



INTRODUCTION

At last, here is your Final Legislative Report for the first year of the 2009 legislative session. I have summarized bills of interest for your association that we worked on during the session, bills that I wanted to make you aware of and some general interest legislation. As you can see, there was a lot of activity this year at the General Assembly and many detailed and important pieces of legislation were approved.

This session was the most intense session that I have experienced since I started lobbying. The financial crisis in the State caused the budget negotiations to be very intense and impacted all legislation that was filed. If legislation had a money component, there was very little chance that it would be approved during the session, since there was no money available even for small projects or legal changes. Since this was the long session, more controversial legislation was debated and approved, including the ban on smoking and the ban on texting, the bullying bill, sex education changes, racial profiling legislation, and a host of others. Legislators tend not to take on such controversial bills during the short session since elections are right around the corner.

Controversy continued in the Legislature with several legislators under fire to the extent that they resigned. Rep. Cary Allred faced allegations of being intoxicated on the floor of the House and acting inappropriately with a page. Although he denied the allegations, he resigned during session. Rep. Ty Harrell currently faces allegations of misusing his campaign funds. He resigned recently before the Legislative Ethics Committee could meet and the investigation will end since he is no longer a legislator. The Board of Elections though will continue to investigate and will most likely hold a hearing regarding the allegations. Of course, the most interesting of scandals involves former Governor Easley who is being investigated by a federal grand jury. Although the grand jury deliberations are confidential, the press has been reporting the witnesses to the grand jury and it appears they are investigating the land deal in Southport, the hiring of Mary Easley at NC State, and the use of airplanes, cars, and other resources without reporting them as gifts. And, of course, this paragraph would not be complete without a mention of former Senator John Edwards's problems as he is also being investigated regarding the use of his campaign funds.

It is an honor to represent the North Carolina Burglar and Fire Alarm Association at the North Carolina General Assembly. It is wonderful to work with such a great group of people and I look forward to a long and successful relationship with you trying to achieve our goals at the General Assembly.



NORTH CAROLINA BURGLAR & FIRE ALARM ASSOCIATION



THIS LEGISLATIVE REPORT IS A
PUBLICATION OF KOCHANЕК LAW GROUP
AND IS A MEMBER BENEFIT OF NCBFAA.
ANY USE OR REPRODUCTION OF THIS
REPORT IS LIMITED TO NCBFAA
AND ITS MEMBERS.

FOR MORE INFORMATION:

Colleen Kochanek
NCBFAA Legislative Counsel
P.O. Box 12946
Raleigh, NC 27605
919.747.9988
colleen@kochaneklawgroup.com
www.kochaneklawgroup.com

HOUSE BILL 2, Prohibit Smoking in Certain Public Places, prohibits smoking in all state government buildings and in all enclosed areas of restaurants and bars. Exceptions are provided for: (1) a designated smoking guest room in a lodging establishment; however, no greater than 20% of a lodging establishment's guest rooms may be designated smoking guest rooms; (2) a cigar bar; or (3) a private club. In addition, local governments may adopt additional ordinances or rules that restrict smoking and may enforce ordinances, board of health rules, and policies restricting or prohibiting smoking that are more restrictive than state law.

However, local governments may **NOT** restrict or prohibit smoking in the following places: (1) a private residence or vehicle; (2) a tobacco shop; (2) all of the premises, facilities, and vehicles owned, operated, or leased by any tobacco products processor or manufacturer, or any tobacco leaf grower, processor, or dealer; (4) a designated smoking guest room in a lodging establishment as long as no more than 20% of a lodging establishment's guest rooms are designated smoking guest rooms; (5) a cigar bar; (6) a private club; (7) a motion picture, television, theater, or other live production set; however, this exemption applies only to the actor or performer portraying the use of tobacco products during the production. Continuing to smoke in a nonsmoking area after receiving an oral or written notice by the person in charge of the area is an infraction punishable by a fine of not more than \$50, with no court costs. **Effective: May 19, 2009, but not enforceable by the local health director until January 2, 2010.**

HOUSE BILL 9, No Texting While Driving, makes it unlawful for any person to operate a vehicle while using a mobile telephone to: (1) manually enter multiple letters or text in the device as a means of communicating with another person; or (2) read any e-mail or text message transmitted to the device or stored within the device, except for any name or number stored in the device or any caller identification information. Exceptions are provided for the operator of a vehicle that is lawfully parked or stopped; a law enforcement officer, a member of a fire department, or the operator of a public or private ambulance; the use of global positioning systems (GPS) or wireless communications devices; and the use of voice operated technology. A violation while operating a school bus is a Class 2 misdemeanor and is punishable by a fine of not less than \$100. Any other violation is an infraction punishable by a fine of \$100 plus court costs. No driver's license points or insurance surcharge will be assessed as a result of a violation and failure to comply will not constitute negligence per se or contributory negligence per se by the operator. **Effective: December 1, 2009.**

HOUSE BILL 22, Enhance Youth Employment Protections, enhances youth employment protections by requiring the Commissioner of Labor to report on enforcement activities. The Commissioner will submit a written report on the Department of Labor's investigative, inspection, and enforcement activities under the Wage and Hour Act pertaining to youth employment. The report will include:

- all activities the Department of Labor has sponsored or participated in to educate employers about their responsibilities under the Wage and Hour Act;
- the total number of complaints received by the Department alleging youth employment violations or any regulations issued under the Wage and Hour Act;
- the specific types of youth employment violations alleged and the ages of the youths referenced in the complaints received by the Department;
- the total number of investigations conducted by the Department concerning alleged youth employment violations, the length of the investigations, and the number of investigators assigned to conduct the investigations;

- the total number of administrative proceedings involving youth employment violations;
- the total number and identity of employers cited for youth employment violations and the industries or occupations that received the greatest and the least number of complaints;
- the total number and dollar amount of civil penalties assessed and the total number and dollar amount of civil penalties actually collected;
- an explanation of any obstacles that prevented the Department of Labor from enforcing any provision of the Wage and Hour Act as it pertains to youth employment, and any recommended changes to the Wage and Hour Act to strengthen the Department of Labor's oversight and the enforcement of youth employment laws and regulations in this state; and
- recommendations about the funding needed by the Department to eliminate any obstacles to enforcement of youth employment laws.

Effective: June 19, 2009.

HOUSE BILL 23, Strengthen Child Labor Violation Penalties, increases the civil penalty for any employer who violates youth employment laws and regulations from \$25 to \$500 for a first violation and \$1,000 for each subsequent violation. The maximum civil penalty for failing to make, keep, and preserve records of the persons employed by the employer and of the wages, hours, and other conditions and practices of employment as required under the Wage and Hour Act is increased from \$1,000 to \$2,000. A penalty of up to \$14,000 will be assessed for each serious violation that involves injury to an employee less than 18 years of age. **Effective: December 1, 2009.**

HOUSE BILL 85, Increase Raffle Prize Limit, increases the maximum total cash prizes offered or paid by any nonprofit organization or association from \$50,000 to \$125,000 in any calendar year. The maximum total fair market value of all prizes offered by any nonprofit organization or association, either in cash or in merchandise that is not redeemable for cash, is also increased from \$50,000 to \$125,000. The legislation authorizes real property to be offered as a prize in a raffle. The maximum appraised value of real property that may be offered for any one raffle by any nonprofit organization or association may not exceed \$500,000 in any calendar year. **Effective: June 1, 2009.**

HOUSE BILL 221, Oversight of Licensing Boards, authorizes the Joint Legislative Administrative Procedure Oversight Committee to review the activities of state occupational licensing boards. The Committee will determine if the boards are operating in accordance with statutory requirements and if the boards are still necessary to achieve the purposes for which they were created. The review will not include decisions concerning board personnel matters or determinations on individual licensing applications or individual disciplinary actions. Each occupational licensing board will file an annual report by October 31 of each year that includes the number of official complaints received involving licensed and unlicensed activities and the number of disciplinary actions taken against licensees, or other actions taken against nonlicensees. If a board fails to comply with the reporting requirements, the board's authority to expend any funds will be suspended until the required reports are filed; however, the board may continue to issue and renew licenses and the validity of any application or license for which fees have been tendered will not be affected. Each board member must receive training on the statutes that govern the board and on the Administrative Procedure Act, the Public Records Law, the Open Meeting Act, the State Tort Claims Act, the Defense of State Employees Law, the State Government Ethics Act, and lobbying laws within six months of his or her initial appointment to the board and every two years thereafter. **Effective: October 1, 2009.**

HOUSE BILL 686, Modernize Do Not Call Procedures, requires all phone companies and competing local providers certified to do business in North Carolina to notify all telephone subscribers who subscribe to residential service from that company of the consumer's right to object to receiving telephone solicitations. The notification will be drafted by the Attorney General's Office and will be provided to the companies for distribution to the consumer. The notification must be sent out at least once a year by bill insert or bill message, direct mail, or e-mail when the subscriber has selected e-mail as a means of notification. **Effective: October 1, 2009.**

HOUSE BILL 752, Lobbying Late Fees, authorizes a late filing fee of \$50 per day, commencing on the 10th business day after the date the certified letter sent by the Secretary of State advising the lobbyist, lobbyist principal, or other person required to file an expense report of the delinquency is received. The cumulative late filing fee may not exceed \$500. Previously, no late notice was required and late fees were incurred automatically. **Effective: October 1, 2009.**

HOUSE BILL 764, Speaker's and President Pro Tempore's Appointments, appoints persons to various boards and commissions based upon the recommendations of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. **Effective: August 11, 2009.**

- Larry W. McClellan of Forsyth County and, effective January 1, 2010, Guy John Phillips of Jackson County are appointed to the Alarm Systems Licensing Board for terms expiring on June 30, 2012.
- Rodney Dickerson and Valoree Eikinas of Wake County are appointed to the State Building Commission for terms expiring on June 30, 2012.
- Chris Smith of Hertford County is appointed to the State Fire and Rescue Commission for a term expiring on June 30, 2010, to fill the unexpired term of William Winn.

HOUSE BILL 877, Repeal UI Disqualification for Trailing Spouses, makes a variety of amendments regarding unemployment insurance. The changes include: prohibiting a person from being denied unemployment compensation solely because the person is seeking only part-time work as long as a majority of weeks of work in the individual's base period include part-time work; removing disqualifying conditions related to separating from work for compelling family reasons, including domestic violence, illness, or disability; and repealing the 2-week disqualification for unemployment benefits as a result of leaving work to accompany a spouse to a new place of residence for work in a different location and making those benefits nonchargeable to the employer. **Effective: January 1, 2010.**

HOUSE BILL 945, The Studies Act of 2009, is the annual studies bill that authorizes the Legislative Research Commission and other legislative standing committees and task forces to study a variety of issues from bills that were not approved during the session and other issues of interest to the Legislature. As you can see, there are over one hundred studies, but very few will actually take place before the next session begins. The following is a list of studies that are authorized to be conducted and the committee or commission that will undertake the study.

- The Legislative Research Commission may study the number of adults in North Carolina who have credit hours at a state institution of higher education but who have not earned a

bachelor's degree and consider initiatives, incentives, and methods to recruit these persons back to college to complete their degree.

- The Legislative Research Commission may study the issue of gasoline shortages in North Carolina. In particular, the Commission may study the gasoline shortages experienced across the state in the wake of Hurricanes Ike and Gustav in 2008.
- The Legislative Research Commission may study the adequacy of public participation in the setting of rates for homeowners insurance in North Carolina.
- The Legislative Research Commission may study the duration of the compensation for Temporary Total Disability under the Workers' Compensation Act.
- The Legislative Research Commission may study whether and to what extent the security and emergency medical services at the state legislative buildings and grounds need to be upgraded.
- The Revenue Laws Study Committee may examine:
 - the feasibility of programs for small businesses with annual gross receipts of \$1.5 million or more and less \$2 million that would provide low-interest loans for any of the following purposes: purchasing real or business property used to maintain or expand workforce; improving real property, whether owned or leased, to make it more energy efficient; acquiring broadband connectivity and technology to improve efficiency of business operations;
 - the feasibility of programs for small business with annual gross receipts of \$500,000 or more and less than \$1.5 million for any of the following purposes: providing working capital grants; providing low-interest construction loans for the purchase of real or business property used to maintain or expand the workforce; improving real property, whether owned or leased, to make it more energy efficient; acquiring broadband connectivity and technology to improve the efficiency of business operations; or any other legitimate business purpose designed to improve business efficiency; and
 - the feasibility of microloans and microgrants to small businesses with annual gross receipts of less than \$500,000 for any legitimate business purpose.
- The Department of Health and Human Services, Division of Public Health, may study the feasibility of establishing a school-based influenza vaccination pilot program. The program would vaccinate against influenza all children ages 6 months to 18 years in accordance with the recommendations of the National Advisory Committee on Immunization Practices. The Division may: (1) examine the costs and benefits of establishing a school-based influenza vaccination pilot program; (2) identify any barriers to implementing the school-based influenza vaccination pilot program and recommend strategies for removing the barriers; and (3) determine the fiscal impact to the State of the proposed pilot program.

HOUSE BILL 1034, Allow Recorded Phone Messages/Public Safety, allows automatic dialing and recorded message players to be used to make unsolicited phone calls to protect the public health, safety, or welfare. Current law prohibits persons from making an unsolicited automatic dialing and recorded messages except under specific circumstances. No part of the call may be used to make a telephone solicitation, the person making the call must clearly identify the person's contact information and the nature of the unsolicited telephone call, and the sole purpose of the unsolicited telephone call must be to protect the public health, safety, or welfare. The calls may be made to inform the telephone subscriber that: (1) he or she has purchased a product that is subject to a recall due to safety or health concerns; (2) he or she may have received a prescription or over-the-counter medication that is subject to a recall; or (3) he or she has not picked up a filled prescription drug for which a valid prescription is on file with a pharmacy and the telephone subscriber requested that the prescription be filled. All messages left must comply with applicable HIPAA and privacy requirements.

In addition, a person may use an automatic dialing and recorded message player to make an unsolicited telephone call as long as no part of the call may be used to make a telephone solicitation, the person making the call must clearly identify the person's contact information and the nature of the unsolicited telephone call for the following: (1) in connection with an existing debt or contract for which payment or performance has not been completed at the time of the unsolicited telephone; (2) the unsolicited telephone call is placed by a person with whom the telephone subscriber has made an appointment, if the call is conveying information only about the appointment, or by a utility, telephone company, cable television company, satellite television company, or similar entity for the sole purpose of conveying information or news about network outages, repairs or service interruptions, and confirmation calls related to restoration of service; or (3) the unsolicited telephone call is placed by, or on behalf of, a health insurer a from whom the telephone subscriber or other covered family member of the health insurer receives health care coverage or the administration of such coverage, if the call is conveying information related to the telephone subscriber or family member's health care, preventive services, medication or other covered benefits. **Effective: July 27, 2009.**

HOUSE BILL 1129, Clarify Silver Alert - All Ages, clarifies that a silver alert may be issued for a person of any age who is believed to be suffering from dementia or other cognitive impairment. **Effective: June 19, 2009.**

SENATE BILL 584, Amend Private Protective Services Act, includes amendments to the laws regarding the Alarm Systems Licensing Board. The main provision allows the Board to receive the criminal record report from a criminal reporting service and will require the applicant to pay for the cost of these reports. This provision should help with the backlog of criminal checks that is being experienced at the Department of Justice. **Effective: October 1, 2009.**

SENATE BILL 625, No Deceptive Advertising/Business Location, expands the prohibition on misrepresenting the geographic location by businesses that supply perishable products to include prohibiting misrepresentation in any other part of the business listing including a telephone directory, other directory assistance database, on the internet, or in any other part of an advertisement. **Effective: October 1, 2009.**

SENATE BILL 786, University Nonappropriated Capital Projects, authorizes a variety of capital improvements projects at University of North Carolina schools without appropriations from the General Fund, including over \$1.1 million at Elizabeth City State University and over \$7.2 million at the University of North Carolina at Chapel Hill for residence hall fire suppression sprinkler system installations. **Effective: August 28, 2009.**

SENATE BILL 882, Statute of Repose/Products Liability, provides that no action for the recovery of damages for personal injury, death, or damage to property based upon or arising out of any alleged defect or any failure in relation to a product may be brought more than 12 years after the date of initial purchase for use or consumption. This legislation does not change existing law related to product liability actions based on disease. **Effective: October 1, 2009, and applies to causes of action that accrue on or after that date.**

SENATE BILL 884, Cig. Saf. Amend/DHHS Elec. Supervision. This legislation includes a provision that would require the Department of Health and Human Services to establish a pilot program to study the use of electronic supervision devices as an alternative means of supervision during sleep hours at facilities for children and adolescents. **Effective: August 26, 2009.**

SENATE BILL 909, Sales Tax: Reliance on Written Advice by DOR, allows a seller who requests specific written advice from the Secretary of Revenue to rely on that advice. A seller who collects and remits sales or use tax in accordance with the written advice the Secretary gives the seller is not liable to a purchaser for any overcollected sales or use tax that was collected in accordance with the written advice. **Effective: August 5, 2009.**

SENATE BILL 1017, Enhance Protections Against Identify Theft, includes a variety of provisions to enhance protections against identity theft and to protect the credit of crime victims during the pendency of crime victims compensation fund applications and appeals, including provisions regarding security freezes and credit monitoring services. **Effective: October 1, 2009.**

SENATE BILL 1018, Ban Certain Single-Use Bags, provides for the reduction of plastic and nonrecycled paper bag use on North Carolina's Outer Banks by prohibiting retailers from providing customers with plastic bags unless the bag is a reusable bag, or the bag is used solely to hold sales to an individual customer of otherwise unpackaged portions of fresh fish, meat, poultry, and produce. The penalty for a violation is not more than \$100 for a first violation, \$200 for a second violation within any 12-month period, and \$500 for each additional violation within any 12-month period. **Effective: September 1, 2009, and applies to retail sales made on or after that date and applies only in Dare County.**

SENATE BILL 1019, Establish NC Financial Literacy Council, establishes the North Carolina Financial Literacy Council. The Council will monitor and assist the Department of Public Instruction in the coordination of statewide delivery of financial education within the public school system, identify programs designed to increase the financial literacy of North Carolinians outside the public school system, and work to expand access to financial education resources and programs in communities across North Carolina. The Council will consider and make recommendations to address the following issues: current personal financial literacy programs in the public schools and how to integrate financial education in K-12 to ensure that young people are prepared for financial success; unique financial issues facing students in higher education and how to address those issues through the community colleges and public and private university

systems; and the creation of and access to financial products that provide hands-on learning of financial skills. **Effective: July 10, 2009.**

SENATE BILL 1073, Amend Alarm Systems Licensing Act, makes a variety of amendments to the North Carolina Alarm Systems Licensing Act. The Licensing Board came to the **North Carolina Burglar and Fire Alarm Association** and shared its proposed draft of changes so that we could review before the legislation was filed. We appreciated this courtesy and did not have any objections to the modifications. Most of the provisions were put in place to strengthen the current law as follows:

- allows a department or a division of a firm to be licensed as long as there is strict confidentiality of private security information;
- allows a business entity to obtain a substitute qualifying agent in 90 days instead of 30;
- requires a person or business to be licensed if they are making solicitations at a residence or business to advise, design, or consult;
- allows any investigations by the Attorney General regarding a licensee to remain confidential;
- adds a variety of new violations that the Board may consider;
- provides that the sale, installation, or service of an alarm system by an unlicensed or unregistered person constitutes a threat to the public safety, and any contract for the sale, installation, or service of an alarm system will be deemed void and unenforceable; and
- makes a contract void if entered into without being properly licensed.

Effective: October 1, 2009.

SENATE JOINT RESOLUTION 1109, Adjournment Resolution, sets the time for adjournment of the 2009 General Assembly on August 11, 2009 and provides that the 2010 Session of the 2009 General Assembly will reconvene on Wednesday, May 12, 2010, at 12:00 noon. Only the following matters may be considered in 2010: (1) bills directly and primarily affecting the State budget; (2) bills amending the Constitution of North Carolina; (3) bills and resolutions introduced in 2009 and that passed the house in which they were introduced and received in the other house; (4) bills and resolutions implementing the recommendations of: study commissions, authorities, and statutory commissions; the General Statutes Commission, the Courts Commission, or any commission authorized or directed to report to the General Assembly; the House Ethics Committee; select committees; or the Joint Legislative Ethics Committee or its Advisory Subcommittee; (5) any local bill accompanied by a certificate signed by the principal sponsor stating that no public hearing will be required or asked for by a member on the bill, the bill is noncontroversial, and that the bill is approved for introduction by each member of the House of Representatives and Senate whose district includes the area to which the bill applies; (6) selection, appointment, or confirmation of members of State boards and commissions as required by law; (7) any matter authorized by joint resolution passed by a two-thirds majority of the members of the House of Representatives present and voting and by a two-thirds majority of the members of the Senate present and voting; (8) a joint resolution authorizing the introduction of a bill; (9) any bills primarily affecting any State or local pension or retirement system; (10) joint resolutions, House resolutions, and Senate resolutions authorized for introduction under Senate Rule 40(b) or House Rule 31; (11) a joint resolution adjourning the 2009 Regular Session, sine die; and (12) bills to disapprove rules under G.S. 150B-21.3. **Effective: August 11, 2009.**

- Colleen Kochanek
NCBFAA Legislative Counsel
P.O. Box 12946
Raleigh, NC 27605
919.747.9988
colleen@kochaneklawgroup.com
www.kochaneklawgroup.comⁱ

ⁱ THIS LEGISLATIVE REPORT IS A PUBLICATION OF KOCHANЕК LAW GROUP AND IS A MEMBER BENEFIT OF NCBFAA. ANY USE OR REPRODUCTION OF THIS REPORT IS LIMITED TO NCBFAA AND ITS MEMBERS.
