for the in-home program, would seek placement in an adult care home facility; and shall include the use of a functional assessment. This in-home option must be available to all counties on a voluntary basis; and to the maximum extent possible, the Department shall consider geographic balance in the dispersion of payments to individuals across the State.

The Department is required to report on or before January 1, 2004, and on or before January 1, 2005, to the cochairs of the House of Representatives Appropriations Committee, the House of Representatives Appropriations Subcommittee on Health and Human Services, the cochairs of the Senate Appropriations Committee, and the cochairs of the Senate Appropriations Committee on Health and Human Services. This report shall include the following information:

- A description of cost savings that result from allowing individuals eligible for State-County Special Assistance the option of remaining in the home.
- A complete fiscal analysis of the in-home option to include all federal, State, and local funds expended.
- How much case management is needed and which types of individuals are most in need of case management.
- The geographic location of individuals receiving payments under this section.
- A description of the services purchased with these payments.
- A description of the income levels of individuals who receive payments under this section and the impact on the Medicaid program.
- Findings and recommendations as to the feasibility of continuing or expanding the in-home program.
- The level and quantity of services (including personal care services) provided to the demonstration project participants compared to the level and quantity of services for residents in adult care homes.

Additionally, the Department shall incorporate data collection tools designed to compare quality of life among institutionalized versus noninstitutionalized populations (i.e., an individual's perception of his or her own health and well-being, years of healthy life, and activity limitations). To the extent national standards are available, the Department shall utilize those standards. These provisions are based on recommendations from the North Carolina Study Commission on Aging.

This section became effective July 1, 2003. (TM)

State/County Special Assistance Transfer of Assets

S.L. 2003-284, Sec. 10.53 (HB 397, Sec. 10.53) codifies the provision adopted in last year's budget providing that Supplemental Security Income (SSI) policy concerning transfer of assets and estate recovery applies to applicants for State-county Special Assistance and repeals current codified law on the issue. The provision also requires the Department of Health and Human Services to continue reviewing whether policy for State-county Special Assistance should be changed to permit an assisted living facility to accept from a family member of a resident who qualifies for State-county Special Assistance payment for the difference in the monthly rate for room, board, and services available. The Department must report its activities on this policy review by March 1, 2004 to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division.

This section became effective July 1, 2003. (DJ)

Social Services Commission Rules on Rate-Setting For Adult Day Centers and Adult Day Health Centers

S.L. 2003-284, Sec. 10.58 (HB 397, Sec. 10.58) provides that the Social Services Commission shall consider adopting rules increasing the rates for adult day centers and adult day health centers and that any rate increase shall be implemented within existing funds.

This section became effective July 1, 2003. (TM)

Nursing Home/Medication Errors

S.L. 2003-393 (SB 1016) requires every nursing home to establish a medication management advisory committee to advise the quality assurance committee on quality of care issues related to pharmaceutical and medication management and use in the nursing home. The Advisory Committee will have the following duties:

- Assess the facility's pharmaceutical management system and practices and identify areas at high risk for medication-related errors.
- Review the facility's pharmaceutical management goals and ensure these goals are being met.
- Review, investigate, and respond to facility incident reports and resident grievances.
- Identify goals and recommendations for the implementation of best practices.
- Develop recommendations for the establishment of a mandatory, nonpunitive, confidential reporting system.
- Develop specifications for drug dispensing and administration documentation procedures to ensure compliance with federal and State law, including the NC Nursing Practice Act.
- Develop specifications for self-administration of drugs by qualified patients in accordance with law.

As part of its requirement to minimize risk of medication-related error, the act requires every nursing home quality assurance committee to undertake the following:

- Educate and make the patient and the patient's family members aware of all the medications the patient is using.
- Increase prescription legibility.
- Minimize confusion in prescription drug labeling and packaging.
- Develop a confidential and nonpunitive process for internal reporting of actual and potential medication-related errors.
- To the extent practicable, implement proven medication safety practices.
- Educate facility staff engaged in medication administration.
- Implement a system to accurately identify recipients before any drug is administered.
- Implement policies and procedures designed to improve accuracy in medication administration and in documentation.
- Implement policies and procedures for the self-administration of medication.
- Investigate and analyze the frequency and root causes of general categories and specific types of actual or potential medication-related errors.
- Develop recommendations for plans of action to correct identified deficiencies in the facility's pharmaceutical management practices.

The act also requires nursing home to provide a minimum of one hour of education and training in the prevention of actual or potential medication-related errors for all nonphysician personnel involved in direct patient care.

A new statute enacted in this act requires consultant pharmacists of nursing homes to undertake certain drug regimen reviews, make reports concerning drug irregularities, drug product defects and adverse drug reactions, ensure proper documentation of allergies and adverse effects, and ensure that drugs that are not specifically limited as to duration of use or number of doses are controlled by automatic stop orders.

Finally, the act requires the Secretary of Health and Human Services to contract with a public or private entity to develop and implement a Medication Error Quality Initiative. As part of the Initiative, each nursing home must report annually on the nursing home's medication-related errors. The report submitted by each nursing home would not contain information that would identify the patient, individual reporting the error, or other persons involved in the occurrence. The contracting entity would analyze the reports to determine trends in the incidence of

medication-related errors in nursing homes. Information released to the contractor would retain its confidentiality and would not be subject to discovery or use in any civil action as provided under the act.

This act becomes effective January 1, 2004. (DJ)

Studies

Referrals to Departments, Agencies, Etc.

Audit of CAP/DA Programs by State Auditor

S.L. 2003-284, Sec. 10.29B (HB 397, Sec. 10.29B) directs the State Auditor to perform an audit of the Community Alternatives Program for Disabled Adults (CAP/DA), provided that State funds are appropriated for this purpose. The audit shall build upon the results of the study conducted by the North Carolina Institute of Medicine, in accordance with Section 10.16(c) of S.L. 2002-126, and provide information necessary to determine whether CAP/DA is operating within waiver guidelines and program goals. The State Auditor shall report the results of the audit to the North Carolina Study Commission on Aging by January 1, 2004.

This section also directs the Department of Health and Human Services to review, on a pilot basis, a selected number of CAP/DA programs to determine compliance with eligibility requirements for the program. Additionally, the Department shall continue to examine aspects of CAP/DA including: the current assessment process; an analysis of per-client costs in CAP/DA to per-client costs in nursing homes and adult care homes; per-participant costs for the State-County In-Home Program; an analysis of per-person costs for personal care services through Medicaid; the monitoring of quality of care for CAP/DA clients; the current waiting list procedures. The Department is required to make a report of its findings to the North Carolina Study Commission on Aging by January 1, 2004.

This section became effective July 1, 2003. (TM)

Chapter 23
State Government

Erika Churchill (EC), Karen Cochrane-Brown (KCB), Kory Goldsmith (KG),
Trina Griffin (TG), Tim Hovis (TH), Hal Pell (HP), Giles Perry (GSP),
Walker Reagan (WR), Barbara Riley (BR), and Mary Shuping (MS)

Enacted Legislation

Agencies and Departments

Military Expiration of Drivers License

S.L. 2003-152 (HB 1159). See **Military, Veterans', and Indian Affairs.**

IT Security Changes

S.L. 2003-153 (HB 1003) requires the State Chief Information Officer (CIO) to assess the ability of each agency to comply with current enterprise-wide security standards. The CIO is to submit a public report on the status of the assessment, including the funding needed to bring agencies into compliance, to the Joint Legislative Commission on Governmental Operations and provide updated assessment information by January 15 of each year. The act also requires that the head of each State agency provide the CIO with the full details of any agency information technology security incident within 24 hours of confirmation and requires the person designated as agency liaison for information technology to undergo a criminal background check.

In addition, the act requires each State agency to establish a disaster recovery planning team to develop a business and disaster recovery plan for information technology and to administer the implementation of the plan. The plan is to be submitted annually to the CIO and the Information Resource Management Commission.

This act became effective June 4, 2003. (BR)

Formula Cost-Effective Vehicle Replacement

S.L. 2003-177 (HB 344) requires the State Motor Fleet Management Division of the Department of Administration to use best management practices in maintaining the State motor fleet, to use and develop a vehicle replacement formula, and to report semi-annually to the co-chairs of the Appropriations Subcommittee on General Government on the effect of any new or revised formula on the cost of operating the State motor fleet, including the amount of savings from use of the formula.

This act became effective June 12, 2003. (GSP)

Promote E-Commerce and E-Government

S.L. 2003-233 (SB 622). See **Technology.**

Government Agencies to Use Products of Recycled Steel

S.L. 2003-284, Sec. 6.10 (HB 397, Sec. 6.10) mandates the use of products of recycled steel in connection with contracts entered into by State agencies, political subdivisions using State funds, and persons contracting with an agency, if the following conditions are satisfied:

- The product must be acquired competitively within a reasonable time frame.
- The product must meet appropriate performance standards.
- The product must be acquired at a reasonable price.

The Department of Administration is directed to report to the Joint Legislative Commission on Governmental Operations on agencies' compliance with this section.

This section became effective July 1, 2003. (KCB)

Office of Policy and Planning

S.L. 2003-284, Sec. 10.2 (HB 397, Sec. 10.2) requires the Secretary of Health and Human Services to establish an Office of Policy and Planning from existing resources across the Department to promote coordinated policy development and strategic planning for the State's health and human services systems. The Director of the Office of Policy and Planning will report directly to the Secretary and will have the following responsibilities:

- Coordinating the development of departmental policies, plans, and rules, in consultation with the Divisions of the Department.
- Developing a departmental process for the development and implementation of new policies, plans, and rules.
- Developing a departmental process for the review of existing policies, plans, and rules to ensure that departmental policies, plans, and rules are relevant.
- Coordinating and reviewing all departmental policies before dissemination to ensure that all policies are well-coordinated within and across all programs.
- Implementing ongoing strategic planning that integrates budget, personnel, and resources with the mission and operational goals of the Department.
- Reviewing, disseminating, monitoring, and evaluating best practice models.

This section became effective July 1, 2003. (TG)

Agencies to Use Mail Service Center

S.L. 2003-284, Sec. 18.1 (HB 397, Sec. 18.1) provides that the Department of Administration has the duty to establish a mail service center that shall be used by all State agencies, other than the Employment Security Commission. Previously, the Department had the duty to establish a "central mailing system," and there was no mandate that the system was to be used by State agencies. The Secretary of the Department of Administration is required to allocate and charge State agencies with their proportionate cost of the maintenance of the mail service center.

This section became effective July 1, 2003. (HP)

Transfer Consultation Requirement Under Business License Information Office to Small Business Centers

S.L. 2003-284, Sec. 24.1 (HB 397, Sec. 24.1) directs the Secretary of State's office and the Community College System to develop and implement a plan to transfer the consultation function of the Business License Information Office within the Secretary of State's office to the Small Business Center located within each of the community colleges in the System. The Secretary of State's Office shall use funds appropriated for the 2003-2004 fiscal year for the

Business License Information Office to develop a web-based master application system of all State licensing and regulatory requirements and for training for the Directors of the Small Business Centers. The plan for developing the master application system and transferring the consultation function of the Business License Information Office shall be presented to the Joint Legislative Commission on Governmental Operations and to the Chairs of the Appropriations Committees of the Senate and the House by October 1, 2003. Quarterly reports are to be made thereafter on the implementation of the plan. The plan must be fully implemented by June 30, 2004.

This section became effective July 1, 2003. (BR)

State Treasurer Subject to Executive Budget Act.

S.L. 2003-284, Sec. 28.2 (HB 397, Sec. 28.2) makes the State Treasurer subject to the Executive Budget Act. The Executive Budget Act directs the Governor to supervise the budgets of all State agencies by ensuring the efficient and economical operation of those agencies. Under prior law, the provisions of the Executive Budget Act did not apply to the State Treasurer. This section expands the scope of the Executive Budget Act to include most operations of the State Treasurer. However, in carrying out the duties set forth in G.S. 147-68, governing receiving and disbursing funds, the State Treasurer will continue to be independent of any fiscal control by the Director of the Budget and will continue to be responsible directly to the Advisory Budget Commission and the General Assembly.

This section became effective July 1, 2003. (MS)

Charitable Solicitations/Inform the Public

S.L. 2003-373 (SB 659). See **Commercial Law and Consumer Protection.**

State Government Sales Tax Exempt/School Coop Refund

S.L. 2003-431 (SB 100). See **Finance.**

Boards and Commissions

Occaneechi Band of Saponi/Indian Cultural Center

S.L. 2003-55 (HB 710). See **Military, Veterans', and Indian Affairs**.

Appellate Procedure/State Banking Commission

S.L. 2003-63 (SB 658). See **Civil Law and Procedure**.

Amend ASMFC Appointment

S.L. 2003-92 (SB 979). See **Environment and Natural Resources**.

Adjust Eastern Region Commission

S.L. 2003-94 (SB 517) reduces the minimum membership of the Global Transpark Development Commission, also called the Eastern Region Commission. Under prior law, the board of commissioners of each county participating in the Zone was required to appoint three members, and the Commission was required to appoint at least three but no more than seven voting members. This act eliminates the three-person minimum by the Commission.

This act became effective May 30, 2003. However, the act does not affect any member's current term. (TG)

Soil and Water Conservation Commission

S.L. 2003-198 (HB 727). See **Environment and Natural Resources.**

Science and Technology Board

S.L. 2003-210 (HB 665). See **Technology**.

NC School of the Arts/Board Membership

S.L. 2003-215 (HB 1210). See **Education**.

Indian Cultural Center Changes

S.L. 2003-260 (HB 745). See **Military, Veterans', and Indian Affairs**.

Advisory Members on State Board of Education

S.L. 2003-306 (SB 698). See **Education**.

Clean Water Management Trust Fund Board Terms

S.L. 2003-422 (SB 831). See **Environment and Natural Resources**.

Budget Process and Use of State Funds

Joint Committee on Executive Budget Act Revisions

S.L. 2003-284, Sec. 6.12 (HB 397, Sec. 6.12) creates the Joint Committee on Executive Budget Act Revisions (Committee). The Committee is to be composed of four members of the House Appropriations Committee, appointed by the Speaker of the House, and four members of the Senate Appropriations Committee, appointed by the President Pro Tempore of the Senate. The Committee must consider contemporary financial management practices in reviewing the current budget process, and recommend any changes to the Executive Budget Act that are needed to modernize and improve the processes of budget preparation, budget adoption, budget execution, and program evaluation. The Committee shall report its recommendations to the 2003 General Assembly on or before April 1, 2004.

This section became effective July 1, 2003. (KG)

Revise Law on Non-State Entity Reports on Use of State Funds

S.L. 2003-284, Sec. 6.21 (HB 397, Sec. 6.21) strengthens the reporting requirements for non-State entities that receive State funds. Corporations, organizations, and institutions that receive, use, or expend State funds must provide all required reports and financial information to the appropriate State agencies before the State may disburse those funds. This section also requires the Office of State Budget and Management to report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division by May 1 of each year concerning all grantees that failed to comply with the reporting requirements.

This section became effective July 1, 2003. (TG)

Capital Facilities and State Property

Change Offensive Place-Names

S.L. 2003-211 (HB 483) provides that the Secretary of State, in consultation with the North Carolina Geographic Information Coordinating Council, must adopt procedures for changing offensive or insulting place-names. The Council must notify the governing body of the county where an alleged offensive or insulting place-name exists. The county governing body has 90 days to respond to the Council and has the opportunity to provide a suggested replacement name. The Council must take action after reviewing the response, or upon the expiration of 90 days, whichever comes first. The Council will then make the appropriate application to the U.S. Board for Geographic Names, which has the authority to make the change.

This act became effective June 19, 2003. (HP)

State-Owned Surplus Real Property System

S.L. 2003-284, Sec. 6.8 (HB 397, Sec. 6.8), as amended by S.L. 2003-283, Sec. 3 (SB 274, Sec. 3), directs the Department of Administration to establish a process for the identification and disposal of unused or under used State-owned land and buildings. The Department's duties in this regard include the following:

- Reviewing the current inventory of State-owned land and buildings.
- Determining how and when the buildings should be declared surplus.
- Determining whether the highest and best use is being made of the property.

Within 60 days after receiving the list from the State Property Office, the Joint Legislative Commission on Governmental Operations shall review the list of State-owned surplus real property and recommend which properties it wishes to be sold. Unless otherwise provided, the proceeds of the sale of State-owned surplus real property will be credited to the General Fund and used to offset debt service costs associated with financing the repair and renovation of State buildings. If the clear proceeds from the disposal of the property are not expected to generate the availability of funds contemplated under this section to be used to offset debt service by June 30, 2005, the General Assembly shall identify in the bill revising the 2004-2005 budget other sources of funds to fund the debt service.

This section also establishes the Real Property Management Advisory Council in the Department of Administration to advise the Secretary of Administration as to the identification of those properties that are unneeded or underutilized.

Additionally, the section requires the Department of Administration to make an interim report to the Joint Legislative Commission on Governmental Operations no later than December 1, 2003, regarding the extraordinary measures being taken to comply with this section and a final

report of its findings and recommendations and implementation progress no later than March 1, 2004.

This section became effective July 1, 2003. (EC)

Sell Surplus/Confiscated Property Electronically

S.L. 2003-284, Sec. 18.6 (HB 397, Sec. 18.6) authorizes the State Surplus Property Agency and local governments to sell or dispose of surplus government property, including motor vehicles, through an electronic auction service. The act also authorizes sheriffs and police departments with authority to sell seized or confiscated property to sell property through an electronic auction service.

This act became effective July 1, 2003. (WR)

Repair and Renovations

S.L. 2003-284, Sec. 46.1-46.4 (HB 397, Sec. 46.1-46.4). See *2003 Budget Act* in **Finance.**

Structural Pest Control Training Facility

S.L. 2003-284, Sec. 46A.3 (HB 397, Sec. 46A.3). See *2003 Budget Act* in **Finance**.

Public Works Exemption

S.L. 2003-305 (HB 994) exempts certain public building projects from the requirement that building plans and specifications be prepared by a registered architect or engineer. G.S. 133-1.1 requires that State boards, departments and commissions have plans and specifications for certain building projects prepared by a registered architect, a registered engineer, or both. The act exempts from this requirement pre-engineered garages, sheds, and workshops up to 5,000 square feet used exclusively by city, county, public school, or State employees for purposes related to their employment. Structures exempted under the act must be at least 30 feet from other buildings or property lines.

This act became effective July 4, 2003. (TH)

Use of State Property/Blount Street Historic District

S.L. 2003-404 (SB 819) authorizes the Department of Administration to sell State-owned property in the Blount Street Historic District in Raleigh. The act directs the Department of Administration, prior to May 1, 2004, to modify the Capital Area Master Plan to provide for the sale, to require that property sold pursuant to the act be subject to preservation or conservation agreements, and to provide that the properties be sold by private negotiation and sale.

The act also does the following:

- Authorizes the Department of Administration to use up to $300,000 to implement the provisions of the act.
- Provides that the net proceeds of the sale of the property must first be used to reimburse the Department of Administration for any funds expended pursuant to implement the act.
- Requires $5,000,000 of the proceeds to be placed in a trust fund in the Department of State Treasurer to be used to upkeep, repair, and maintain the Governor's Mansion.
- Provides that the remainder of the proceeds be placed in the General Fund.

The act established the Blount Street Historic District Oversight Committee to monitor the implementation of this act. Prior to September 1, 2004, the Department of Administration is required to submit to the Blount Street Historic District Oversight Committee a plan for implementation of the act and a schedule for implementation of the plan.

This act became effective August 7, 2003. (GSP)

Governmental Liability

State Institution Resident Damage Claims

S.L. 2003-285 (SB 786). See **Civil Law and Procedure.**

Liability at Public Skateboard Parks

S.L. 2003-334 (SB 774). See **Civil Law and Procedure.**

Official North Carolina Designations

NC's Official International Festival

S.L. 2003-315 (SB 840) adopted Folkmoot USA as the official international festival of North Carolina.

This act became effective July 10, 2003. (EC)

NC Aviation Hall of Fame and Aviation Museum

S.L. 2003-363 (HB 694) designates the Asheboro Municipal Airport as the official location of the North Carolina Aviation Hall of Fame and the North Carolina Aviation Museum. The law designates the Wilmington International Airport as the official location of the North Carolina Museum of Aviation.

This act became effective August 1, 2003. (HP)

Adopt Carolina Lily as State Wildflower

S.L. 2003-426 (HB 47) designates the Carolina Lily (Lilium michauxii) as the official wildflower of the State of North Carolina.

This act became effective August 19, 2003. (HP)

Parks and Recreation

Mayo River State Park

S.L. 2003-106 (HB 1078). See **Environment and Natural Resources.**

Haw River State Park

S.L. 2003-108 (HB 1025). See **Environment and Natural Resources.**

Purchase and Contracts

Guaranteed Energy Savings Contract Efficiency

S.L. 2003-138 (HB 864) adds additional provisions to the law permitting the State to enter into guaranteed energy savings contracts.

The act provides that qualified providers of guaranteed energy savings contracts with the State must conduct an investment grade audit. If the results of the audit are not within 10% of the guaranteed savings contained in the proposal, either the State or the qualified provider may terminate the project. If the audit shows savings within 10% of the proposal and the State terminates the proposal, the act requires the State to reimburse the provider the reasonable costs of the audit. Under the act, qualified providers are also required to provide an annual reconciliation statement demonstrating any shortfall or surplus between specified energy savings and actual energy savings during a given guarantee year. The provider must reimburse the State for any shortfall in actual savings for a given year.

The act also requires the Department of Administration to adopt rules establishing time periods for consideration of guaranteed energy savings contracts by the Office of State Budget and Management, the Office of State Treasurer, and the Council of State, and setting measurements and verification criteria. The Department is also authorized to make recommendations to the Council of State concerning any energy savings contracts.

This act became effective June 4, 2003. (WR)

UNC Purchasing Flexibility

S.L. 2003-228 (HB 975). See **Education.**

General Contractors Board/Bidding

S.L. 2003-231 (SB 437). See **Occupational Boards and Licensing**.

Competitively Bid Beverages Contracts

S.L. 2003-284, Sec. 6.15 (HB 397, Sec. 6.15). See **Education.**

Purchase Contracts/Increase UNC Benchmark

S.L. 2003-312 (HB 1070). See **Education.**

Prohibit State Purchase of Reconstituted Milk

S.L. 2003-367 (HB 974) prohibits any department, institution, or agency of the State from purchasing any fluid milk product that is labeled, or that is required to be labeled, as "reconstituted" or "recombined." The act defines the term "fluid milk product" but does not define the terms "reconstituted" or "recombined."

The Secretary of Administration is authorized to temporarily suspend this provision in the case of an emergency or pressing need.

This act becomes effective October 1, 2003, and applies to any contract entered into on or after that date. (KCB)

Strengthen Security Fraud Enforcement Laws

S.L. 2003-413, Sec. 28 (SB 925, Sec. 28) prohibits the Secretary of Administration from entering into a contract with a vendor, or an affiliate of a vendor, if the vendor or affiliate is incorporated or reincorporates in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the stock of the corporation incorporated in the tax haven country. The definition of 'tax haven country' is identical to the definition of the same term that was in federal legislation before Congress in 2002 that would prohibit the federal government from using defense-spending funds as payment on any new contracts with 'corporate expatriates.' This section also deleted Cyprus and the Principality of Liechtenstein from the list of tax haven countries.

This section becomes effective October 1, 2003, and applies to contracts entered into on or after that date. (TG)

This act also strengthens securities fraud enforcement laws. For additional information, see **Commercial Law and Consumer Protection.**

Miscellaneous

Disaster Leave/Voluntary Emergency Personnel

S.L. 2003-103 (SB 940). See **Labor and Employment.**

Terror Response Plans

S.L. 2003-180 (SB 692) provides that certain information concerning plans to respond to terrorist activity is not subject to the Public Records or Open Meeting laws.

The act provides that plans to prevent or respond to terrorist activity are exempt from the public records law and, thus, cannot be disclosed to the public. Records containing the following information are exempt from public disclosure: vulnerability and risk assessments, potential targets, specific tactics, and specific security or emergency procedures. These records are only exempt if disclosure would jeopardize the safety of government personnel, the public, or the security of any government facility, building, structure, or information storage system.

This act also authorizes a public body to hold a closed session, where the public is excluded, when the closed session is required to discuss and take action regarding plans to protect public safety. This provision applies when the closed session relates to existing or potential terrorist activity, or when the session is holding briefings by staff members, legal counsel, law enforcement, or emergency service officials concerning actions taken, or to be taken, in response to terrorist activity.

This act became effective June 12, 2003. (HP)

Improve Rule-Making Process

S.L. 2003-229 (HB 1151) amends the Administrative Procedure Act (APA) to streamline the process for adopting administrative rules. The act reduces the time required to make a permanent rule effective in most cases, by providing that permanent rules go into effect on the first day of the month following the month they are approved by the Rules Review Commission, unless the Commission receives written objections from ten or more people. If objections are received, the rules are delayed and become subject to legislative disapproval. The act also changes the procedure for adopting temporary rules and makes them subject to review by the Rules Review Commission. Prior to adopting a temporary rule, the agency must give notice to interested parties, accept written comments, and hold at least one public hearing.

The act establishes a procedure for adopting emergency rules in cases of serious or unforeseen threats to public health or safety. There is also a provision authorizing the Department of Health and Human Services to adopt an emergency rule when a recent act of the General Assembly or Congress or a recent federal regulation provides new or increased services or benefits to children and families and the emergency rule is necessary to implement the change in law.

With regard to the role of the Rules Review Commission, the act makes several changes, including:

- Giving the Commission authority to review temporary rules using the same standards applied to permanent rules.
- Adding a fourth standard requiring the Commission to determine whether the rule was adopted in accordance with Part 2 of Article 2A of the APA.
- Clarifying the standard of reasonable necessity to provide that the rule must be necessary to interpret or implement a State or federal statute or federal regulation.
- Providing that approval by the Commission creates a rebuttable presumption that the rule was adopted properly. This provision applies only to rules adopted on or after the effective date of this act.
- Clarifying that when an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change is substantial using the existing standard for changes made by an agency prior to adoption. If the change is substantial, the rule must be republished and reviewed in accordance with the temporary rule procedure.

The act also excludes the State Medical Facilities Plan from the definition of a rule and sets notice and hearing requirements in the law defining the State Medical Facilities Plan.

Finally, the act 'grandfathers' any temporary rulemaking authority granted to an agency prior to the effective date of this act.

This act became effective July 1, 2003, and applies to temporary and emergency rules adopted on or after that date, and to permanent rules adopted on or after October 1, 2003. (KCB)

HIPAA Implementation

S.L. 2003-284, Sec. 6.7 (HB 397, Sec. 6.7). See **Health and Human Services.**

Notice of Legislative Meetings & Commission and Board Appointees

S.L. 2003-374 (SB 561) changes the law regarding what constitutes reasonable public notice of meetings of the General Assembly and what information is required to be given by the appointing authority about an appointee to a State commission, council, committee, or board.

The act eliminates the requirement that notice of legislative meetings be posted on the legislative press room door and substitutes that notice may be mailed or sent by electronic mail to those requesting notice and shall be posted on the General Assembly website.

The act also requires that notice of appointments to State commissions, councils, committees, and boards be made within 30 days of acceptance of the appointment by the appointee rather than the present 60 days. As well, the appointing authority must also provide appointee's the county of residence; the name of the person the appointee replaces; if applicable; and the specific statutory qualification for the public office to which the appointment is made, if applicable. The act provides a notice of appointment form that may be used by the appointing authority in providing the required notice.

This act became effective August 31, 2003, and applies to appointments made after that date. (WR)

Studies

Referrals to Departments, Agencies, Etc.

Study IT Legacy Systems

S.L. 2003-172 (HB 941) requires the State Office of Information Technology Services, in conjunction with the Information Resources Management Commission, to analyze the State's legacy information technology systems and develop a plan to ascertain the needs, costs, and time frame required to upgrade those systems to more modern information technology systems. "Legacy" systems are those information technology systems already in existence that are in danger of becoming obsolete or unsupportable due to age, programming language, dependence on hardware or software that cannot be maintained, or non-availability of system support skills. The Office of Information Technology Services shall complete the assessment phase of the analysis and report to the Joint Legislative Commission on Governmental Operations by March 1, 2004. Updated reports must be filed annually with the Commission. The second phase of the analysis, needs, costs and time frame to modernize, is to be completed by January 31, 2005 and a report made to the 2005 General Assembly. Ongoing and updated reports are to be filed with the General Assembly on the opening day of each biennial session thereafter.

This act became effective June 12, 2003. (BR)

Study of Advocacy Programs in Department of Administration

S.L. 2003-284, Sec. 18.2 (HB 397, Sec. 18.2) directs the Secretary of Administration, in collaboration with appropriate entities that concentrate on public policy and business management, to study the functions of the advocacy programs that are housed in the Department of Administration to determine the appropriate organizational placement of the programs within State government, and whether the functions of these programs are more appropriately performed by nonprofit organizations. The Secretary is directed to submit findings and recommendations to the Joint Legislative Commission on Governmental Operations and the Chairs of the Senate and House of Representatives Appropriations Committees by May 1, 2004.

This section became effective July 1, 2003. (GSP)

ITS Budget Structure Review/Report

S.L. 2003-284, Sec. 21.1 (HB 397, Sec. 21.1). See **Technology.**

Chapter 24
Technology

Dickie Brown (DB), and Brenda Carter (BC)

Enacted Legislation

IT Security Changes

S.L. 2003-153 (HB 1003). See **State Government**.

Study IT Legacy Systems

S.L. 2003-172 (HB 941). See **State Government**.

Science and Technology Board

S.L. 2003-210 (HB 665) authorizes the North Carolina Board of Science and Technology to advise and make recommendations to the General Assembly on the role of science and technology in the economic growth and development of the State.

This act became effective June 19, 2003. (BC)

Promote E-Commerce & E-Government

S.L. 2003-233 (SB 622) provides that electronic signatures created pursuant to law may be accepted by State agencies, and allows a corporation's annual report to be filed with the Secretary of State electronically.

This act amends the North Carolina's Electronic Commerce Act by removing the prohibition on electronic signatures where notarization is required, making that act consistent with the Uniform Electronic Transactions Act (UETA). This act provides that the Electronic Commerce Act does not affect the validity, presumptions, or burdens of proof regarding a study on electronic notarization. For additional information, see **Studies** in this chapter.

This act became effective June 19, 2003, and is applicable to filings made on or after that date. (BC)

Sell Surplus/Confiscated Property Electronically

S.L. 2003-284, Sec. 18.6 (HB 397, Sec. 18.6). See **State Government**.

Toner/Inkjet Cartridges

S.L. 2003-386 (HB 999). See **Commercial Law and Consumer Protection**.

Property Tax Certification Procedure

S.L. 2003-399 (HB 972) provides for an Internet-based alternative to property tax certification procedures. The act amends the law concerning a tax collector's statement of the amount of taxes due on real property. If a taxing unit maintains an Internet web site on which current information on the amount of taxes, special assessments, penalties, interest, and costs

due on any real or personal property is available, the governing body of the taxing unit may adopt an ordinance to allow a person to rely on information obtained from the web site as if it were a traditional certificate. A person who relies on the web site information must keep and present a copy of the information as if it were a traditional certificate.

This act became effective August 7, 2003. (BC)

Establish e-NC Authority

S.L. 2003-425 (HB 1194) creates the e-NC Authority within the Department of Commerce to continue and conclude the work of the North Carolina Rural Internet Access Authority. The stated purpose of the Authority is to promote, manage, oversee, and monitor efforts to provide rural counties and distressed urban areas with high-speed broadband Internet access. No member of the General Assembly may serve on the Authority.

A Commission consisting of nine voting members and six non-voting ex officio members will govern the Authority. The Governor will designate one of his appointees to serve as chair of the Commission. The Authority is created within the Department of Commerce for organizational and budgetary purposes only, and the Commission is authorized to exercise all of its statutory authority independent of the control of the Department of Commerce. The North Carolina Rural Economic Development Center will provide administrative and professional staff support for the Authority under contract.

This act sets out specific powers, duties, and goals of the Authority, including the monitoring and safeguarding of the investments made by the Rural Internet Access Authority in carrying out its functions under Chapter 149 of the 2000 Session Laws. The Authority is required to submit quarterly reports to the Governor, the Joint Select Committee on Information Technology, and the Joint Legislative Commission on Governmental Operations. The reports will summarize the Authority's activities during the quarter.

This act repeals the existing statutes governing the North Carolina Rural Internet Access Authority effective December 31, 2003 rather than December 1, so that repeal of the statutes is consistent with the date the Rural Internet Access Authority will expire. Provisions regarding the e-NC Authority become effective December 31, 2003, with the e-NC Authority designated as the successor entity of the Rural Internet Access Authority, which is set to expire and dissolve on that date.

This act became effective August 14, 2003. (BC)

Studies

Referrals to Departments, Agencies, Etc.

Promote E-Commerce & E-Government

S.L. 2003-233, Sec. 4 (SB 622, Sec. 4) authorizes the Secretary of State to study and make recommendations to the 2004 Short Session about further changes that might be made in the Notary Public Act to facilitate electronic notarization.

This section became effective June 19, 2003. (BC)

ITS Budget Structure Review/Report

S.L. 2003-284, Sec. 21.1 (HB 397, Sec. 21.1) directs the Office of State Budget and Management (OSBM) to conduct a study of information technology (IT) expenditures across all of State government, with focused attention to the identification and elimination of duplicative IT expenditures, operations, and inventory, in order to identify and recommend potential cost

savings and efficiencies in State agency IT operations. OSBM is directed to work in conjunction with the Office of Information Technology Services (ITS) and the Information Resources Management Commission (IRMC) to study the ITS and the IRMC budget structures. By April 1, 2004, OSBM will make reports on these matters to the Joint Legislative Commission on Governmental Operations, the Chairs of the Joint Appropriations Subcommittee on General Government, and the Fiscal Research Division of the General Assembly.

This section became effective July 1, 2003. (BC)

Chapter 25
Transportation

Brenda Carter (BC), Giles S. Perry (GSP), and Wendy Graf Ray (WGR)

Enacted Legislation

Department of Transportation

DOT Resurfacing/Secondary Road Fund Use

S.L. 2003-112 (HB 22) broadens the authorized use of the contract resurfacing funds appropriated by the General Assembly to the Department of Transportation. The act allows the 15% already authorized for widening existing narrow pavements that are scheduled for resurfacing to also be used to widen any other existing narrow pavement. The act also updates the target date to the 2009-2010 fiscal year for paving all unpaved State secondary roads with a least 50 vehicles a day. In addition, the act authorizes the Department of Transportation to use Highway Trust Fund secondary road paving funds for State secondary road safety improvements in a county if all the State secondary roads (not blocked by right-of-way or permit issues) in the county have been paved.

This act became effective May 31, 2003. (GSP)

Formula Cost-Effective Vehicle Replacement

S.L. 2003-177 (HB 344). See **State Government.**

DOT Safety and Logo Signs

S.L. 2003-184 (SB 38) makes the following five changes:

- Designates the Department of Transportation (DOT) as the agency responsible for fixed guideway transit safety oversight, and directs DOT to adopt appropriate rules, in conformity with federal law.
- Authorizes DOT to place attraction signs as a part of its logo sign program.
- Authorizes DOT to adopt temporary rules concerning logo signs.
- Exempts DOT's "511" traveler information phone service from the requirement for State phone systems to have first menu operator access.
- Amends the law applicable to HOV lanes to: require vehicles to enter and leave HOV lanes at designated points; prohibit vehicles with more than 3 axles from HOV lanes; and exempt motorcycles, vehicles designed to transport 15 or more passengers, and emergency vehicles (when responding to an emergency) from HOV lane restrictions.

This act became effective June 12, 2003, except the HOV lane provisions, which become effective December 1, 2003. The temporary rule authority granted by the act expires July 1, 2005. (GSP)

Bikeway Funding

S.L. 2003-256 (SB 232) authorizes the Department of Transportation to grant funds to counties for bikeways, and authorizes counties to expend funds to establish bikeways.

This act became effective June 26, 2003. (GSP)

DOT Bridge Encroachments

S.L. 2003-267 (HB 824) adds to the powers and duties of the Department of Transportation (DOT) by giving it general authority to permit and regulate encroachments for private bridges across State highways and roads. The act provides that:

- Private bridge encroachments shall be approved the Board of Transportation, upon a finding that the encroachment is necessary and appropriate.
- Private bridge encroachment location, plans, and specifications shall be approved by DOT.
- DOT shall retain the right to reject any plans, specification, or materials used on a private bridge encroachment.
- DOT shall retain the right to inspect and approve all materials used in a private bridge encroachment.
- DOT shall retain the right to inspect the construction, maintenance, and repair of any private bridge encroachment.
- DOT shall retain the right to require replacement, repair, or demolition of any unsafe or substandard bridge.
- DOT is authorized to include in any encroachment agreement a requirement for the purchase and maintenance of liability insurance in an amount determined by DOT.
- DOT is required to ensure that any private bridge encroachment is regularly inspected for safety.
- The owner of any private bridge encroachment is required to have the bridge inspected every two years by a qualified private engineering firm based on National Bridge Inspection Standards and provide copies of the inspection to DOT, where they are to be kept on file.

This act became effective June 26, 2003. (GSP)

Department of Transportation Productivity Pilot Programs

S.L. 2003-284, Sec. 29.3 (HB 397, Sec. 29.3) authorizes the Department of Transportation to establish two pilot programs to test incentive pay for employees. The Department is authorized to use up to .25% of the budget for its highway road oil resurfacing budget for one of the incentive programs, and up to $25,000 of its existing budget for another pilot project chosen by the Department.

This act became effective July 1, 2003. (GSP)

Reduce Highway Trust Fund Administration Allocation

S.L. 2003-284, Sec. 29.4 (HB 397, Sec. 29.4) amends the Highway Trust Fund to reduce the maximum amount of that Fund that may be annually used for administrative purposes by the Department of Transportation from 4.5% to 4.0% in fiscal year 2003-2004, and 3.8% thereafter.

This section became effective July 1, 2003. (GSP)

Environmental Permits on Department of Transportation Construction Projects

S.L. 2003-284, Sec. 29.6 (HB 397, Sec. 29.6) provides that any permit required for a Department of Transportation project and issued by the Department of Environment and Natural Resources, or any agency within that Department, remains in effect until the project is completed, subject to exceptions listed in the section.

This section became effective July 1, 2003. (GSP)

Amend the Highway Trust Fund Act Descriptions of Urban Loops and Other Intrastate Improvement Projects

S.L. 2003-284, Sec. 29.11 (HB 397, Sec. 29.11) amends the Highway Trust Fund to add or rewrite the descriptions of the following loop roads: Durham Northern Loop, Fayetteville Western Outer Loop, Greensboro Loop, Greenville Loop, Raleigh Outer Loop, Wilmington Bypass, and Winston-Salem Northbelt. In addition, the section deletes the U.S. 13 connector from I-95 to NC 87 in Cumberland County from the list of Highway Trust Fund Intrastate projects, since this project now appears on the urban loop list of eligible projects.

This section became effective July 1, 2003. (GSP)

Metropolitan Planning Organizations/Rural Transportation Planning Organizations Transportation Planning Funding

S.L. 2003-284, Sec. 29.14 (HB 397, Sec. 29.14) does the following:

- Authorizes any lead planning agency for a Metropolitan Planning Organization in a nonattainment or maintenance area under the Federal Clean Air Act to apply to the Department of Transportation for funds to avoid a plan conformity lapse; and
- Authorizes any regional transportation planning agency in a nonattainment or maintenance area under the Federal Clean Air Act to apply to the Department of Transportation for funds to support local transportation planning efforts.

This section became effective July 1, 2003. (GSP)

Ferry Employee Positions

S.L. 2003-284, Sec. 29.15 (HB 397, Sec. 29.15) directs the Ferry Division of the Department of Transportation to use funds available from increased toll revenue to convert a maximum of 39 temporary positions to permanent positions.

This section became effective July 1, 2003. (GSP)

Incident Management Assistance Patrol Program Personnel

S.L. 2003-284, Sec. 29.16 (HB 397, Sec. 29.16) directs the Department of Transportation to designate up to a maximum of 26 full-time temporary positions of the Incident Management Assistance Patrol Program as permanent positions.

This section became effective July 1, 2003. (GSP)

Currituck-Corolla Ferry Service Funds

S.L. 2003-284, Sec. 29.20 (HB 397, Sec. 29.20) provides that from funds available, the Department of Transportation may use up to $834,000 to establish a new ferry service, on or before May 1, 2004, from the Currituck terminal of the Currituck-Knotts Island ferry to Corolla.

This section became effective July 1, 2003. (GSP)

Use Highway Trust Fund to Match Federal-Aid Highway Fund

S.L. 2003-284, Sec. 29.22 (HB 397, Sec. 29.22) amends the Highway Trust Fund Act to authorize use of Highway Trust Fund funds to meet State matching funds requirements to receive federal-aid highway funds.

This section became effective July 1, 2003. (GSP)

North Carolina "Quick Clearance" Act

S.L. 2003-310 (HB 1140) authorizes an investigating law enforcement officer, with the concurrence of the Department of Transportation (DOT), to immediately remove vehicles, spilled cargo, or other personal property from controlled-access highways when the vehicle, cargo, or property is causing an obstruction or hazard to traffic. No removal is allowed following an accident involving injury or death until the investigating officer determines that adequate information has been obtained.

Any State or local law enforcement officer, DOT employee, or other person assisting in the removal of vehicles, cargo, or property may not be held criminally or civilly liable for any damage or economic injury incurred as a result of carrying out these provisions. In addition, the owner of the vehicle, cargo, or property is required to pay for costs incurred in the removal, storage and disposition of the vehicle, cargo, or property.

The act also amends G.S. 20-166, which sets out a driver's duty to stop at the scene of an accident when the driver's vehicle is involved. The act requires that vehicles be moved as soon as possible from the main travel lane to a shoulder or other designated accident investigation site when they are involved in accidents in order to minimize interference with traffic. This requirement only applies when the accident involves no injury or death or the drivers did not know or have reason to know of any injury or death, and each vehicle can be normally and safely driven.

This act becomes effective October 1, 2003. (WGR)

Moving Ahead Transportation Initiative

S.L. 2003-383 (HB 48) authorizes the Department of Transportation to use $300 million in FY 2003-2004 and $400 million in FY 2004-2005 of the cash balances of the Highway Trust Fund for the following purposes: $630 million for highway system preservation, modernization, and maintenance; and $70,000,000 for public transportation purposes.

The act also does the following:

- Requires project selection under this act to be based on identified and documented need; funds expended under this act for preservation, modernization, and maintenance to be distributed in accordance with the equity distribution formula in G.S. 136-17.2A.
- Requires the Department to certify that use of funds pursuant to this act will not adversely affect the delivery schedule of any Highway Trust Fund projects.
- Requires the Department to report to the General Assembly on its use of funds under the act.
- Reaffirms that it is the intent of the General Assembly for proceeds from the issuance of any bonds issued pursuant to the Highway Bond Act of 1996 to be used only for the purposes stated in that act, and for no other purpose.
- Creates a Blue Ribbon Commission to study mobility needs of urban areas in North Carolina.
- Requires funds transferred from the Highway Trust Fund to the General Fund, in addition to the transfer authorized by G.S. 105-187.9, to be repaid to the Highway Trust within five years, using a formula specified in the act.
- Delays the applicability of escort driver training and certification requirements to transportation of agricultural machinery until October 1, 2004.
- Eliminates the flagman requirement when a vehicle is transporting farm equipment under its own power or on a trailer from any field to another field, or from the normal place of storage to a field, if the movement is for no more than ten miles and the vehicle can be seen for 300 feet in both directions during the entire move.

This act became effective July 1, 2003. (GSP)

Drivers Licenses

Drivers License Medical Certification

S.L. 2003-14 (SB 2) amends the law regarding the issuance of a drivers license to an applicant who is afflicted with or suffers from a physical or mental disability or disease that may impair the ability to safely operate a motor vehicle. Current law requires that the applicant submit to a physical examination by a licensed physician who must complete a certificate recommending whether a license should be issued to the applicant.

The act amends the law to allow the Division of Motor Vehicles to issue the license upon the applicant's submission of a signed certificate from a physician licensed by this State or by any other state, deleting the previous restriction that the physician be licensed to practice in North Carolina.

This act became effective April 19, 2003. (WGR)

Military Expiration of Drivers License

S.L. 2003-152 (HB 1159). See **Military, Veterans', and Indian Affairs**.

License Plates

Alpha Kappa Alpha License Plate

S.L. 2003-10 (HB 482) authorizes the Division of Motor Vehicles to issue, upon receipt of 300 applications, an Alpha Kappa Alpha Sorority License Plate for the regular registration fee plus an additional fee of $10.

This act became effective April 10, 2003. (GSP)

Nurses Special Registration Plate

S.L. 2003-11 (HB 237) authorizes the Division of Motor Vehicles to issue, upon receipt of at least 300 applications, a license plate bearing the phrase "First in Nursing" for the regular registration fee plus an additional fee of $25. Fifteen dollars of the additional fee for the plate is to be transferred quarterly to the North Carolina Foundation for Nursing for nursing scholarships.

This act became effective April 10, 2003. (GSP)

Special Registration Plates

S.L. 2003-68 (SB 295) authorizes the Division of Motor Vehicles to issue, upon receipt of at least 300 applications per plate, the following two plates:

- NC Coastal Federation – The special plate is to bear a phrase used by the North Carolina Coastal Federation and an image that depicts the coastal area of the State. The fee for this plate is the regular registration fee plus an additional fee of $25. Fifteen dollars of the money derived from the additional fee is to be transferred quarterly to the North Carolina Coastal Federation, Inc. The North Carolina Coastal Federation is a nonprofit, tax-exempt organization that seeks to provide citizens and groups with the assistance needed to take an active role in the wise management of North Carolina's coastal water quality and natural resources.

- Paramedics – The special plate is to bear the phrase "Professional Paramedic" and the Star of Life logo, and it is issuable to an emergency medical technician-paramedic. The fee for this plate is the regular registration fee plus an additional fee of $10. To be an emergency medical technician-paramedic, a person must be credentialed as such by the Department of Health and Human Services under G.S. 131E-159.

This act became effective May 20, 2003. (WGR)

Various Special Registration Plates

S.L. 2003-424 (HB 855) changes fees for personalized registration plates, authorizes several new special registration plates, and directs the Joint Legislative Transportation Oversight Committee to study issues relating to special registration plates.

The act increases the additional fee imposed for personalized registration plates from $20 to $30, and the additional fee for a Special Olympics plate from $20 to $25.

The act also authorizes 16 new special registration plates, and specifies the additional fee that must be paid for each plate. The Division of Motor Vehicles (DMV) must receive at least 300 applications for a plate before it may be issued. Most of the plates would be on a "First in Flight" background. The following plates are authorized:

- Alternative Fuel Vehicle. – Issuable to a registered owner of an alternative fuel vehicle.
- Be Active NC. – Issuable to a registered owner of a motor vehicle and bears the phrase "Be Active NC" and a representation of the Be Active NC logo.
- Blue Ridge Parkway Foundation. – Issuable to a registered owner of a vehicle. The plate is not required to be on a "First in Flight" plate.
- Breast Cancer Awareness. – Issuable to a registered owner of a motor vehicle and bears the phrase "Early Detection Saves Lives" and a representation of a pink ribbon.
- Buffalo Soldiers. – Issuable to a registered owner of a motor vehicle and bears the phrase "The Buffalo Soldiers" and the logo of the 9th and 10th (Horse) Cavalry Association of the Buffalo Soldiers Greater North Carolina Chapter.
- Celebrate Adoption. – Issuable to a registered owner of a motor vehicle and bears the phrase "Celebrate Adoption" and a representation of a white ribbon with a red heart on it.
- Crystal Coast. – Issuable to a registered owner of a motor vehicle and bears the phrase "Crystal Coast Artificial REEF Association" and a representation of a SCUBA diving flag.
- Delta Sigma Theta Sorority. – Issuable to a registered owner of a motor vehicle and bears the name and symbol of the sorority.
- Fraternal Order of Police. – Issuable to a current member of the State Lodge, Fraternal Order of Police, or the surviving spouse of a member so long as the spouse continues to renew the plate and does not remarry. Plate bears a representation of the Fraternal Order of Police emblem containing the letters "FOP".
- Friends of the Appalachian Trail. – Issuable to a registered owner of a motor vehicle. The plate is not required to be on a "First in Flight" plate.
- Mothers Against Drunk Driving. – Issuable to a registered owner of a motor vehicle and bears the letters "M.A.D.D." and the words "Mothers Against Drunk Driving".
- POW/MIA. – Issuable to a registered owner of a motor vehicle and bears the official POW/MIA logo.
- Red Hat Society. – Issuable to a registered owner of a motor vehicle and bears a representation of The Red Hat Society.
- Retired Law Enforcement Officers. – Issuable to a retired law enforcement officer or the surviving spouse of a retired officer so long as the spouse continues to renew the

plate and does not remarry. The plate must bear the phrase "Retired Law Enforcement Officer" and a representation of a law enforcement badge.

- Surveyor Plate. – Issuable to a registered owner of a motor vehicle and bears the words "Following In Their Footsteps" and a picture of a transit.
- Zeta Phi Beta Sorority. – Issuable to a registered owner of a motor vehicle and bears the name and symbol of the sorority.

The act allows for five special registration plates that do not have to be on a "First in Flight" background. The design for those plates (Friends of the Great Smoky Mountains National Park, Rocky Mountain Elk Foundation, Blue Ridge Parkway Foundation, Friends of the Appalachian Trail, and NC Coastal Federation) must be approved by DMV and the State Highway Patrol.

The act also directs the Joint Legislative Transportation Oversight Committee to study certain issues related to special registration plates. For additional information, see **Studies** in this Chapter.

The study provision became effective August 14, 2003. The remainder of the act becomes effective January 1, 2004. (WGR)

Motor Vehicle Law

Spring Lake and Newton Red Light Cameras

S.L. 2003-86 (HB 68) authorizes the towns of Spring Lake and Newton to adopt traffic control photographic system (red light camera) ordinances.

This act became effective May 28, 2003. (HP)

DWI Blood Test Result – Directly to Clerk

S.L. 2003-104 (SB 619) provides that a blood analysis report sent directly to the clerk of superior court may be used as the basis for civil revocation of a drivers license. G.S. 20-16.5 provides for an automatic 30-day civil revocation of a person's drivers license if that person is charged with an implied consent offense and one of the following four conditions are met:

- The person willfully refuses to submit to chemical analysis.
- The person has an alcohol concentration of 0.08 or more within a relevant time after the driving.
- The person has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial motor vehicle.
- The person has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age.

When a blood analysis has been done, the revocation report is filed with the clerk of superior court, and the clerk issues the civil revocation after finding probable cause based on the report. Prior to this act, the blood analysis was sent to the district attorney and to the charging officer, and the charging officer would then file his report with the analysis results attached.

This act authorizes the clerk to issue a revocation order based on the charging officer's sworn statement and an affidavit received directly by the clerk from the chemical analyst. This allows the charging officer to quickly submit his sworn statement without having to wait for the chemical analysis results to come back. Additionally, the clerk is able to proceed with the revocation procedure as soon as the chemical analysis results are received.

The act also directs the chemical analyst who analyzes the blood to complete an affidavit and provide that affidavit to the charging officer and the clerk of superior court in the county in which the criminal charges are pending.

This act became effective May 31, 2003. (WGR)

Improper Equipment Included in Speeding

S.L. 2003-110 (HB 510). See **Criminal Law and Procedure.**

Beech Mountain Golf Cart/Utility Vehicle Regulation

S.L. 2003-124 (HB 295) authorizes the Town of Beech Mountain to regulate by ordinance the operation of golf carts and utility vehicles on any public street or road within the Town.

This act became effective June 2, 2003. (GSP)

Charlotte Photo Speed-Measuring Systems

S.L. 2003-280 (HB 562), as amended by S.L. 2003-380, Sec. 5 (HB 786, Sec. 5), authorizes the City of Charlotte to use photographic speed-measuring systems during a three-year pilot program in designated corridors in that city and to establish civil penalties for speed limit and school zone speed limit violations. A photographic speed-measuring system works in conjunction with a photographic, video, or electronic camera to automatically measure the speed and produce photographs, video or digital images of vehicles violating a speed limit or speed restriction. The systems will be calibrated pursuant to standards adopted by the North Carolina Criminal Justice Education and Training Standards Commission and the Secretary of Crime Control and Public Safety and will be monitored by a sworn law enforcement officer at all times that the system is actively in use. Any system installed or in use shall be identified by appropriate advance warning signs conspicuously posted not more than 1,000 feet from the location of the system.

The owner of a vehicle photographed is responsible for the violation unless the owner furnishes an affidavit within 30 days of notification of the violation that, at the time of the offense, the vehicle was under the care, custody or control of another person or that the vehicle had been stolen. The affidavit must be supported with supporting evidence, such as insurance or police report information. The owner shall not be responsible for the violation if notice of the violation is given to the registered owner more than 90 days after the date of the violation. The violation is noncriminal and includes a $50 civil penalty. No license or insurance points may be assessed. If the owner fails to provide evidence or pay the civil penalty, the owner waives the right to contest the responsibility and will be subject to an additional penalty not to exceed $50.

The city must institute a nonjudicial administrative hearing process to review objections to citations or penalties issued or assessed. The clear proceeds from the violations shall be paid to the county school fund. Clear proceeds means the funds remaining after paying for the lease, lease-purchase, or purchase of the photographic speed-measuring system; paying for operation of the system, either by the city or by a contractor; paying for a program to provide public awareness of the system; and paying any administrative costs incurred by the city related to the use of the system.

This act became effective July 1, 2003 and expires June 30, 2006. (SS)

Horse Trailer/Weigh Stations

S.L. 2003-338 (HB 425) exempts certain privately owned noncommercial horse trailers from a requirement to stop at permanent weigh stations, unless the driver is specifically directed to stop by a law enforcement officer.

G.S. 20-118.1 requires any person operating a vehicle or combination of vehicles having a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds or more to enter weigh stations as directed by signs on the highway for the purpose of being screened for compliance, or weighed, or inspected.

This act provides that the driver of a privately owned noncommercial horse trailer designed to carry four or fewer horses is not required to stop at a permanent weigh station while transporting horses, unless the driver is directed to stop by a law enforcement officer. 'Privately owned noncommercial horse trailer' is defined as a trailer used solely for the occasional transport of horses and not for compensation or in furtherance of a commercial enterprise.

This act became effective July 20, 2003. (WGR)

Parking/Red Light Camera Liability Rules

S.L. 2003-380 (HB 786) makes various changes to the liability rules that apply to parking, red light camera, and speed camera enforcement actions.

Parking Tickets/Leased or Rented Vehicles. – The act allows registered owners who lease or rent their vehicles to avoid liability for parking tickets. The owner has 30 days following notification of the violation to provide the name and address of the person who had leased or rented the vehicle at the time of the violation. If the owner receives notification more than 90 days after the violation date, then the owner has no obligation to provide the name or address of the lessee or renter, and is not responsible for the violation.

Red Light Cameras. – The act amends the laws that allow a vehicle's registered owner to avoid liability when their vehicle is photographed in violation of the traffic control statute (red light camera) in the following ways:

- By providing that, in certain cities, the owner is not liable if he provides, within 30 days (previously 21 days) after notification of the violation, an affidavit stating:
  - The name and address of the person who had care, custody, and control of the vehicle at the time of the violation; or
  - That the vehicle was stolen. The act adds the requirement that the stolen vehicle affidavit must be supported with evidence, such as insurance or police report information.

  The new law also provides that the owner is not liable if the notification of violation is given more than 90 days after the date of the violation. These changes apply only to the Cities of Albemarle, Charlotte, Durham, Fayetteville, Greensboro, High Point, Rocky Mount, Wilmington, Greenville, Lumberton, and Newton; to the Towns of Chapel Hill, Cornelius, Huntersville, Matthews, Nags Head, Pineville, and Spring Lake; and to the municipalities in Union County.
- By providing that, in certain cities, the owner is not liable if he provides, within 30 days (previously 21 days) after notification of the violation, an affidavit stating:
  - The name and address of the person who had care, custody, and control of the vehicle at the time of the violation;
  - That the vehicle was stolen; or
  - That the person who received the notification was either not the owner or driver of the vehicle, or was not driving a vehicle at the time of the violation.

  The act adds the requirement that the stolen vehicle affidavit must be supported with evidence, such as insurance or police report information. The new law also provides that the owner is not liable if the notification of violation is given more than 90 days after the date of the violation. These changes apply only to the City of Concord, and any municipality with 51% or more of its land area lying within Wake County.

Speed Cameras. – The act also amends the statute that allows for photographic speed-measuring systems (speed cameras), and also amends S.L. 2003-280 (HB 562) passed earlier in the Session. A person receiving a citation under the "speed camera" law is not responsible for

the violation if he provides, within 30 days (previously 21 days) after notification of the violation, an affidavit stating:

- The name and address of the person who had care, custody, and control of the vehicle at the time of the violation; or
- That the vehicle was stolen.

The law adds the requirement that the stolen vehicle affidavit must be supported with evidence, such as insurance or police report information. The new law also provides that the owner is not liable if the notification of violation is given more than 90 days after the date of the violation. This section expires June 30, 2006. These changes apply only to the City of Charlotte.

This act became effective August 1, 2003. (HP)

Hit and Run – 2 Year License Revocation

S.L. 2003-394 (HB 963) provides that a person may have his or her drivers license revoked for a period of two years for leaving the scene of an accident involving personal injury or death.

G.S. 20-166(a) requires the driver of any vehicle who knows or reasonably should know that the vehicle he is operating is involved in an accident or collision that has resulted in injury or death to any person to immediately stop at the scene of the accident or collision. The driver is required to remain at the scene of the accident until a law-enforcement officer completes an investigation of the accident or collision or authorizes the driver to leave. A willful violation of the duty to stop is a Class H felony. Under G.S. 20-17(a)(4), the Division of Motor Vehicles (DMV) is required to revoke the license of a driver for one year upon receiving a record of the driver's conviction for failure to stop and render aid in violation of G.S. 20-166(a).

This act requires DMV to revoke the drivers license of a person convicted of violating G.S. 20-166(a) for an additional year if the court finds that a longer period of revocation is appropriate under the circumstances of the case. Upon a first conviction only, the trial judge may allow for limited driving privileges during the period of revocation.

This act becomes effective December 1, 2003, and applies to offenses committed on or after that date. (WGR)

Motor Vehicle Dealers

Amend Dealer Licensing Law

S.L. 2003-254 (SB 777). See **Occupational Boards and Licensing.**

Auto Auctioneers – No Dealer License Needed

S.L. 2003-265 (HB 692) amends the Motor Vehicle Dealers and Manufacturers Licensing Law to provide that properly licensed auctioneers are exempt from the licensing requirements of the motor vehicle dealer licensing law, provided that the auctioneer is employed by a licensed motor vehicle dealer and conducting a motor vehicle auction for that dealer.

This act became effective June 26, 2003. (WGR)

Public Transportation

Charlotte Transit Procurement

S.L. 2003-197 (HB 706) amends the Charter of the City of Charlotte and the General Statutes by establishing a Regional Public Transportation Authority to allow the city and a Regional Public Transportation Authority to purchase apparatus, supplies, materials, or equipment for public transit purposes from persons or entities that have recently met State bidding law requirements and provided apparatus, supplies, materials, or equipment to the federal government, the State of North Carolina, or another state.

This act became effective June 12, 2003. (GSP)

Rail Corridor Subdivisions

S.L. 2003-284, Sec. 29.23 (HB 397, Sec. 29.23) amends the definition of "subdivision" of land applicable in city and county land use ordinances to exclude the public acquisition by purchase of strips of land for public transportation corridors.

This section became effective July 1, 2003. (GSP)

Trucks

CDL Changes/Study Moped Tag Identification

S.L. 2003-397 (SB 61) amends several North Carolina statutes relating to Commercial Drivers Licenses (CDL) to conform with regulations issued by the Federal Motor Carrier Safety Administration on July 31, 2002. Failure to comply with these regulations would have resulted in the loss of Federal aid highway funds.

The act amends the definition of "serious traffic violation" to include (i) driving a commercial motor vehicle without obtaining a CDL, (ii) driving a commercial motor vehicle without a CDL in the driver's possession, and (iii) driving a commercial motor vehicle without the proper class of CDL or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported. The act also provides that a person may not be convicted of failing to carry a CDL if, by the date they are required to appear in court for the violation, the person produces a CDL issued to that person that was valid on the date of the offense. These provisions of this act become effective January 1, 2005.

The act requires disqualification from driving a commercial motor vehicle for violation of certain railroad crossing offenses. A first violation results in a 60-day disqualification. A second violation within a 3-year period results in a 120-day disqualification. A third or subsequent violation within a 3-year period results in a one-year disqualification. This provision becomes effective October 1, 2003.

The act requires a new "S" endorsement for driving a school bus and requires school bus drivers to pay the same endorsement fee required for other endorsements. The act provides for current school bus drivers to be grandfathered and receive the "S" endorsement without testing if they are currently licensed, have experience driving a school bus, have a good driving record, and meet certain other criteria. The "S" endorsement requirement becomes effective October 1, 2003. The provisions for waiving the test criteria are effective October 1, 2003 and expire September 30, 2005.

The act also authorizes the Joint Legislative Transportation Oversight Committee to study the need for a moped identification tag program. For additional information, see **Studies** in this Chapter. (SS)

Other

Disclosure of Prior Motor Vehicle Damage

S.L. 2003-258 (SB 558). See **Commercial Law and Consumer Protection**.

Required Notices for Towing Payments

S.L. 2003-336 (HB 944). See **Commercial Law and Consumer Protection.**

Motor Vehicle Insurer to Disclose Financial Interest

S.L. 2003-395 (HB 986). See **Insurance.**

Amortization Moratorium

S.L. 2003-432 (HB 754). See **Local Government.**

Studies

New/Independent Studies/Commissions

Highway Trust Fund Study Committee

S.L. 2003-284, Sec. 29.12 (HB 397, Sec. 29.12) reenacts the Highway Trust Fund Study Committee. The Committee is directed to report to the Joint Legislative Transportation Oversight Committee by November 1, 2004.

This section became effective July 1, 2003. (GSP)

Virginia-North Carolina Interstate High-Speed Rail Commission

S.L. 2003-284, Sec. 29.19 (HB 397, Sec. 29.19) reenacts the Virginia-North Carolina Interstate High-Speed Rail Commission. The Commission is directed to report its findings and any recommendations to the Governor and the General Assembly by November 30, 2004.

This section became effective July 1, 2003. (GSP)

Moving Ahead Transportation Initiative

S.L. 2003-383, Sec. 5 (HB 48, Sec. 5) creates a Blue Ribbon Commission to study mobility needs of urban areas in North Carolina.

This section became effective July 1, 2003. (GSP)

Referrals to Existing Commissions/Committees

Department of Transportation Project Delivery Process Study

S.L. 2003-284, Sec. 29.21 (HB 397, Sec. 29.21) directs the Joint Legislative Transportation Oversight Committee to contract with an independent consultant to study the project delivery process of the Department of Transportation.

This section became effective July 1, 2003. (GSP)

CDL Changes/Study Moped Tag Identification

S.L. 2003-397, Sec. 6 (SB 61, Sec. 6) authorizes the Joint Legislative Transportation Oversight Committee to study the need for a moped identification tag program. This section provides that if the Committee finds that identifying mopeds is desired, it may recommend the methods and process for identifying them.

This section became effective August 7, 2003. (SS)

Various Special Registration Plates

S.L. 2003-424, Sec. 7 (HB 855, Sec. 7) directs the Joint Legislative Transportation Oversight Committee to study the following issues related to special registration plates:

- Special plates that have not received the minimum number of applications and whether to repeal authority for those plates.
- The registration plate background and other methods of identifying North Carolina vehicles.
- The fees imposed for special plates and the distribution of those fees.

This section became effective August 14, 2003. (WGR)

Amortization Moratorium

S.L. 2003-432, Sec. 2 (HB 754, Sec. 2) directs the Revenue Laws Study Committee to study local government ordinances amortizing off premises outdoor advertising, and report to the 2004 Regular Session of the 2003 General Assembly.

This section became effective August 19, 2003.

Referrals to Departments, Agencies, Etc.

Driver Education Privatization

S.L. 2003-284, Sec. 29.7 (HB 397, Sec. 29.7). See **Education.**

Chapter 26
Utilities

Kory Goldsmith (KG), and Steve Rose (SR)

Enacted Legislation

Electricity

Remove Sunset/Municipal Electric Service

S.L. 2003-24 (SB 338) makes permanent the changes enacted in S.L. 1997-346 as amended by S.L. 1999-111. S.L. 1997-346 allowed secondary suppliers of electricity (suppliers other than the city or the entity holding a franchise from the city) to supply electricity in newly annexed municipal territory with the agreement of the city. It also made changes to Chapter 117 of the General Statutes, which applies to electric and telephone membership corporations. It allows voting by proxy where the issue involves the sale or encumbrance of co-op property, or the dissolution of an electric cooperative. Prior to the passage of S.L. 1997-346, only votes cast in person could be counted.

As enacted, the provisions in S.L. 1997-346 were scheduled to sunset at sine die adjournment of the 1999 General Assembly. S.L. 1999-111 extended that date to December 31, 2003. This act removes the sunset and makes the changes permanent.

This act became effective April 24, 2003. (SR)

Telecommunications

Clarify Competitive Telecommunications Statutes

S.L. 2003-91 (SB 814) provides for the deregulation of intrastate long distance services.

The act begins by making a finding that all in-state long distance services and all long distance operator services are sufficiently competitive so as to no longer require regulation by the North Carolina Utilities Commission (Commission). The Commission retains jurisdiction over complaints dealing with unauthorized changes of long distance services or unauthorized charges in connection with those services.

The act also amends G.S. 62-133.5, which allows the Commission to approve pricing plans that are not based on a regulated recovery of costs and a regulated rate of return. The change provides that if a company has shifted from rate of return regulation to price regulation and then seeks a modification of its plan, and if the Commission disapproves any part of the modification request, the company may remain under the previously approved price plan. G.S. 62-133.5 is also amended to prohibit the Commission from using a company's earnings or rate of return to determine if a proposed price regulation plan is in the public interest. (The Commission would not approve a plan not in the public interest.) G.S. 62-133.5 is further amended to provide that the Commission no longer regulates returned check charges. Instead, the charges are controlled by G.S. 25-3-506 which provides for a $25 fee. Finally, local telephone providers and competing local providers may make promotional or bundled service offerings that combine regulated and nonregulated services featuring discounts applicable to nonregulated services without Commission approval. The companies must give the Commission one day's notice prior to the offering. The companies are not obligated to convert existing customers who subscribe to the same or similar services.

This act became effective May 30, 2003. (KG)

Universal Telephone Service Provider

S.L. 2003-99 (HB 913) eliminates the requirement that the North Carolina Utilities Commission (Commission) adopt rules by July 1, 2003, concerning the provision of universal local telephone service, the person that should be the universal service provider, and the appropriate funding mechanism.

The General Assembly enacted legislation authorizing competition in local telephone service in 1996. That legislation required the Commission to adopt rules concerning the provision and funding of universal telephone service. Universal service means that affordable, basic local telephone service should be available to everyone. The original date for the adoption of final rules was July 1, 1998, which the General Assembly later extended to July 1, 2003. The reason for the delay is that it has taken longer than expected to complete all the proceedings before the Commission regarding local competition. Temporary rules are in place and universal service has been provided and continues to be provided. The act allows the Commission to determine when it is in the public interest to adopt final rules.

This act became effective May 31, 2003. (SR)

Extend Telecommunications Relay Service Surcharge to Wireless Connections

S.L. 2003-341 (SB 939) extends the current statewide telecommunications relay service (TRS) surcharge imposed on landline phones to wireless phones. The act provides that a Commercial Mobile Radio Service (CMRS) provider must, as part of its monthly billing process, collect from each CMRS connection the same surcharge imposed on each landline phone. A CMRS connection means each mobile handset telephone number assigned to a CMRS customer with a place of primary use in North Carolina. The CMRS provider may deduct a 1% administrative fee from the surcharge collected. The remainder must be remitted to the Wireless 911 Board (Board) in the same manner and on the same schedule as the funds are handled by the local service providers. The Board must remit the surcharge revenues to the State Treasurer to be credited to the interest-bearing, nonreverting account established to fund the TRS program.

This act becomes effective January 1, 2004, and applies to wireless telephone bills issued on or after that date. (KG)

Unwanted Telephone Solicitations

S.L. 2003-411 (SB 872). See **Commercial Law and Consumer Protection**.

Wireless 911 Charges/Allocation

S.L. 2003-418, Sec. 29(b) (SB 97, Sec. 29(b)) amends G.S. 62A-23(b) regarding the allocation of the wireless 911 funds. Previously, the statute provided that of the wireless 911 funds remitted, 40% would be allocated to the local 911 centers and 60% would be allocated to wireless phone service providers. The 911 Wireless Board (Board) had the authority to change this allocation, but only in conjunction with an adjustment to the service charge and the reallocation could only affect subsequent receipts. The amendments to G.S. 62A-23(b) allow the Board to reallocate the 40-60% split between the 911 centers and the wireless phone service providers. The amendment allows the reallocation at any time, and also allows the reallocation to apply to money already in the fund balance, as well as subsequent receipts. This allows the Board greater flexibility to meet the financial needs of the wireless providers and the 911 centers

as the wireless 911 system is deployed in accordance with federal requirements and in light of the diversion of Wireless 911 Fund receipts in the 2003-05 biennium.

This section became effective August 14, 2003. (SR)

Chapter 27
Vetoed Legislation

Karen Cochrane-Brown (KCB) and Robin Johnson (RJ)

Conform Mortgage Lending Laws

HB 917 amends the law governing permissible interest rates and fees for home loans secured by first mortgages or first deeds of trust. The bill amends a provision that applies to affiliates licensed under the Consumer Finance Act who are operating in the same office and making home loans. The provision limits the amount of interest, points, and fees that may be charged by these lenders. The bill also repeals a provision relating to interest rates for savings and loan associations. Finally, the bill directs the Legislative Research Commission to study the banking and lending laws of the State and make recommendations to the 2004 Session of the General Assembly. It also directs the Commissioner of Banks to report to the 2005 General Assembly by April 1, 2006 on the effects of this act and to make any recommendations the Commissioner deems appropriate. This act would have become effective January 1, 2004, and would have expired on October 1, 2006. The General Assembly ratified this bill on July 20, 2003.

On August 19, 2003, Governor Michael F. Easley vetoed the bill. In his veto message, the Governor stated the following reasons for his veto:

> "HB 917 would raise the fees that consumer finance companies may charge mortgage borrowers by two percentage points (from one percent to three percent). It would allow new deferral fees and new modification fees of $150 each per year. All of these fee increases are in addition to the statutorily allowed interest of up to 15 percent.
>
> Consumer finance companies primarily make high rate, personal unsecured consumer loans to borrowers who may not qualify for bank loans. However, if consumer finance companies move these borrowers into first mortgage loans, they can charge up to 15 percent interest and an origination fee, while taking the borrower's home as security. To allow additional charges under these circumstances is unnecessary and harmful.
>
> North Carolina is known for having one of the toughest predatory lending laws in the country. During a national recession, many families are struggling to make ends meet. However, the five large national and international conglomerates that make the vast majority of consumer finance loans are thriving. This legislation has no economic benefit to North Carolina or our working families. It would simply increase the cost of loans for North Carolina citizens at a time that they can afford it least."

On August 27, 2003, the General Assembly reconvened. Upon receipt of the veto message, the House re-referred the bill to the Committee on Rules. The General Assembly adjourned without taking further action on the bill. The bill, as ratified, is still eligible for consideration and the Governor's veto could be overridden until adjournment sine die of the 2003 General Assembly. (KCB)

No Portfolio Required/Teacher Certification

SB 931 makes the following changes:

- Prohibits the State Board of Education from including a portfolio requirement as a part of the rigorous standards for continuing certification for teachers.
- Requires the State Board of Education, in consultation with the Board of Governors of The University of North Carolina, to revise the standards for continuing certification so that the portfolio requirement for teachers would no longer be required.
- Repeals the provision of up to three days of approved paid leave for teachers to work on their performance-based product or to consult with their mentors.
- Prohibits the State Board of Education from adding, now or in the future, any new teacher certification requirements without explicit legislative authorization.

The General Assembly ratified this bill on May 28, 2003.

On June 8, 2003, Governor Michael F. Easley vetoed the bill. In his veto message, the Governor stated the following reasons for his veto:

> "The North Carolina Constitution and our state Supreme Court decision in *Leandro* support the State Board's role to determine the standards and requirements for public school teachers in North Carolina reflecting our priorities for improving student achievement. Both charge the executive branch of government with a duty to provide every child with an opportunity for a sound basic education. This duty cannot be fulfilled without the executive branch having the capacity to adjust rules, regulations, and policies in a timely manner that reflect changing societal and educational needs. While the Constitution reserves certain powers to the General Assembly, it specifically grants the general authority for the State Board of Education to 'administer the free public school system.' Section four of this bill impairs the executive branch's ability to execute its constitutional duty. This section is also in direct conflict with and erodes the Excellent Schools Act of 1997 requiring the State Board to set rigorous standards for teachers and student achievement. Removing the authority of the State Board of Education to ensure teacher standards is not only bad public policy, but it is also constitutionally questionable."

The Senate, upon receipt of the veto message, re-referred the bill to the Committee on Rules and Operations of the Senate. On June 11, 2003, the State Board of Education held an emergency meeting and took action to eliminate the portfolio requirement as a prerequisite for continuing certification for teachers. The General Assembly adjourned without voting on whether to override the veto. The bill, as ratified, is still eligible for consideration and the Governor's veto could be overridden until adjournment sine die of the 2003 General Assembly. (RJ)

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