ACTS
AND
JOINT RESOLUTIONS
SOUTH CAROLINA
2016

Volume I

REGULAR
SESSION

Pages 1184-1894
Acts 132-279

ACTS and JOINT RESOLUTIONS

OF THE

GENERAL ASSEMBLY

OF THE

STATE of SOUTH CAROLINA

_____

2016 REGULAR SESSION

Volume I

_____

Second Part
of Eightieth Volume of Statutes at Large

(The Acts and Joint Resolutions of 2016
Constitute the Second Part)

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Passed at the regular session which was begun and held at the City of Columbia on the 12th day of January, A.D., 2016, and was adjourned on the 15th day of June, A.D., 2016

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PRINTED UNDER DIRECTION OF
JAMES H. HARRISON
CODE COMMISSIONER

Notice

The second regular session of the 121th South Carolina General Assembly has adjourned under the provisions of H. 1336, the Sine Die Resolution.

In the parenthesis to the left of the permanent numbers are two numbers of which this is an example: (R276, S424). The first number is preceded by R in every instance, and the second number is either H or S. The R indicates the ratification number of the act or joint resolution; the H is the House number as a bill or joint resolution; and the S is the Senate number as a bill or joint resolution.

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ACTS

AND

JOINT RESOLUTIONS

OF THE

General Assembly

OF THE

State of South Carolina

NIKKI R. HALEY, Governor; HENRY D. MCMASTER, Lieutenant Governor and ex officio President of the Senate; HUGH K. LEATHERMAN, SR., President Pro Tempore of the Senate; JAMES H. LUCAS, Speaker of the House of Representatives; THOMAS E. POPE, Speaker Pro Tempore of the House of Representatives; JEFFREY S. GOSSETT, Clerk of the Senate; CHARLES F. REID, Clerk of the House of Representatives.

PART I

GENERAL AND PERMANENT LAWS

No. 132

(R134, S255)

AN ACT TO AMEND SECTION 17-1-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EXPUNGEMENT AND THE PROCEDURE FOR RETENTION AND DESTRUCTION OF CRIMINAL RECORDS, SO AS TO CLARIFY WHEN DESTRUCTION OF CERTAIN RECORDS RELATING TO ARREST AND BOOKING IS REQUIRED, TO GIVE THE SOLICITOR DISCRETION TO NOTIFY THE STATE LAW ENFORCEMENT DIVISION TO AMEND A PERSON'S RECORD IF A PERSON PLEADS GUILTY TO A LESSER INCLUDED OFFENSE, AND TO DELETE PROVISIONS WHICH EXCLUDE EXPUNGEMENT FOR CERTAIN WILDLIFE AND DRIVING OFFENSES; BY ADDING SECTION 17-1-60 SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON OR ENTITY TO PUBLISH ON THE PERSON'S OR ENTITY'S WEBSITE OR ANY OTHER PUBLICATION THE ARREST AND BOOKING RECORDS OF A PERSON AND REMOVAL OR REVISION OF THOSE RECORDS THAT REQUIRES THE PAYMENT OF A FEE OR OTHER CONSIDERATION, TO PROVIDE PROCEDURES FOR THE REMOVAL OF SUCH RECORDS UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE A PENALTY FOR A VIOLATION, AND TO PROVIDE EXCEPTIONS; TO AMEND SECTION 17-22-950, AS AMENDED, RELATING TO EXPUNGEMENT OF CERTAIN CRIMINAL CHARGES IN SUMMARY COURT, SO AS TO PROVIDE FURTHER PROCEDURES FOR SUMMARY COURT ORDERS OF EXPUNGEMENT AND THE REMOVAL OF RECORDS FROM ALL INTERNET-BASED PUBLIC RECORDS; TO AMEND SECTION 22-5-910, AS AMENDED, RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS, SO AS TO DELETE PROVISIONS WHICH EXCLUDE EXPUNGEMENT FOR CERTAIN WILDLIFE AND DRIVING OFFENSES; AND TO AMEND SECTION 22-5-920, AS AMENDED, RELATING TO YOUTHFUL OFFENDER CONVICTIONS, SO AS TO DELETE PROVISIONS WHICH EXCLUDE EXPUNGEMENT FOR CERTAIN WILDLIFE AND DRIVING OFFENSES.

Be it enacted by the General Assembly of the State of South Carolina:

Expungement, procedures for destruction of criminal records, lesser-included offenses, removal of exclusion on certain wildlife and driving offenses

SECTION 1. Section 17-1-40 of the 1976 Code, as last amended by Act 276 of 2014, is further amended to read:

"Section 17-1-40. (A) For purposes of this section, 'under seal' means not subject to disclosure other than to a law enforcement or prosecution agency, and attorneys representing a law enforcement or prosecution agency, unless disclosure is allowed by court order.

(B)(1) If a person's record is expunged pursuant to Article 9, Title 17, Chapter 22, because the person was charged with a criminal offense, or was issued a courtesy summons pursuant to Section 22-3-330 or another provision of law, and the charge was discharged, proceedings against the person were dismissed, or the person was found not guilty of the charge, then the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge or associated bench warrants may be retained by any municipal, county, or state agency. Provided, however, that:

(a) Law enforcement and prosecution agencies shall retain the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person under seal for three years and one hundred twenty days. A law enforcement or prosecution agency may retain the information indefinitely for purposes of ongoing or future investigations and prosecution of the offense, administrative hearings, and to defend the agency and the agency's employees during litigation proceedings. The information must remain under seal. The information is not a public document and is exempt from disclosure, except by court order.

(b) Detention and correctional facilities shall retain booking records, identifying documentation and materials, and other institutional reports and files under seal, on all persons who have been processed, detained, or incarcerated, for a period not to exceed three years and one hundred twenty days from the date of the expungement order to manage the facilities' statistical and professional information needs, and to defend the facilities and the facilities' employees during litigation proceedings, except that when an action, complaint, or inquiry has been initiated, the records, documentation and materials, and other reports and files may be retained as needed to address the action, complaint, or inquiry. The information is not a public document and is exempt from

disclosure, except by court order. At the end of the three years and one hundred twenty days from the date of the expungement order, the records must be destroyed unless they are being retained to address an action, complaint, or inquiry that has been initiated.

(2) A municipal, county, or state agency, or an employee of a municipal, county, or state agency that intentionally violates this subsection is guilty of contempt of court.

(3) Nothing in this subsection requires the South Carolina Department of Probation, Parole and Pardon Services to expunge the probation records of persons whose charges were dismissed by conditional discharge pursuant to Section 44-53-450.

(4) If a person pleads guilty to a lesser included offense and the solicitor deems it appropriate, the solicitor shall notify the State Law Enforcement Division (SLED) and SLED shall request that the person's record contained in the National Crime Information Center (NCIC) database or other similar database reflects the lesser included offense rather than the offense originally charged.

(C)(1) If a person's record is expunged pursuant to Article 9, Title 17, Chapter 22, because the person was charged with a criminal offense, or was issued a courtesy summons pursuant to Section 22-3-330 or another provision of law, and the charge was discharged, proceedings against the person were dismissed, or the person was found not guilty of the charge, then law enforcement and prosecution agencies shall retain the unredacted incident and supplemental reports, and investigative files under seal for three years and one hundred twenty days. A law enforcement or prosecution agency may retain the information indefinitely for purposes of ongoing or future investigations, other law enforcement or prosecution purposes, administrative hearings, and to defend the agency and the agency's employees during litigation proceedings. The information must remain under seal. The information is not a public document, is exempt from disclosure, except by court order, and is not subject to an order for destruction of arrest records.

(2) If a request is made to inspect or obtain the incident reports pursuant to the South Carolina Freedom of Information Act, the law enforcement agency shall redact the name of the person whose record is expunged and other information which specifically identifies the person from copies of the reports provided to the person or entity making the request.

(3) If a person other than the person whose record is expunged is charged with the offense, a prosecution agency may provide the attorney representing the other person with unredacted incident and supplemental reports. The attorney shall not provide copies of the reports to a person

or entity nor share the contents of the reports with a person or entity, except during judicial proceedings or as allowed by court order.

(4) A person who intentionally violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days, or both.

(5) Nothing in this subsection prohibits evidence gathered or information contained in incident reports or investigation and prosecution files from being used for the investigation and prosecution of a criminal case or for the defense of a law enforcement or prosecution agency or agency employee.

(D) A municipal, county, or state agency may not collect a fee for the destruction of records pursuant to this section.

(E) The State Law Enforcement Division is authorized to promulgate regulations that allow for the electronic transmission of information pursuant to this section.

(F) Unless there is an act of gross negligence or intentional misconduct, nothing in this section gives rise to a claim for damages against the State, a state employee, a political subdivision of the State, an employee of a political subdivision of the State, a public officer, or other persons."

Publication of arrest and booking records, unlawful under certain circumstances, procedures for removal of such information

SECTION 2. Chapter 1, Title 17 of the 1976 Code is amended by adding:

"Section 17-1-60. (A) For purposes of this section, a person or entity who publishes on the person's or entity's website or any other publication the arrest and booking records, including booking photographs, of a person who is arrested and booked in South Carolina is deemed to be transacting business in South Carolina.

(B) It is unlawful for a person or entity to obtain, or attempt to obtain, the arrest and booking records, including booking photographs, of a person who is arrested and booked in South Carolina knowing:

(1) the arrest and booking records will be published on a website or any other publication; and

(2) removal or revision of the arrest or booking records requires the payment of a fee or other consideration.

(C) It is unlawful for a person or entity to require the payment of a fee or other consideration to remove, revise, or refrain from posting to a website or any other publication the arrest and booking records,

including booking photographs, of a person who is arrested and booked in South Carolina.

(D)(1) A person or entity who publishes on the person or entity's website or any other publication the arrest and booking records, including booking photographs, of a person who is arrested and booked in South Carolina shall remove the arrest and booking records from the person or entity's website or any other publication without requiring the payment of a fee or other consideration within thirty days of the receipt of a request to remove the arrest and booking records, if the request:

(a) is made in writing via certified mail, return receipt requested, to the registered agent, principal place of business, or primary residence of the person or entity who publishes the website or any other publication;

(b) includes the person's name, date of arrest, and the name of the arresting law enforcement agency;

(c) contains certified documentation that the original charges stemming from the arrest were discharged, dismissed, expunged, or the person was found not guilty; and

(d) includes a complete and accurate description of where the arrest and booking records are located, including, but not limited to, the uniform resource locator (URL) and e-edition, if applicable.

(2) If the original charges stemming from the arrest were discharged or dismissed as a result of the person pleading to a lesser included offense, or a different offense, the person or entity who publishes the website or any other publication is not required to remove the arrest and booking records from the person or entity's website or any other publication; however, the person or entity shall revise the arrest and booking records published on the person or entity's website or any other publication to reflect the lesser included offense, or different offense, instead of the original charges, without requiring the payment of a fee or other consideration within thirty days of the receipt of a request to remove the arrest and booking records pursuant to item (1).

(3) This subsection does not apply to the following:

(a) motion picture producers and distributors, and their products as released in theaters, to DVD, pay-per-view, broadcast, cable and satellite television, as well as Internet services;

(b) acts done by the publisher, owner, agent, employee, or retailer of a newspaper, periodical, books, radio station, radio network, television station, television broadcast network, or cable television network in the publication or dissemination in print or electronically of:

(i) news, history, entertainment, or commentary; or

(ii) an advertisement of or for another person, when the publisher, owner, agent, or employee did not have actual knowledge of the false, misleading, or deceptive character of the advertisement, did not prepare the advertisement, or did not have a direct financial interest in the sale or distribution of the advertised product or service.

(4) A person or entity who violates this subsection is not subject to the criminal penalty provided in subsection (F); however, the person or entity is subject to a civil cause of action as provided in subsection (G).

(E)(1) This section does not apply to a state or local government agency.

(2) Except as otherwise provided by state law, it is unlawful for an employee of a state or local government agency to provide the arrest or booking records, including booking photographs, of a person who is arrested and booked in South Carolina knowing:

(a) the arrest and booking records will be published on a nongovernmental website or any other publication; and

(b) removal or revision of the arrest or booking records requires the payment of a fee or other consideration.

(F)(1) A person or entity who violates this section, except for subsection (D), is guilty of a misdemeanor, and, upon conviction, must be fined not more than one thousand dollars or be imprisoned not more than sixty days, or both.

(2) Each arrest and booking record obtained, attempted to obtain, or provided, and each payment solicited or accepted in violation of this section constitutes a separate violation.

(G)(1) Except as provided in item (2), a person who suffers a loss or harm as a result of a violation of this section may file a civil cause of action against a person or entity who violates this section for damages suffered, along with costs, attorney's fees, and any other legal or equitable relief.

(2) A person who suffers a loss or harm as a result of a violation of this section may not file a civil cause of action against a state or local government agency pursuant to this section; however, the person may file a civil cause of action against an employee of a state or local government agency who violates subsection (E)(2) pursuant to the South Carolina Tort Claims Act. A state or local government agency may not be substituted for an employee of the state or local government agency in a civil cause of action against the employee."

Expungement, summary court expungement orders, removal of Internet-based public records

SECTION 3. Section 17-22-950 of the 1976 Code, as last amended by Act 276 of 2014, is further amended to read:

"Section 17-22-950. (A) If criminal charges are brought in a summary court, the accused person is found not guilty or the charges are dismissed or nolle prossed, and the accused person was fingerprinted for the charges, the summary court, at no cost to the accused person, immediately shall issue an order to expunge the criminal records, including any associated bench warrants, of the accused person unless the dismissal of the charges occurs at a preliminary hearing or the accused person has charges pending in summary court and a court of general sessions and the charges arise out of the same course of events. Upon issuance of the order, the summary court shall obtain and verify the presence of all necessary signatures and provide copies of the completed expungement order to all governmental agencies which must receive the order, including, but not limited to, the arresting law enforcement agency; the detention facility or jail; the solicitor's office; the clerk of court, but only in cases in which the charges were appealed to the circuit court or remanded to the summary court from general sessions court; the summary court where the arrest or bench warrants originated; the summary court that was involved in any way in the criminal process of the charges or bench warrants; and SLED.

(B) If criminal charges are brought in a summary court, the accused person is found not guilty or the charges are dismissed or nolle prossed, and the person was not fingerprinted for the charges, the accused person may apply to the summary court, at no cost to the accused person, for an order to expunge the criminal records, including any associated bench warrants, of the accused person unless the dismissal of the charges occurs at a preliminary hearing or the accused person has charges pending in summary court and a court of general sessions and the charges arise out of the same course of events. Upon application, and after verification that the charges are appropriate for expungement, the summary court shall issue an order to expunge the criminal records, obtain and verify all necessary signatures, and provide copies of the completed expungement order to the arresting law enforcement agency and all summary courts that were involved in the criminal process of the charges. The summary court is not required to provide copies of the completed expungement order to SLED.

(C) An expungement pursuant to this section must occur no sooner than the appeal expiration date and no later than thirty days after the appeal expiration date.

(D) A summary court shall provide a copy of a completed expungement order issued pursuant to this section to the applicant or the applicant's counsel of record. The copy must be certified or marked with the court's raised seal.

(E) Criminal charges must be removed pursuant to this section from all Internet-based public records no later than thirty days from the disposition date, regardless of whether the accused person applies to the summary court for expungement pursuant to subsection (B). All other criminal records must be destroyed or retained pursuant to the provisions of Section 17-1-40.

(F) A prosecution or law enforcement agency may file an objection to a summary court expungement. If an objection is filed, the expungement must be heard by the judge of a general sessions court. The prosecution's or law enforcement agency's reason for objecting must be that the accused person has other charges pending or the charges are not eligible for expungement. The prosecution or law enforcement agency shall notify the accused person of the objection. The notice must be given in writing at the most current address on file with the summary court, or through the accused person's attorney, no later than thirty days after the accused person is found not guilty or the accused person's charges are dismissed or nolle prossed.

(G) The Office of Court Administration shall provide uniform application forms to be used for expungements pursuant to this section."

Expungement, removal of exclusion on certain wildlife and driving offenses

SECTION 4. Section 22-5-910(A) of the 1976 Code, as last amended by Act 58 of 2015, is further amended to read:

"(A) Following a first offense conviction for a crime carrying a penalty of not more than thirty days imprisonment or a fine of one thousand dollars, or both, the defendant after three years from the date of the conviction, including a conviction in magistrates or general sessions court, may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction and any associated bench warrant. However, this section does not apply to an offense involving the operation of a motor vehicle."

Expungement, youthful offenders, removal of exclusion on certain wildlife and driving offenses

SECTION 5. Section 22-5-920(B) of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

"(B)(1) Following a first offense conviction as a youthful offender for which a defendant is sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the defendant, after five years from the date of completion of the defendant's sentence, including probation and parole, may apply, or cause someone acting on the defendant's behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction.

(2) However, this section does not apply to:

(a) an offense involving the operation of a motor vehicle;

(b) an offense classified as a violent crime in Section 16-1-60; or

(c) an offense contained in Chapter 25, Title 16, except as otherwise provided in Section 16-25-30.

(3) If the defendant has had no other conviction during the five-year period following completion of the defendant's sentence, including probation and parole, for a first offense conviction as a youthful offender for which the defendant was sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the circuit court may issue an order expunging the records. No person may have the person's records expunged under this section more than once. A person may have the person's record expunged even though the conviction occurred before the effective date of this section. A person eligible for a sentence pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, and who is not sentenced pursuant to those provisions, is not eligible to have the person's record expunged pursuant to the provisions of this section."

Time effective

SECTION 6. This act takes effect ninety days after approval by the Governor. This act applies retroactively to allow for the expungement of offenses charged, discharged, dismissed, or nolle prossed prior to the effective date of this act, and persons convicted or found not guilty prior to the effective date of this act.

Ratified the 11th day of February, 2016.

Approved the 16th day of February, 2016.

No. 133

(R136, H3145)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 15-3-700 SO AS TO PROVIDE A PERSON IS IMMUNE FROM CIVIL LIABILITY FOR PROPERTY DAMAGE RESULTING FROM HIS FORCIBLE ENTRY INTO A MOTOR VEHICLE FOR THE PURPOSE OF REMOVING A MINOR OR VULNERABLE ADULT FROM THE VEHICLE IF THE PERSON HAS A REASONABLE GOOD FAITH BELIEF THAT FORCIBLE ENTRY INTO THE VEHICLE IS NECESSARY BECAUSE THE MINOR OR VULNERABLE ADULT IS IN IMMINENT DANGER OF SUFFERING HARM.

Be it enacted by the General Assembly of the State of South Carolina:

Immunity for property damage incurred in rescue from locked vehicle

SECTION 1. Article 5, Chapter 3, Title 15 of the 1976 Code is amended by adding:

"Section 15-3-700. A person is immune from civil liability for property damage resulting from his forcible entry into a motor vehicle for the purpose of removing a minor or vulnerable adult from the vehicle if the person has a reasonable good faith belief that forcible entry into the vehicle is necessary because the minor or vulnerable adult is in imminent danger of suffering harm."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 11th day of February, 2016.

Approved the 16th day of February, 2016.

No. 134

(R137, H3874)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-6-3770 SO AS TO PROVIDE FOR AN INCOME TAX CREDIT TO AN INDIVIDUAL OR BUSINESS THAT CONSTRUCTS, PURCHASES, OR LEASES CERTAIN SOLAR ENERGY PROPERTY AND PLACES IT IN SERVICE IN THIS STATE, AND TO PROVIDE A DEFINITION OF "SOLAR ENERGY PROPERTY"; AND TO AMEND SECTION 12-6-3587, RELATING TO THE PURCHASE AND INSTALLATION OF CERTAIN SOLAR ENERGY SYSTEMS, SO AS TO ALLOW AN INCOME TAX CREDIT FOR CERTAIN COSTS INCURRED BY THE TAXPAYER IN THE PURCHASE AND INSTALLATION OF GEOTHERMAL MACHINERY AND EQUIPMENT, AND TO PROVIDE A DEFINITION OF "GEOTHERMAL MACHINERY AND EQUIPMENT".

Be it enacted by the General Assembly of the State of South Carolina:

Income tax credit for certain solar energy property

SECTION 1. A. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

"Section 12-6-3770. (A) A taxpayer who constructs, purchases, or leases solar energy property located on the Environmental Protection Agency's National Priority List, National Priority List Equivalent Sites, or on a list of related removal actions, as certified by the Department of Health and Environmental Control, located in the State of South Carolina, and places it in service in this State during the taxable year, is allowed an income tax credit equal to twenty-five percent of the cost, including the cost of installation, of the property. The credit is earned in the year in which the solar energy property is placed in service, but must

be taken in five equal annual installments, beginning in the year in which the solar energy property is placed in service. Unused credit may be carried forward for five taxable years from the year in which the credit was able to be taken. A lessor shall give a taxpayer who leases solar energy property from him a statement that describes the solar energy property and states the cost of the property upon request. A credit is not allowed pursuant to this section to the extent the cost of the solar energy property is provided by public funds. For purposes of this section, 'public funds' does not include federal grants or tax credits.

(B) If the solar energy property with respect to which the credit was claimed is disposed of, taken out of service, or moved out of the State in a year in which the installment of a credit accrues, then the credit expires and the taxpayer may not take any remaining installments of the credit.

(C) A credit for each installation of solar energy property placed in service may not exceed two million five hundred thousand dollars. The credit is allowed on a first-come, first-served basis, and the total amount of credits available to be taken, pursuant to the five equal annual installments, for all taxpayers in a taxable year, may not exceed two million five hundred thousand dollars in the aggregate.

(D) A taxpayer who claims any other state credit allowed with respect to solar energy property may not take the credit allowed in this section with respect to the same property. A taxpayer may not take the credit allowed in this section for solar energy property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit pursuant to this section with respect to the property.

(E) The Department of Revenue may promulgate regulations necessary to implement the provisions of this section.

(F) For purposes of this section, 'solar energy property' means any nonresidential solar energy equipment with a nameplate capacity of at least two thousand kilowatts (2,000 kw AC) that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. The term also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy."

B. This section takes effect in income tax years beginning after 2015. The provisions of this act are repealed on December 31, 2017, except that if the credit allowed by Section 12-6-3770, as added by this act, is

earned before the repeal, the provisions of Section 12-6-3770 continue to apply until the credits have been fully claimed.

Income tax credit for certain geothermal machinery and equipment

SECTION 2. A. Section 12-6-3587 of the 1976 Code is amended to read:

"Section 12-6-3587. (A) There is allowed as a tax credit against the income tax liability of a taxpayer imposed by this chapter an amount equal to twenty-five percent of the costs incurred by the taxpayer in the purchase and installation of a solar energy system, small hydropower system, or geothermal machinery and equipment for heating water, space heating, air cooling, energy-efficient daylighting, heat reclamation, energy-efficient demand response, or the generation of electricity in or on a facility in South Carolina and owned by the taxpayer. The tax credit allowed by this section must not be claimed before the completion of the installation. The amount of the credit in any year may not exceed three thousand five hundred dollars for each facility or fifty percent of the taxpayer's tax liability for that taxable year, whichever is less. If the amount of the credit exceeds three thousand five hundred dollars for each facility, the taxpayer may carry forward the excess for up to ten years.

(B) 'System' includes all controls, tanks, pumps, heat exchangers, and other equipment used directly and exclusively for the solar energy system. The term 'system' does not include any land or structural elements of the building such as walls and roofs or other equipment ordinarily contained in the structure. A credit may not be allowed for a solar system unless the system is certified for performance by the nonprofit Solar Rating and Certification Corporation or a comparable entity endorsed by the State Energy Office.

(C) For purposes of this section, 'small hydropower system' means new generation capacity on a nonimpoundment or on an existing impoundment that:

(1) meets licensing standards as defined by the Federal Energy Regulatory Commission (FERC);

(2) is a run-of-the-river facility with a capacity not to exceed 5MW; or

(3) consists of a turbine in a pipeline or in an irrigation canal.

(D) For purposes of this section, 'geothermal machinery and equipment' means machinery and equipment for use at the taxpayer's residence that either:

(1) is a heat pump that uses the ground or groundwater as a thermal energy source to heat a structure or as a thermal energy sink to cool a structure; or

(2) uses the internal heat of the earth as a substitute for traditional energy for water heating or active space heating or cooling; and

(3) on the date of installation, meets or exceeds applicable federal Energy Star requirements."

B. The provisions contained in this section related to geothermal machinery and equipment are repealed January 1, 2019.

C. This section takes effect on January 1, 2016.

Time effective

SECTION 3. This act takes effect upon approval of the Governor.

Ratified the 11th day of February, 2016.

Approved the 16th day of February, 2016.

No. 135

(R138, H3881)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40-29-327 SO AS TO PROVIDE EACH LICENSED MANUFACTURED HOUSING RETAIL DEALER LOCATION MUST HAVE ONE AUTHORIZED OFFICIAL REPRESENTING THE DEALERSHIP, TO PROVIDE AN AUTHORIZED OFFICIAL WHO IS NOT THE DEALER MUST HOLD A MANUFACTURED HOME RETAIL SALESPERSON OR RETAIL DEALER LICENSE, AND TO PROVIDE THE MANUFACTURED HOUSING BOARD MUST BE NOTIFIED IN WRITING WITHIN TWENTY DAYS IF THE AUTHORIZED OFFICIAL CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

Authorized officials required in each location, licensure, notice requirements

SECTION 1. Chapter 29, Title 40 of the 1976 Code is amended by adding:

"Section 40-29-327. Each licensed manufactured housing retail dealer location must have one authorized official representing the dealership. An authorized official who is not the dealer must hold a manufactured home retail salesperson or retail dealer license. The board must be notified in writing within twenty days if the authorized official changes."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 11th day of February, 2016.

Approved the 16th day of February, 2016.

No. 136

(R140, H4507)

AN ACT TO AMEND SECTION 23-25-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CREATION, PURPOSE, AND MEMBERSHIP OF THE SOUTH CAROLINA LAW ENFORCEMENT OFFICERS HALL OF FAME ADVISORY COMMITTEE, SO AS TO INCREASE THE MEMBERSHIP TO INCLUDE THE PRESIDENT OF THE SOUTH CAROLINA FRATERNAL ORDER OF POLICE, OR HIS DESIGNEE.

Be it enacted by the General Assembly of the State of South Carolina:

South Carolina Law Enforcement Officers Hall of Fame Advisory Committee, membership revised

SECTION 1. Section 23-25-20(B) of the 1976 Code is amended to read:

"(B) There is created a South Carolina Law Enforcement Officers Hall of Fame Advisory Committee. The committee shall consist of the following ex officio members:

(1) the Director of the Department of Public Safety, who shall serve as chairman;

(2) the Chief of the State Law Enforcement Division;

(3) the Director of the Department of Corrections;

(4) the President of the South Carolina Sheriffs' Association, or his designee;

(5) the Executive Director of the South Carolina Law Enforcement Officers Association;

(6) the President of the South Carolina Police Chiefs Association, or his designee;

(7) a representative of the Natural Resources Enforcement Division, to be appointed by the Director of the Department of Natural Resources; and

(8) the President of the South Carolina Fraternal Order of Police, or his designee."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 25th day of February, 2016.

Approved the 2nd day of March, 2016.

No. 137

(R141, H4660)

AN ACT TO AMEND SECTION 38-43-50, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO LIMITED LINE AND SPECIAL PRODUCER LICENSURE, SO AS TO PROVIDE

THAT A LICENSED PROPERTY CASUALTY INSURANCE PRODUCER MAY PLACE SURPLUS LINES INSURANCE THROUGH A LICENSED INSURANCE BROKER WITHOUT BEING APPOINTED BY THE SURPLUS LINES INSURER; AND TO AMEND SECTION 38-1-20, RELATING TO DEFINITIONS CONCERNING THE INSURANCE LAW OF THIS STATE, AND SECTION 38-45-10, RELATING TO DEFINITIONS CONCERNING INSURANCE BROKERS AND SURPLUS PROPERTY LINES INSURANCE, BOTH SO AS TO MAKE CONFORMING CHANGES TO RELATED TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

Property and casualty licensees exemption

SECTION 1. Section 38-43-50 of the 1976 Code is amended to read:

"Section 38-43-50. (A) All applicants for a limited lines or special producer's license must be vouched for by an official or a licensed representative of the insurer for which the applicant proposes to act, who shall certify whether the applicant has been appointed a producer to represent it and that it has duly investigated the character and record of the applicant and has satisfied itself that he is trustworthy and qualified to act as its producer and intends to hold himself out in good faith as an insurance producer. When a contract of a producer is canceled by the insurer represented, that insurer shall notify the department of the cancellation within thirty days stating the cause of the termination. The records furnished by insurers are for the use of the department solely and not for public inspection.

(B) When appointing a producer, the insurer shall certify on a form prescribed by the director whether the applicant has been appointed a producer to represent it and that it has duly investigated the character and record of the applicant and has satisfied itself that he is trustworthy and qualified to act as its producer and intends to hold himself out in good faith as an insurance producer. An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

(C) To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the director or his designee, a notice of appointment within fifteen days from the date the agency contract is executed or the first insurance application is submitted. An insurer also

may elect to appoint a producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request. Each appointment must be accompanied by an appointment fee paid by the insurer as prescribed in Section 38-43-80.

(D) Upon receipt of the notice of appointment, the director or his designee shall verify within a reasonable time not to exceed thirty days that the insurance producer is eligible for appointment. If the insurance producer is determined to be ineligible for appointment, the insurance director or his designee shall notify the insurer within five days of its determination.

(E) When placing surplus lines insurance through a licensed insurance broker, a producer licensed for property and casualty insurance is not required to be appointed by the surplus lines insurer.

(F) An insurer shall remit a renewal appointment fee in the amount set forth in Section 38-43-80."

Insurance terminology, conforming changes

SECTION 2. Section 38-1-20(21) and (56) of the 1976 Code is amended to read:

"(21) 'Eligible surplus lines insurer' means a nonadmitted insurer with which a licensed broker, or a licensed producer as provided in Section 38-45-10(8)(b)(ii), may place surplus lines insurance.

(56) 'Surplus lines insurance' means insurance in this State of risks located or to be performed in this State, permitted to be placed through a licensed broker, or a licensed broker as provided in Section 38-45-10(8)(b)(ii), with a nonadmitted insurer eligible to accept the insurance, other than reinsurance, wet marine and transportation insurance, insurance independently procured, and life and health insurance and annuities. Excess and stop-loss insurance coverage upon group life, accident, and health insurance or upon a self-insured's life, accident, and health benefits program may be approved as surplus lines insurance."

Insurance terminology, conforming changes

SECTION 3. Section 38-45-10(8) and (10) of the 1976 Code is amended to read:

"(8)(a) 'Insurance broker' means a property and casualty insurance producer licensed by the director or his designee who:

(i) sells, solicits, or negotiates insurance on behalf of an insured;

(ii) takes or transmits other than for himself an application for insurance or a policy of insurance to or from an insured;

(iii) advertises or otherwise gives notice that he receives or transmits a surplus lines application or policy;

(iv) receives or delivers a policy of surplus lines insurance for an insured on behalf of a surplus lines insurer;

(v) receives, collects, or transmits a premium of surplus lines insurance; or

(vi) performs another act in the making of a surplus lines insurance contract for or with an insured.

(b) An insurance broker's license is not required of:

(i) a broker's office employee acting within the confines of the broker's office, under the direction and supervision of the licensed broker and within the scope of the broker's license, in the acceptance of request for insurance and payment of premiums and the performance of clerical, stenographic, and similar office duties; or

(ii) a producer licensed for property and casualty insurance who places surplus lines insurance through a licensed insurance broker.

(c) An insurance broker, or an insurance producer as provided in subitem (b)(ii), may place that insurance either with an eligible surplus lines insurer or with a licensed insurance producer appointed by an insurance carrier licensed in this State.

(10) 'Surplus lines insurance' means any property and casualty insurance permitted to be placed directly or through a surplus lines broker, or an insurance producer as provided in subitem (b)(ii), with a surplus lines insurer eligible to accept the insurance as defined in Section 38-1-20(56)."

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 25th day of February, 2016.

Approved the 2nd day of March, 2016.

No. 138

(R142, H4857)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 58-27-255 SO AS TO REQUIRE COAL COMBUSTION RESIDUALS RESULTING FROM THE PRODUCTION OF ELECTRICITY TO BE PLACED IN A CLASS 3 LANDFILL AND TO PROVIDE EXCEPTIONS.

Be it enacted by the General Assembly of the State of South Carolina:

Coal combustion residuals disposal

SECTION 1. Article 1, Chapter 27, Title 58 of the 1976 Code is amended by adding:

"Section 58-27-255. (A) Coal combustion residuals that result from an electrical utility, an electric cooperative, a governmental entity, a corporation, or an individual producing electricity for sale or distribution by burning coal must be placed in a commercial Class 3 solid waste management landfill, unless the coal combustion residuals are:

(1) located contiguous with the electric generating unit;

(2) intended to be beneficially reused;

(3) placed into beneficial reuse; or

(4) placed in an appropriate landfill which meets the standards of the Department of Health and Environmental Control Regulation 61-107, and that is owned or operated by the entity that produced the electricity which resulted in the coal combustion residuals.

(B) The 'beneficial reuse' of coal combustion residuals, as used in this section, is subject to the applicable regulations as promulgated by the Department of Health and Environmental Control."

Other provisions or requirements unaffected

SECTION 2. Nothing in this act affects any other provisions or requirements of law or regulation applicable to coal combustion residuals.

Provisions to sunset in five years

SECTION 3. The provisions of this act are repealed five years from the act's effective date, unless reenacted or otherwise extended by the General Assembly.

Time effective

SECTION 4. This act takes effect upon approval by the Governor and applies to the disposal of coal combustion residuals placed in a landfill on or after that date.

Ratified the 25th day of February, 2016.

Approved the 2nd day of March, 2016.

No. 139

(R143, S937)

AN ACT TO AMEND SECTION 7-7-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN AIKEN COUNTY, SO AS TO REDESIGNATE THE MAP NUMBER ON WHICH THE NAMES OF THE AIKEN COUNTY VOTING PRECINCTS MAY BE FOUND AND MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE.

Be it enacted by the General Assembly of the State of South Carolina:

Designation of voting precincts

SECTION 1. Section 7-7-40(B) of the 1976 Code, as last amended by Act 13 of 2015, is further amended to read:

"(B) Precinct lines defining the precincts provided in subsection (A) of this section are as shown on the official map prepared by and on file with the Revenue and Fiscal Affairs Office designated as document P-03-16 and as shown on certified copies of the official map provided

by the office to the State Election Commission and the Board of Voter Registration and Elections of Aiken County."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 10th day of March, 2016.

Approved the 14th day of March, 2016.

No. 140

(R144, S975)

AN ACT TO AMEND SECTION 42-3-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE MANNER OF APPOINTMENT OF THE CHAIRMAN OF THE WORKERS' COMPENSATION COMMISSION, SO AS TO DELETE A PROHIBITION OF THE SERVING OF CONSECUTIVE TERMS BY THE CHAIRMAN, TO PROVIDE THE GOVERNOR MAY REAPPOINT A CHAIRMAN, AND TO PROVIDE MEMBERS APPOINTED TO THE WORKERS' COMPENSATION COMMISSION ARE SUBJECT TO REMOVAL BY THE GOVERNOR IN CERTAIN CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

Reappointment of chairman permitted, removal of commissioners

SECTION 1. Section 42-3-20(B) of the 1976 Code is amended to read:

"(B) The Governor, with the advice and consent of the Senate, shall designate one of the seven commissioners as chairman for a term of two years. At the conclusion of a commissioner's two-year term as chairman, the Governor shall appoint or reappoint a commissioner to serve as chairman. If the Governor does not appoint or reappoint a chairman at the expiration of the two-year term, a majority of the commission shall elect from among their members an interim chairman who shall serve until the Governor appoints another chairman. A deputy commissioner

is not eligible to serve as chairman. Any person appointed to the commission is subject to removal as provided in Section 1-3-240(C)."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 10th day of March, 2016.

Approved the 14th day of March, 2016.

No. 141

(R145, S1002)

AN ACT TO AMEND SECTION 4-23-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE BOUNDARIES OF THE MURRELL'S INLET-GARDEN CITY FIRE DISTRICT, SO AS TO REVISE THE BOUNDARIES; AND TO REPEAL SECTION 4-23-15 RELATING TO THE BOUNDARIES OF THE SAME DISTRICT.

Be it enacted by the General Assembly of the State of South Carolina:

Boundaries of Murrell's Inlet-Garden City Fire District

SECTION 1. Section 4-23-10 of the 1976 Code is amended to read:

"Section 4-23-10. There is established the Murrell's Inlet-Garden City Fire District in Georgetown and Horry Counties. Effective January 1, 2016, the district consists of that area shown on the official map prepared by and on file with the Revenue and Fiscal Affairs Office designated as document F-43-51-16, and as shown on certified copies of the official map which must be kept on file at the fire district."

Repeal

SECTION 2. Section 4-23-15 of the 1976 Code is repealed.

Time effective

SECTION 3. This act takes effect upon approval by the Governor. This act applies to all property tax years beginning after 2015, and the auditor of each respective county shall adjust the millage levy appropriately for each taxpayer within the district to reflect the provisions of this act.

Ratified the 10th day of March, 2016.

Approved the 14th day of March, 2016.

No. 142

(R146, H3251)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44-1-310 SO AS TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO ESTABLISH THE MATERNAL MORBIDITY AND MORTALITY REVIEW COMMITTEE TO REVIEW AND STUDY MATERNAL DEATHS AND TO REPORT THE FINDINGS TO THE GENERAL ASSEMBLY.

Be it enacted by the General Assembly of the State of South Carolina:

Legislative findings

SECTION 1. The General Assembly finds that:

(1) the South Carolina rate of maternal death is higher than the United States average;

(2) maternal deaths are a serious public health concern and have a tremendous family and societal impact;

(3) maternal deaths are significantly underestimated and inadequately documented, preventing efforts to identify and reduce or eliminate the causes of death;

(4) no processes exist in this State for the confidential identification, investigation, or dissemination of findings regarding maternal deaths;

(5) the federal Centers for Disease Control and Prevention and the American College of Obstetricians and Gynecologists have determined

that maternal deaths and severe maternal morbidity should be investigated through state-based maternal morbidity and mortality reviews in order to institute the systemic changes needed to decrease maternal mortality; and

(6) there is a need to establish a program to review maternal deaths and maternal morbidity to develop strategies for the prevention of maternal deaths in South Carolina.

Maternal Morbidity and Mortality Review Committee

SECTION 2. Chapter 1, Title 44 of the 1976 Code is amended by adding:

"Section 44-1-310. (A) The Department of Health and Environmental Control shall establish a Maternal Morbidity and Mortality Review Committee to review maternal deaths and to develop strategies for the prevention of maternal deaths. The committee must be multidisciplinary and composed of members deemed appropriate by the department. The committee also may review severe maternal morbidity. The department may contract with an external organization to assist in collecting, analyzing, and disseminating maternal mortality information, organizing and convening meetings of the committee, and performing other tasks as may be incident to these activities, including providing the necessary data, information, and resources to ensure successful completion of the ongoing review required by this section.

(B) The committee shall:

(1) identify maternal death cases, as defined as a death within one year of pregnancy with a direct or indirect causation related to the pregnancy or postpartum period;

(2) review medical records and other relevant data;

(3) contact family members and other affected or involved persons to collect additional data;

(4) consult with relevant experts to evaluate the records and data;

(5) make determinations regarding the preventability of maternal deaths;

(6) develop recommendations for the prevention of maternal deaths; and

(7) disseminate findings and recommendations pursuant to subsection (F).

(C)(1) Health care providers and pharmacies licensed pursuant to Title 40 shall provide reasonable access to the committee to all relevant medical records associated with a case under review by the committee.

(2) A health care provider, health care facility, or pharmacy providing access to medical records pursuant to this subsection are not liable for civil damages or subject to criminal or disciplinary action for good faith efforts in providing the records.

(D)(1) Information, records, reports, statements, notes, memoranda, or other data collected pursuant to this section are not admissible as evidence in any action of any kind in any court or before another tribunal, board, agency, or person. The information, records, reports, statements, notes, memoranda, or other data must not be exhibited nor their contents disclosed, in whole or in part, by an officer or a representative of the department or another person, except as necessary for the purpose of furthering the review of the committee of the case to which they relate. A person participating in a review may not disclose the information obtained except in strict conformity with the review project.

(2) All information, records of interviews, written reports, statements, notes, memoranda, or other data obtained by the department, the committee, and other persons, agencies, or organizations authorized by the department pursuant to this section are confidential.

(E)(1) All proceedings and activities of the committee, opinions of members of the committee formed as a result of the proceedings and activities, and records obtained, created, or maintained pursuant to this section, including records of interviews, written reports, and statements procured by the department or another person, agency, or organization acting jointly or under contract with the department in connection with the requirements of this section, are confidential and are not subject to the provisions of Chapter 4, Title 30 relating to open meetings or public records, or subject to subpoena, discovery or introduction into evidence in any civil or criminal proceeding. However, this section must not be construed to limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source and entirely independent of the committee's proceedings.

(2) Members of the committee must not be questioned in a civil or criminal proceeding regarding the information presented in or opinions formed as a result of a meeting or communication of the committee. However, this section must not be construed to prevent a member of the committee from testifying to information obtained independently of the committee or which is public information.

(F) Reports of aggregated nonindividually identifiable data for the previous calendar year must be compiled and disseminated by March first of the following year in an effort to further study the causes and problems associated with maternal deaths. Reports must be distributed to the General Assembly, the Director of the Department of Health and

Environmental Control, health care providers and facilities, key governmental agencies, and others necessary to reduce the maternal death rate.

(G) Members shall serve without compensation, and are ineligible for the usual mileage, subsistence, and per diem allowed by law for members of state boards, committees, and commissions."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 10th day of March, 2016.

Approved the 14th day of March, 2016.

No. 143

(R147, H3534)

AN ACT TO AMEND SECTION 2-77-15, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF "ELIGIBLE INSTITUTION" AS IT PERTAINS TO THE SOUTH CAROLINA HIGHER EDUCATION EXCELLENCE ENHANCEMENT PROGRAM, SO AS TO INCLUDE INSTITUTIONS THAT OFFER AT LEAST ONE NONSECTARIAN PROGRAM AT THE BACCALAUREATE LEVEL, HISTORICALLY SINGLE GENDER WOMEN'S INSTITUTIONS OF TRADITIONAL STUDENTS, AND INSTITUTIONS ACCREDITED BY AN ORGANIZATION THAT IS RECOGNIZED BY THE UNITED STATES DEPARTMENT OF EDUCATION AND ALSO RECEIVES TITLE III FUNDING; AND TO AMEND SECTION 2-77-20, AS AMENDED, RELATING TO THE ALLOCATION OF APPROPRIATED FUNDS AMONG ELIGIBLE INSTITUTIONS, SO AS TO REQUIRE THE COMMISSION ON HIGHER EDUCATION ANNUALLY TO REVIEW AND DETERMINE WHETHER EACH ELIGIBLE INSTITUTION APPROPRIATELY USED THESE FUNDS, AND TO PROVIDE REQUIREMENTS FOR FUNDING REDUCTIONS AND ALTERNATE FUNDING DISTRIBUTIONS WHEN THE

COMMISSION FINDS AN ELIGIBLE INSTITUTION INAPPROPRIATELY USED THESE FUNDS.

Be it enacted by the General Assembly of the State of South Carolina:

"Eligible institutions", definition expanded

SECTION 1. Section 2-77-15(1) of the 1976 Code, as last amended by Act 162 of 2005, is further amended to read:

"(1) 'Eligible institution' means a four-year institution of higher learning or an institution of higher learning that is accredited to offer, and is actively offering, at least one nonsectarian program at the baccalaureate level:

(a)(i) at which sixty percent or more of the enrolled undergraduate students were low-income and educationally disadvantaged students, for the four consecutive years immediately preceding the then current year and which is defined in Part B, Subchapter III, Chapter 28, Title 20 of the United States Code; or

(ii) which is an historically single gender women's institution of traditional students, as evidenced by ninety percent or more of full-time female undergraduates under twenty-five years of age for the four consecutive years immediately preceding the current year;

(b)(i) that is accredited by the Southern Association of Colleges and Schools; or

(ii) which receives Title III funding and is accredited by an accrediting organization recognized by the United States Department of Education;

(c) that is organized as a nonprofit corporation or is a public institution; and

(d) that has its main campus located in South Carolina."

Funding allocation process revised

SECTION 2. Section 2-77-20(C) of the 1976 Code, as last amended by Act 74 of 2011, is further amended to read:

"(C)(1) An institution seeking to qualify as an eligible institution must submit an annual application to the commission. The commission must certify the eligibility of institutions seeking contracts pursuant to this section. Subject to the provisions of item (2), and less any

allocations made pursuant to item (2), the funds appropriated for this program must be allocated equally among the eligible institutions.

(2) The Commission on Higher Education, or its successor, annually shall review and determine if funds allocated to a school pursuant to item (1) have been properly used by the school pursuant to Section 2-77-30. If the Commission on Higher Education, or its successor, determines these funds were used inappropriately by a school, the funds must be returned, and the following year that school's allocation must be reduced by fifty percent of the amount appropriated to each eligible institution pursuant to item (1). The balance remaining from a school's reduced allocation must be distributed equally among the remaining eligible institutions."

Time effective

SECTION 3. This act takes effect July 1, 2016.

Ratified the 10th day of March, 2016.

Approved the 14th day of March, 2016.

No. 144

(R148, H3972)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 6-29-1210 SO AS TO ESTABLISH THAT UNDEVELOPED PROPERTY MAY BE TRANSFERRED WITHOUT THE SUBMISSION OF A LAND DEVELOPMENT OR LAND USE PLAN AND THAT A LOCAL GOVERNMENT MAY REQUIRE THE GRANTEE TO FILE A PLAT AT THE TIME THE DEED IS RECORDED; AND TO AMEND SECTION 30-5-30, RELATING TO PREREQUISITES TO RECORDING, SO AS TO ESTABLISH THAT THE SUBMISSION OF A LAND DEVELOPMENT OR LAND USE PLAN IS NOT A PREREQUISITE TO RECORDING AND THAT A LOCAL GOVERNMENT MAY REQUIRE THE GRANTEE TO FILE A PLAT AT THE TIME THE DEED IS RECORDED.

Be it enacted by the General Assembly of the State of South Carolina:

Local planning, land development plan not required to execute a deed

SECTION 1. Article 7, Chapter 29, Title 6 of the 1976 Code is amended by adding:

"Section 6-29-1210. Under this chapter, the submission of a land development plan or land use plan is not a prerequisite and must not be required before the execution of a deed transferring undeveloped real property. A local governmental entity may still require the grantee to file a plat at the time the deed is recorded."

Prerequisites for recording, land development plan not a prerequisite

SECTION 2. Section 30-5-30 of the 1976 Code is amended to read:

"Section 30-5-30. Except as otherwise provided by statute, before any deed or other instrument in writing can be recorded in this State, it must be acknowledged or proved by the method described in subsection (A) or (B).

(A)(1) The execution of the deed or other instrument must be first proved by the affidavit of a subscribing witness to the instrument, taken before some officer within this State competent to administer an oath. If the affidavit is taken without the limits of this State, it may be taken before:

(a) a commissioner appointed by dedimus issued by the clerk of the court of common pleas of the county in which the instrument is to be recorded;

(b) a commissioner of deeds of this State;

(c) a clerk of a court of record who shall make certificate of the deed or other instrument under his official seal;

(d) a justice of the peace who shall append to the certificate his official seal;

(e) a notary public who shall affix to the deed or other instrument his official seal within the state of his appointment, which is a sufficient authentication of his signature, residence, and official character;

(f) before a minister, ambassador, consul general, consul, or vice consul, or consular agent of the United States of America; or

(g) in the case of any officer or enlisted man of the United States Army, Air Force, Navy, Marine Corps, or Coast Guard on active duty outside the State or any civilian employee of any such organization on active duty outside the continental confines of the United States, any commissioned officer of the Army, Air Force, Navy, Marine Corps, or Coast Guard, if the probating officer states his rank, branch, and organization.

(2) The Uniform Recognition of Acknowledgments Act must be complied with or the person executing it shall submit an affidavit subscribed to before a person authorized to perform notarial acts herein or by the Uniform Recognition of Acknowledgments Act that the signature on the deed or other instrument is his signature and that the instrument was executed for the uses and purposes stated in the instrument.

(B) A deed or other instrument must be signed by the grantor, mortgagor, vendor, or lessor and the signing must be acknowledged by the grantor, mortgagor, vendor, or lessor in the presence of two witnesses, taken before some officer within this State competent to administer an oath. If the acknowledgment is taken without the limits of this State, it may be taken before:

(1) a commissioner appointed by dedimus issued by the clerk of the court of common pleas of the county in which the instrument is to be recorded;

(2) a commissioner of deeds of this State;

(3) a clerk of a court of record who shall make certificate of the deed or other instrument under his official seal;

(4) a justice of the peace who shall append to the certificate his official seal;

(5) a notary public who shall affix to the deed or other instrument his official seal within the state of his appointment, which is a sufficient authentication of his signature, residence, and official character;

(6) before a minister, ambassador, consul general, consul, or vice consul, or consular agent of the United States of America; or

(7) in the case of any officer or enlisted man of the United States Army, Air Force, Navy, Marine Corps, or Coast Guard on active duty outside the State or any civilian employee of any such organization on active duty outside the continental confines of the United States, any commissioned officer of the Army, Air Force, Navy, Marine Corps, or Coast Guard, if the probating officer states his rank, branch, and organization.

(C) Where the instrument is acknowledged by the grantor or maker, the form of acknowledgement must be in substance as follows:

'South Carolina,

_____ County.

I (here give the name of the official and his official title), do hereby certify that (here give the name of the grantor or maker), personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and (where an official seal is required by law) official seal this the _ day of _ (year).

_____

Signature of Officer'

(D) The submission of a land development plan or land use plan is not a prerequisite and must not be required before the execution of a deed transferring undeveloped real property. A local governmental entity may still require the grantee to file a plat at the time the deed is recorded."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 10th day of March, 2016.

Approved the 14th day of March, 2016.

No. 145

(R149, H4151)

AN ACT TO AMEND SECTION 12-21-735, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE STAMP TAX ON CIGARETTES, SO AS TO REQUIRE AND PROVIDE FOR THE PROPER AFFIXING OF STAMPS, INCLUDING

PROVISIONS FOR EXEMPT PACKAGES, UNIQUE SERIAL NUMBERING OF STAMPS, REVOCATION OF THE LICENSE OF A PERSON VIOLATING THESE PROVISIONS, LIMITATIONS ON THE RECEIPT AND SALE OF UNTAXED CIGARETTES, TO PROVIDE FOR RETURN AND PAYMENT OF THE TAX, AND TO AUTHORIZE THE DEPARTMENT OF REVENUE TO PROMULGATE REGULATIONS NECESSARY TO ESTABLISH, IMPLEMENT, AND ENFORCE THESE PROVISIONS.

Be it enacted by the General Assembly of the State of South Carolina:

Stamp tax on cigarettes

SECTION 1. Section 12-21-735 of the 1976 Code is amended to read:

"Section 12-21-735. (A) Each person or distributor of cigarettes taxable under this article, first receiving untaxed cigarettes for sale or distribution in this State, is subject to the tax imposed in Section 12-21-620. The taxes imposed on cigarettes pursuant to this chapter must be paid by affixing stamps in the manner and at the time provided in this section. Except as otherwise provided in this section, stamps must be affixed to each individual package of cigarettes by distributors before being sold, distributed, or shipped to another person. A distributor may affix stamps only to packages of cigarettes obtained directly from a manufacturer or importer with a valid permit issued pursuant to 26 U.S.C. Section 5713. If cigarettes are manufactured in this State and sold directly to consumers in this State by a manufacturer or importer, the cigarette packages must be stamped by a licensed distributor before being sold.

(B) Only manufacturers or importers with a valid permit issued pursuant to 26 U.S.C. Section 5713, or licensed distributors, may receive or possess unstamped packages of cigarettes. Only a manufacturer or importer with a valid permit issued pursuant to 26 U.S.C. Section 5713 may ship or otherwise cause to be delivered unstamped packages of cigarettes in, into, or from this State, except that a licensed distributor may transfer, transport, or cause to be transported unstamped cigarettes from a facility owned by the distributor to another facility, wherever located, owned by the distributor.

(C) A qualified distributor licensed pursuant to this chapter may sell cigarettes without South Carolina stamps affixed to the package, provided that:

(1) the cigarettes are set forth in separate stock for sale to a licensed distributor of cigarettes in another state;

(2) if the cigarettes are not in the possession of a qualified distributor licensed pursuant to this chapter, the cigarettes must be in the possession of a person having immediate evidence of a license in business as a distributor of cigarettes in the another state, and the cigarettes must be purchased for the purpose of resale in the other state;

(3) the cigarettes, at the time of sale by the distributor, properly are stamped with revenue stamps authorized and issued by another state for use on the cigarettes, if the other state requires revenue stamps, or any applicable tax imposed on the cigarettes by the other state has been paid if the law of the other state permits the sale of the cigarettes to consumers in a package not bearing a stamp; and

(4) at all times there is accompanying the cigarettes an invoice, indicating the purchase date, the name, address, and telephone number of the seller, and the name, address, and telephone number of the purchaser. A distributor shall have on file a record of each sale, the original purchase order, a copy of the invoice, and a signed receipt from the purchaser showing that the purchase was made exclusively for resale in another state.

(D) Cigarettes may be sold by qualified distributors without revenue stamps affixed to the package when exempted from tax by Section 12-21-100. A distributor that receives or possesses cigarettes intended for sale or distribution into or within this State which are exempt from the taxes imposed pursuant to this chapter shall affix stamps that indicate the package of cigarettes is exempt from tax.

(E) The department shall prescribe, prepare, and furnish stamps of denominations and quantities as necessary for the payment of the tax imposed by this chapter. The department also shall cause to be prepared and distributed to licensed distributors stamps that indicate that a package of cigarettes is exempt from the taxes imposed pursuant to this chapter.

(1) The stamps must be of a type that when affixed on each individual package the stamps cannot be removed without being mutilated or destroyed.

(2) The department, by rules and regulations, shall designate the type of stamps to be applied.

(3) The stamps must be sold only in amounts of thirty thousand or multiples of thirty thousand.

(4) In addition to stamps, the department, by rules and regulations, may authorize licensed distributors to use other devices which imprint distinctive indicia evidencing the payment of the tax upon each

individual package. The machines must be constructed in a manner as accurately records or meters the number of impressions or tax stamps made. The tax meter machines or other devices must be kept available at all reasonable times for inspection by the department.

(5) The department, by rules and regulations, may authorize a process allowing for a credit for damaged tax stamps, for product returned as unsellable, and for product unrecoverable as a result of bad debt.

(6) A distributor is allowed a tax credit for the purchase of one stamping machine and equipment acquired by the distributor within one year of implementation by the department. The credit may be claimed beginning in the first calendar month following the purchase of the machine and equipment and continuing for the immediately succeeding seventeen months. The amount of the credit equals the direct costs actually incurred by the distributor to acquire the stamping machine and equipment, as determined by the department, divided by eighteen, with the maximum cumulative credit equaling one hundred seventy-five thousand dollars. The direct costs must exclude costs for shipping, installation, or for ongoing maintenance related to the machine. Any tax credit must be applied only to the tax remitted pursuant to this chapter. The department may promulgate regulations necessary to implement the provisions of this credit.

(7) The department, by rules and regulations, may authorize the sale of stamps to a distributor on thirty-day credit periods. Those persons authorized to pay tax by such means are required to execute a bond with a solvent surety company qualified to do business in this State, in an amount of one hundred ten percent of the distributor's estimated tax liability for thirty days, but not less than two thousand dollars, and conditioned upon the distributor paying all taxes due the State arising from this section. This form of payment is in lieu of cash or its equivalent. Payment for each month's liability is due on or before the twentieth day of each month, including Sundays and holidays. At the discretion of the department, default in the bonding and payment provisions by any distributor may result in the revocation of the distributor's privilege to purchase stamps.

(F) All stamps prescribed by the department must be designed and furnished in a fashion that permits identification of the distributor that affixed the stamp to the particular package of cigarettes by means of a serial number or other mark on the stamp. A stamp on a package of cigarettes must note whether the taxes prescribed in this chapter were paid or whether the package of cigarettes was exempt from the taxes.

(G) Stamps only may be affixed to packages of cigarettes that are listed on the South Carolina Tobacco Directory published by the Office of the Attorney General pursuant to Section 11-48-30.

(H) The department may appoint manufacturers and distributors of cigarettes, in or out of this State, as agents to buy or affix stamps to be used in paying the tax imposed by this chapter, but the agent at all times has the right to appoint a person in his employ who is to affix the stamps to any cigarette under the agent's control.

(1) When the department sells and delivers to an agent, the agent is entitled to receive as compensation for his services and expenses as an agent in affixing and accounting for the taxes represented by the stamps and to retain out of the money to be paid by the agent for the stamps a discount of four and twenty-five one hundredths percent of the face value of the stamps.

(2) The department, by rules and regulations, shall provide a method of purchasing stamps.

(I) The department may promulgate regulations necessary to enforce this section.

(J) For the limited purpose of recovering the costs incurred by the department associated with the installation and operation of the cigarette stamp program, annually the department may retain up to four hundred thousand dollars of tax revenue generated pursuant to Section 12-21-620(A)(1), not to exceed actual costs. By March fifteenth of each year, the department must report to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee the costs incurred by the department associated with the operation of the cigarette tax stamp program."

Time effective

SECTION 2. This act takes effect on January 1, 2019, except that Section 12-21-735(I) takes effect upon approval by the Governor.

Ratified the 10th day of March, 2016.

Approved the 14th day of March, 2016.

No. 146

(R150, H4639)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 59-103-17 SO AS TO PROVIDE THE COMMISSION ON HIGHER EDUCATION MAY ENTER INTERSTATE RECIPROCITY AGREEMENTS THAT AUTHORIZE ACCREDITED DEGREE-GRANTING INSTITUTIONS OF HIGHER EDUCATION IN THIS STATE TO OFFER POSTSECONDARY DISTANCE EDUCATION IN A CERTAIN MANNER, TO PROVIDE RELATED POWERS AND DUTIES OF THE COMMISSION, TO PROVIDE PARTICIPATION IN THESE RECIPROCITY AGREEMENTS IS VOLUNTARY TO ELIGIBLE INSTITUTIONS OF HIGHER EDUCATION IN THIS STATE, TO PROVIDE INSTITUTIONS OF HIGHER EDUCATION IN THIS STATE THAT DO NOT PARTICIPATE IN ANY INTERSTATE RECIPROCITY AGREEMENT ENTERED INTO BY THE COMMISSION ARE NOT PROHIBITED FROM OFFERING POSTSECONDARY DISTANCE EDUCATION, AND TO CLARIFY THAT NO PROVISION OF THIS ACT PROHIBITS OR REDUCES THE AUTHORITY OF THE COMMISSION TO LICENSE INSTITUTIONS OF HIGHER EDUCATION OFFERING DISTANCE EDUCATION IN THIS STATE IF THE INSTITUTION IS NOT A PARTICIPANT IN THE INTERSTATE RECIPROCITY AGREEMENT IN WHICH THE COMMISSION PARTICIPATES.

Be it enacted by the General Assembly of the State of South Carolina:

Interstate reciprocity for postsecondary distance education

SECTION 1. Article 1, Chapter 103, Title 59 of the 1976 Code is amended by adding:

"Section 59-103-17. (A) The Commission on Higher Education may enter into interstate reciprocity agreements, including, but not limited to, the State Authorization Reciprocity Agreement, that authorize accredited degree-granting institutions of higher education that offer postsecondary distance education to do so through such reciprocity agreements. The commission shall administer these agreements and

shall approve or disapprove participation in these agreements by accredited degree-granting institutions of higher education in this State. The commission may assume and exercise all powers, duties, and responsibilities associated with and required under the terms of an interstate reciprocity agreement.

(B) The commission may develop policies, procedures, or regulations necessary for the implementation of this section, including the establishment of fees to be paid by participating institutions to cover direct and indirect administrative costs incurred by the commission. Participation in interstate reciprocity agreements shall be voluntary to eligible institutions of higher education in this State.

(C) Nothing in this section may be construed to prohibit institutions of higher education in this State that do not participate in any interstate reciprocity agreement entered into by the commission from offering postsecondary distance education.

(D) Nothing in this section may be construed to prohibit or reduce the commission's authority over institutions of higher education offering distance education in this State if the institution is not a participant in the interstate reciprocity agreement in which the commission participates."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 10th day of March, 2016.

Approved the 14th day of March, 2016.

No. 147

(R151, H4666)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 7 TO CHAPTER 25, TITLE 16 SO AS TO ENTITLE THE ARTICLE THE "DOMESTIC VIOLENCE FATALITY REVIEW COMMITTEES", ESTABLISH THE DOMESTIC VIOLENCE FATALITY REVIEW COMMITTEES IN EACH CIRCUIT, PROVIDE APPROPRIATE PROTOCOLS WHICH MUST BE FOLLOWED BY THE COMMITTEES, PROVIDE FOR THE

COMPOSITION OF THE COMMITTEES, PROVIDE FOR CONFIDENTIALITY OF CERTAIN INFORMATION BY THE COMMITTEES AND OTHER PERSONS, AND PROVIDE PENALTIES FOR THE RELEASE OF CONFIDENTIAL INFORMATION.

Be it enacted by the General Assembly of the State of South Carolina:

Domestic Violence Fatality Review Committees established

SECTION 1. Chapter 25, Title 16 of the 1976 Code is amended by adding:

"Article 7

Domestic Violence Fatality Review Committees

Section 16-25-710. This article may be cited as the 'Domestic Violence Fatality Review Committees'.

Section 16-25-720. (A) Each Circuit Solicitor shall establish an interagency circuit-wide Domestic Violence Fatality Review Committee to assist local agencies in identifying and reviewing domestic violence deaths, including homicides and suicides, and facilitating communication among the various agencies involved in domestic violence cases pursuant to the provisions of this chapter or any other relevant provision of law.

(B) The South Carolina Commission on Prosecution Coordination shall:

(1) develop a protocol for domestic violence fatality reviews; and

(2) develop a protocol that must be used as a guideline to assist coroners and other persons who perform autopsies on domestic violence victims in the identification of domestic violence, in the determination of whether domestic violence contributed to the death or whether domestic violence occurred prior to death but was not the actual cause of death, and in the proper written reporting procedures for domestic violence, including the designation of the cause and mode of death.

(C) Domestic violence fatality review committees may be comprised of, but not limited to, the following:

(1) experts in the field of forensic pathology;

(2) medical personnel with expertise in domestic violence;

(3) coroners and medical examiners;

(4) criminologists;
(5) assistant solicitors;
(6) domestic violence abuse organization staff;
(7) legal aid attorneys who represent victims of abuse;
(8) a representative of the local bar associations;
(9) local and state law enforcement personnel;
(10) representatives of local agencies that are involved with domestic violence abuse reporting;
(11) county health department staff who deal with domestic violence victims' health issues;
(12) representatives of local child abuse agencies; and
(13) local professional associations of persons described in this subsection.

(D) An oral or written communication or a document shared within or produced by a domestic violence fatality review committee related to a domestic violence death is confidential and not subject to disclosure pursuant to Chapter 4, Title 30, the Freedom of Information Act, or discoverable by a third party. An oral or written communication or a document provided by a third party to a domestic violence fatality review committee is confidential and not subject to disclosure pursuant to the Freedom of Information Act or discoverable by a third party. However, recommendations of a domestic violence fatality review committee upon the completion of a review may be disclosed at the discretion of a majority of the members of the committee.

(E) Only deaths in which the investigation is closed and there is not a pending prosecution may be reviewed by a domestic violence fatality review committee.

(F) Upon request of the domestic violence fatality review committee and as necessary to carry out the committee's purpose and duties, as allowed by law, the committee immediately must be provided:

(1) by a provider of medical care, access to information and records regarding a person whose death is being reviewed by the committee pursuant to this article;

(2) access to all information and records maintained by any state, county, or local governmental agency including, but not limited to, birth certificates, law enforcement investigation data, county coroner or medical examiner investigation data, parole and probation information and records, and information and records of social services and health agencies that provided services to the victim, alleged perpetrator, and other household members.

Section 16-25-730. Meetings of the committee are closed to the public and are not subject to the provisions of the Freedom of Information Act when the committee is discussing an individual case. A violation of this section is a misdemeanor and, upon conviction, a person must be fined not more than five hundred dollars or imprisoned not more than six months, or both.

Section 16-25-740. (A) All information and records acquired by the committee in the exercise of their purposes and duties pursuant to this article are confidential, exempt from disclosure under the Freedom of Information Act, and only may be disclosed as necessary to carry out the committee's duties and purposes.

(B) Except as necessary to carry out the committee's purposes and duties, members of the committee and persons attending their meeting may not disclose what transpired at a meeting which is not public under the Freedom of Information Act, and may not disclose information, the disclosure of which is prohibited by this section.

(C) Members of the committee, persons attending a committee meeting, and persons who present information to the committee may not be required to disclose in any civil or criminal proceeding information presented in or opinions formed as a result of a meeting, except that information available from other sources is not immune from introduction into evidence through those sources solely because it was presented during proceedings of the committee or because it is maintained by the committee. Nothing in this subsection prevents a person from testifying to information obtained independently of the committee or which is public information.

(D) Information, documents, and records of the committee are not subject to subpoena, discovery, or the Freedom of Information Act, except that information, documents, and records otherwise available from other sources are not immune from subpoena, discovery, or the Freedom of Information Act through those sources solely because they were presented during proceedings of the committee or because they are maintained by the committee.

(E) Except as necessary to carry out the committee's purposes and duties, members of the committee are not to keep in their possession copies of information, documents, and records subpoenaed or otherwise obtained by or created by the committee. Upon the completion of an investigation, all information, documents, and records subpoenaed or otherwise obtained by or created by the committee shall remain with the Office of the Circuit Solicitor and retained pursuant to that office's policies.

(F) A violation of this section is a misdemeanor and, upon conviction, a person must be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

Section 16-25-750. Each domestic fatality review committee shall make recommendations, when appropriate to, but not limited to, the Domestic Violence Advisory Committee created pursuant to Section 16-25-310 regarding:

(1) training, including cross-agency training, consultation, technical assistance needs, and service gaps that would decrease the likelihood of domestic violence;

(2) the need for changes to any statute, regulation, policy, or procedure to decrease the incidences of domestic violence and include proposals for changes to statutes, regulations, policies, and procedures in the committee's annual report;

(3) education of the public regarding the incidences and causes of domestic violence, specific steps the public can undertake to prevent domestic violence, and the support that civic, philanthropic, and public service organizations can provide in assisting the committee to educate the public;

(4) training of medical examiners, coroners, law enforcement, and other emergency responders on the causes and identification of domestic violence incidents, indicators, and injuries; and

(5) the development and implementation of policies and procedures for its own governance and operation."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 10th day of March, 2016.

Approved the 15th day of March, 2016.

No. 148

(R153, S850)

AN ACT TO AMEND SECTION 38-9-180, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO STANDARD

VALUATION, SO AS TO DEFINE NECESSARY TERMS, TO PRESCRIBE NEW REQUIREMENTS FOR THE DIRECTOR OR HIS DESIGNEE CONCERNING VALUING RESERVE LIABILITIES FOR OUTSTANDING INSURANCE POLICIES BASED UPON THE EFFECTIVE DATE OF THE POLICY OR CONTRACT, TO ALTER THE ACTUARIAL OPINION REQUIREMENTS FOR ALL LIFE INSURANCE POLICIES, TO UPDATE REFERENCES TO REQUIRE THAT THE COMMISSIONER'S RESERVE VALUATION METHOD BE USED FOR POLICIES ISSUED AFTER MARCH 23, 1960, AND POLICIES ISSUED AFTER THE EFFECTIVE DATE OF THIS ACT, TO PROVIDE A NEW FORMULA TO COMPUTE THE CALENDAR YEAR STATUTORY INTEREST RATE, TO UPDATE REFERENCES TO REFLECT THE COMMISSIONER'S RESERVE VALUATION METHODS, TO PROVIDE THE MINIMUM RESERVE REQUIRED IF THE PREMIUM CHARGED BY A COMPANY IS LESS THAN THE VALUATION NET PREMIUM FOR THE POLICY OR CONTRACT, TO PRESCRIBE THE MINIMUM STANDARD OF VALUATION FOR ACCIDENT AND HEALTH INSURANCE CONTRACTS ISSUED ON OR AFTER THE OPERATIVE DATE OF THE OPERATION MANUAL, TO PRESCRIBE THE OPERATIVE DATE FOR THE VALUATION MANUAL AND WHAT THE VALUATION MANUAL MUST SPECIFY, TO ESTABLISH REQUIREMENTS FOR A COMPANY THAT USES A PRINCIPLE-BASED VALUATION, TO DEFINE CONFIDENTIAL INFORMATION AND TO PROVIDE PRIVILEGE FOR AND CONFIDENTIALITY OF CONFIDENTIAL INFORMATION, AND TO PROVIDE EXEMPTIONS IN CERTAIN CIRCUMSTANCES; TO AMEND SECTION 38-63-510, RELATING TO STANDARD NONFORFEITURE LAW FOR LIFE INSURANCE, SO AS TO DEFINE THE TERM "OPERATIVE DATE OF THE VALUATION MANUAL"; AND TO AMEND SECTION 38-63-600, RELATING TO THE BASIS FOR CALCULATING ADJUSTED PREMIUMS AND PRESENT VALUES OF POLICIES ISSUED ON OR AFTER JANUARY 1, 1989, SO AS TO PROVIDE THAT THE COMMISSIONERS' STANDARD MORTALITY TABLE SHALL BE USED TO DETERMINE THE MINIMUM NONFORFEITURE STANDARD FOR POLICIES ISSUED ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL.

Be it enacted by the General Assembly of the State of South Carolina:

Standard Valuation Law

SECTION 1. Section 38-9-180 of the 1976 Code is amended to read:

"Section 38-9-180. (A) This section is known as the 'Standard Valuation Law'.

(B) For the purposes of this section, the following definitions shall apply on or after the operative date of the valuation manual:

(1) 'Accident and health insurance' means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual.

(2) 'Appointed actuary' means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required in subsection (D)(5).

(3) 'Company' means an entity which:

(a) has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this State and has at least one such policy in force or on claim; or

(b) has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in this State.

(4) 'Deposit-type contract' means contracts that do not incorporate mortality or morbidity risks and as may be specified in the valuation manual.

(5) 'Life insurance' means contracts that incorporate mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual.

(6) 'NAIC' means the National Association of Insurance Commissioners.

(7) 'Policyholder behavior' means any action a policyholder, contract holder or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this section including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract but excluding events of mortality or morbidity that

result in benefits prescribed in their essential aspects by the terms of the policy or contract.

(8) 'Principle-based valuation' means a reserve valuation that uses one or more methods or one or more assumptions determined by the insurer and is required to comply with subsection (O) as specified in the valuation manual.

(9) 'Qualified actuary' means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual.

(10) 'Tail risk' means a risk that occurs either where the frequency of low probability events is higher than expected under a normal probability distribution or where there are observed events of very significant size or magnitude.

(11) 'Valuation manual' means the manual of valuation instructions adopted by the NAIC as specified in this section or as subsequently amended.

(C)(1) The director or his designee annually shall value, or cause to be valued, the reserve liabilities, referred to as reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this State issued prior to the operative date of the valuation manual. However, for an alien insurer the valuation is limited to their United States business. In calculating the reserves he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required in this section of a foreign or an alien insurer, he may accept any valuation made, or caused to be made, by the insurance supervisory official of a state or another jurisdiction when the valuation complies with the minimum standard provided in this section.

(2) The provisions set forth in subsections (E) through (M) apply to all policies and contracts, as appropriate, subject to this section issued on or after March 24, 1960, and prior to the operative date of the valuation manual and the provisions set forth in subsections (N) and (O) must not apply to any such policies and contracts.

(3) The minimum standard for the valuation of policies and contracts issued prior to March 24, 1960, must be that provided by the laws in effect immediately prior to that date.

(4) The director or his designee annually shall value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of

every company issued on or after the operative date of the valuation manual. In lieu of the valuation of the reserves required of a foreign or alien company, the director or his designee may accept a valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this section.

(5) The provisions set forth in subsections (M), (N), and (O) apply to all policies and contracts issued on or after the operative date of the valuation manual.

(D)(1) Every life insurance company doing business in this State annually shall submit to the director or his designee the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the director by regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this State. The director by regulation shall define the specifics of this opinion and add other items necessary to its scope.

(2)(a) Every life insurance company, except as exempted by or pursuant to regulation, also annually must include in the opinion required in item (1) an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the director by regulation, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(b) The director may provide by regulation for a transition period for establishing higher reserves which the qualified actuary considers necessary in order to render the opinion required by this subsection.

(3) Each opinion required by item (2) is governed by the following provisions:

(a) A memorandum, in form and substance acceptable to the director or his designee as specified by regulation, must be prepared to support each actuarial opinion.

(b) If the insurance company fails to provide a supporting memorandum at the request of the director or his designee within a period specified by regulation or the director or his designee determines

that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the regulations or is otherwise unacceptable to the director or his designee, the director or his designee may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare supporting memorandum required by the director or his designee.

(4) Every opinion is governed by the following provisions:

(a) The opinion must be submitted with the annual statement reflecting the valuation of reserve liabilities for each year ending after December 30, 1993.

(b) The opinion must apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the director or his designee as specified by regulation.

(c) The opinion must be based on standards adopted by the Actuarial Standards Board and on additional standards the director by regulation prescribes.

(d) For an opinion required to be submitted by a foreign or alien company, the director or his designee may accept the opinion filed by that company with the insurance supervisory official of another state if the director or his designee determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.

(e) For the purposes of this subsection, 'qualified actuary' means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in regulations.

(f) Except in cases of fraud or wilful misconduct, the qualified actuary must not be liable for damages to a person, other than the insurance company and the director or his designee, for an act, an error, an omission, a decision, or conduct with respect to the actuary's opinion.

(g) Disciplinary action by the director or his designee against the company or the qualified actuary must be defined in regulations by the director.

(h) A memorandum in support of the opinion and related material provided by the company to the director or his designee must be kept confidential by the director or his designee and must not be made public or subject to subpoena, other than for the purpose of defending an action seeking damages from a person by reason of action required by this subsection or by regulations promulgated under it. However, the memorandum or other material may be released by the director or his designee with the written consent of the company or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the director or

his designee for preserving the confidentiality of the memorandum or other material. Once a portion of the confidential memorandum is cited by the company in its marketing, is cited before a governmental agency other than a state insurance department, or is released by the company to the news media all portions of the confidential memorandum are no longer confidential.

(5)(a) Every company with outstanding life insurance contracts, accident and health insurance contracts or deposit-type contracts in this State and subject to regulation by the director annually shall submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this State. The valuation manual will prescribe the specifics of this opinion including any items deemed to be necessary to its scope.

(b) Every company with outstanding life insurance contracts, accident and health insurance contracts or deposit-type contracts in this State and subject to regulation by the director, except as exempted in the valuation manual, annually shall include in the opinion required by item (5)(a), an opinion of the same appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(c) Each opinion required by this item must be governed by the following provisions:

(i) A memorandum, in form and substance as specified in the valuation manual, and acceptable to the director or his designee, shall be prepared to support each actuarial opinion.

(ii) If the insurance company fails to provide a supporting memorandum at the request of the director or his designee within a period specified in the valuation manual or the director or his designee determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the valuation manual or is otherwise unacceptable to the director or his designee, the director or his designee may engage a qualified actuary at the expense of the

company to review the opinion and the basis for the opinion and prepare the supporting memorandum required by the director or his designee.

(d) Every opinion must be governed by the following provisions:

(i) The opinion must be in form and substance as specified in the valuation manual and acceptable to the director or his designee.

(ii) The opinion must be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after the operative date of the valuation manual.

(iii) The opinion applies to all policies and contracts subject to item (5)(b), plus other actuarial liabilities as may be specified in the valuation manual.

(iv) The opinion must be based on standards adopted by the Actuarial Standards Board or its successor, and on additional standards as prescribed in the valuation manual.

(v) In the case of an opinion required to be submitted by a foreign or alien company, the director or his designee may accept the opinion filed by that company with the insurance supervisory official of another State if the director or his designee determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.

(vi) Except in cases of fraud or wilful misconduct, the appointed actuary is not liable for damages to a person, other than the insurance company and the director, for an act, error, omission, decision or conduct with respect to the appointed actuary's opinion.

(vii) Disciplinary action by the director against the company or the appointed actuary must be defined in regulations by the director.

(E)(1) Except as otherwise provided in item (3) and subsection (F), the minimum standard for the valuation of policies and contracts issued before March 24, 1960, is that provided by the laws in effect immediately before that date except the minimum standards for the valuation of annuities and pure endowments purchased under group annuity and pure endowment contracts issued before the effective date is that provided for by the laws in effect immediately before that date but replacing the interest rates as specified in the laws by an interest rate of five percent a year.

(2) Except as otherwise provided in item (3) and subsection (F), the minimum standard for the valuation of policies and contracts issued after March 23, 1960, is the commissioner's reserve valuation methods defined in subsections (G), (H), and (K), five percent interest for group annuity and pure endowment contracts and three and one-half percent interest for all other policies and contracts, or for policies and contracts

other than annuity and pure endowment contracts issued after May 25, 1975, four percent interest for policies issued before January 1, 1979, five and one-half percent interest for single premium life insurance policies, and four and one-half percent interest for all other policies issued after December 31, 1978, and the following tables:

(a) for ordinary policies of life insurance issued on the standard basis, excluding disability and accidental death benefits in the policies, the Commissioner's 1941 Standard Ordinary Mortality Table for the policies issued before the operative date stated in Section 38-63-650, the Commissioner's 1958 Standard Ordinary Mortality Table for the policies issued on or after the operative date of Section 38-63-590 of the Standard Nonforfeiture Law for Life Insurance, and before the operative date of Section 38-63-590 of the Standard Nonforfeiture Law for Life Insurance, if for any category of policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than three years younger than the actual age of the insured; for policies issued before January 1, 1979, and not more than six years younger than the actual age of the insured or policies issued after December 31, 1978, and before the operative date of Section 38-63-600; and for policies issued on or after the operative date of Section 38-63-600 of the Standard Nonforfeiture Law for Life Insurance the Commissioner's 1980 Standard Ordinary Mortality Table, at the election of the company for one or more specified plans of life insurance, the Commissioner's 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors, or any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for the policies;

(b) for industrial life insurance policies issued on the standard basis, excluding disability and accidental death benefits in the policies, the 1941 Standard Industrial Mortality Table for policies issued before the operative date stated in Section 38-63-650; for all policies issued on or after operative date, the 1941 Standard Industrial Mortality Table or the Commissioner's 1961 Standard Industrial Mortality Table or any industrial mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for policies, according to which of these tables is used to calculate adjusted premiums and present values as specified in Section 38-63-580;

(c) for individual annuity and pure endowment contracts, excluding disability and accidental death benefits in the policies, the

1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or a modification of either of these tables approved by the director or his designee;

(d) for group annuity and pure endowment contracts, excluding disability and accidental death benefits in the policies, the Group Annuity Mortality Table for 1951, a modification of the table approved by the director or his designee or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

(e) for total and permanent disability benefits in or supplementary to ordinary policies or contracts, for policies or contracts issued after December 31, 1965, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit or tables of disablement rates and termination rates, adopted after 1980 by the National Association of Insurance Commissioners, approved by regulation promulgated by the director, for use in determining the minimum standard of valuation for the policies; for policies or contracts issued after December 31, 1960, and before January 1, 1966, either the tables or, at the option of the company, the Class (3) Disability Table (1926) and for policies issued before January 1, 1961, the Class (3) Disability Table (1926) or other table approved by the director or his designee. The table, for active lives, must be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(f) for accidental death benefits in or supplementary to policies, for policies issued after December 31, 1965, the 1959 Accidental Death Benefits Table, or any accidental death benefits table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for the policies; for policies issued after December 31, 1960, and before January 1, 1966, either the table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for policies issued before January 1, 1961, the Inter-Company Double Indemnity Mortality Table, or other table approved by the director or his designee. The table must be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(g) for extra benefits provided in life or endowment contracts or policies under which there is payable a series of coupons or guaranteed dividends or a series of constant or variable pure endowments maturing either during the term of the contract and the continuation of the life of

the insured or maturing as a series after the death of the insured, the table or basis of reserves approved by the director or his designee;

(h) for group life insurance, life insurance issued on the substandard basis and other special benefits, the tables approved by the director or his designee;

(3) Except as provided in subsection (F), the minimum standard for the valuation for individual annuity and pure endowment contracts issued on or after the operative date of this item, as defined in this section, and for all annuities and pure endowments purchased on or after the operative date under group annuity and pure endowment contracts, is the commissioner's reserve valuation methods defined in subsections (G) and (H) and the following tables and interest rates:

(a) for individual annuity and pure endowment contracts issued before January 1, 1979, excluding disability and accidental death benefits in the contracts, the 1971 Individual Annuity Mortality Table, or a modification of this table approved by the director or his designee, and six percent interest for single premium immediate annuity contracts, and four percent interest for all other individual annuity and pure endowment contracts;

(b) for individual single premium immediate annuity contracts issued after December 31, 1978, excluding disability and accidental death benefits in the contracts, the 1971 Individual Annuity Mortality Table or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for the contracts, or a modification of these tables approved by the director or his designee, and seven and one-half percent interest;

(c) for individual annuity and pure endowment contracts issued after December 31, 1978, other than single premium immediate annuity contracts, excluding disability and accidental death benefits in the contracts, the 1971 Individual Annuity Mortality Table or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for the contracts, or a modification of these tables approved by the director or his designee, and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other individual annuity and pure endowment contracts;

(d) for annuities and pure endowments purchased before January 1, 1979, under group annuity and pure endowment contracts,

excluding disability and accidental death benefits purchased under the contracts, the 1971 Group Annuity Mortality Table, or a modification of this table approved by the director or his designee, and six percent interest;

(e) for annuities and pure endowments purchased after December 31, 1978, under group annuity and pure endowment contracts, excluding disability and accidental death benefits purchased under the contracts, the 1971 Group Annuity Mortality Table or a group annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the director for use in determining the minimum standard of valuation for the annuities and pure endowments, or a modification of these tables approved by the director or his designee, and seven and one-half percent interest.

After May 26, 1975, an insurer may file with the director or his designee a written notice of its election to comply with this item after a specified date before January 1, 1979, which is the operative date of this item for the insurer. However, an insurer may elect a different effective date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no election, the effective date of this item for the insurer is January 1, 1979.

(F)(1) The calendar year statutory valuation interest rates as defined in this subsection must be used in determining the minimum standard for the valuation of:

(a) life insurance policies issued in a particular calendar year, on or after the operative date of Section 38-63-600 of the Standard Nonforfeiture Law for Life Insurance;

(b) individual annuity and pure endowment contracts issued in a particular calendar year after December 31, 1982;

(c) annuities and pure endowments purchased in a particular calendar year after December 31, 1982, under group annuity and pure endowment contracts;

(d) the net increase, if any, in a particular calendar year after January 1, 1983, in amounts held under guaranteed interest contracts.

(2) The calendar year statutory valuation interest rates, I, must be determined as follows and the results rounded to the nearer one-quarter of one percent:

(a) for life insurance,

$I = .03 + W (R(1) - .03) + W* (1/2) * (R(2) - .09)$;

(b) for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with

cash settlement options and from guaranteed interest contracts with cash settlement options,

I = .03 + W (R - .03),

where R(1) is the lesser of R and .09, R(2) is the greater of R and .09, R is the reference interest rate defined in this subsection, and W is the weighting factor defined in this subsection;

(c) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subitem (b), the formula for life insurance stated in subitem (a) applies to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in subitem (b) applies to annuities and guaranteed interest contracts with guarantee duration of ten years or less;

(d) for other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subitem (b) applies;

(e) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in subitem (b) applies.

However, if the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for the life insurance policies must be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year must be determined for 1980, using the reference interest rate defined for 1979, and must be determined for each subsequent calendar year regardless of when Section 38-63-600 of the Standard Nonforfeiture Law for Life Insurance becomes operative.

(3) The weighting factors referred to in the formulas stated in this subsection are given in the following tables:

(a) weighting Factors for Life Insurance:

Guarantee Duration Years	Weighting
10 or Less:	.50

More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance may remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(b) weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:

Weighting Factors
.80

(c) weighting factors for other annuities and for guaranteed interest contracts, except as stated in subitem (b) of this item are as specified subsubitems (i), (ii), and (iii) according to the rules and definitions in subsubitems (iv), (v), and (vi):

(i) for annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting for Plan Type		
	A	B	C
5 or less	.80	.60	.50
More than five, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

(ii) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in subsubitem (i) of this subitem increased by:

Plan Type		
A	B	C
.15	.25	.05

(iii) for annuities and guaranteed interest contracts valued on an issue year basis other than those with no cash settlement options, which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months

beyond the valuation date, the factors shown in subsubitem (i) of this subitem or derived in subsubitem (ii) increased by:

Plan Type		
A	B	C
.05	.05	.05

(iv) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(d) Plan type as used in the above tables is defined as:

(i) Plan Type A:

At any time policyholder may withdraw funds only:

a. with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer;

b. without the adjustment but in installments over five years or more;

c. as an immediate life annuity; or

d. no withdrawal permitted;

(ii) Plan Type B:

Before expiration of the interest rate guarantee, policyholder may withdraw funds only:

a. with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer;

b. without the adjustment but in installments over five years or more; or

c. no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without the adjustment in a single sum or installments over less than five years;

(iii) Plan Type C:

Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either:

a. without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer; or

b. subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

An insurer may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this subsection an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(4) The Reference Interest Rate referred to in item (2) of this subsection is defined as:

(a) for life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June thirtieth of the calendar year next preceding the year of issue, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.;

(b) for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over twelve months, ending on June thirtieth of the calendar year of issue or year of purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.;

(c) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subitem (b) with guarantee duration in excess of ten years, the lesser of the average over thirty-six months and the average over twelve months, ending on June thirtieth of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.;

(d) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subitem (b), with guarantee duration of ten years or less, the average over twelve months, ending on June thirtieth of the calendar year of issue or purchase, of Moody's

Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.;

(e) for other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over twelve months, ending on June thirtieth of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.;

(f) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subitem (b), the average over twelve months, ending on June thirtieth of the calendar year of the change in the fund, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.;

(5) If Moody's Corporate Bond Yield Average - Monthly Average Corporates is no longer published by Moody's Investors Service, Inc., or if the National Association of Insurance Commissioners determines that Moody's Corporate Bond Yield Average - Monthly Average Corporates as published by Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the National Association of Insurance Commissioners and approved by regulation promulgated by the director, may be substituted.

(G) Except as otherwise provided in subsections (H) and (K), reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, are the excess, if any, of the present value, at the date of valuation, of future guaranteed benefits provided for by the policies, over the then present value of future modified net premiums. The modified net premiums for the policy are the uniform percentage of the respective contract premiums for the benefits that the present value, at the date of issue of the policy, of the modified net premiums is equal to the sum of the then present value of the benefits provided for by the policy and the excess of item (1) over item (2), as follows:

(1) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium may not exceed the net level annual premium on the nineteen

year premium whole life plan for insurance of the same amount at an age one year higher than the age of issue of the policy.

(2) A net one year term premium for the benefits provided for in the first policy year. For a life insurance policy issued after December 31, 1985, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination of them in an amount greater than the excess premium, the reserve according to the director's or his designee's reserve valuation method as of a policy anniversary occurring on or before the assumed ending date defined in this section as the first policy anniversary on which the sum of an endowment benefit and cash surrender value then available is greater than the excess premium, except as otherwise provided in subsection (K), is the greater of the reserve as of the policy anniversary calculated as described in the preceding paragraph and the reserve as of the policy anniversary calculated as described in that paragraph, but with the value defined in item (1) being reduced by fifteen percent of the amount of the excess first year premium, all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, the policy being assumed to mature on the date as an endowment, and the cash surrender value provided on the date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in subsection (E)(1) and (F) shall be used.

Reserves according to the commissioner's reserve valuation method for: life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer including a partnership or sole proprietorship or by an employee organization, or both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as amended, disability and accidental death benefits in all policies and contracts, and all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, must be calculated by a method consistent with the principles of subsection (F), except extra premiums charged because of impairments or special hazards must be disregarded in the determination of modified net premiums.

(H) This subsection applies to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer including a partnership or sole proprietorship, or by an employee organization, or both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as amended. Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding disability and accidental death benefits in the contracts, is the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by the contracts at the end of each respective contract year, over the present value, at the date of valuation, of future valuation considerations derived from future gross considerations, required by the terms of the contract, that become payable before the end of the respective contract year. The future guaranteed benefits must be determined by using the mortality table, if any, and the interest rate, or rates, specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of the contracts to determine nonforfeiture values.

(I)(1) An insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued after March 23, 1960, must not be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (G), (H), (K), and (L) and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for the policies.

(2) The aggregate reserves for all policies, contracts, and benefits must not be less than the aggregate reserves determined by the appointed actuary to be necessary to render the opinion required by subsection (D).

(J) Reserves for policies and contracts issued before March 24, 1960, may be calculated, at the option of the insurer, according to the standards which produce greater aggregate reserves for all the policies and contracts than the minimum reserves required by the laws in effect immediately before the date. Reserves for a category of policies, contracts, or benefits established by the director or his designee, after March 23, 1960, may be calculated, at the option of the insurer, according to the standards which produce greater aggregate reserves for the category than those calculated according to the minimum standard provided in this section, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, must

not be greater than the corresponding rate or rates of interest used in calculating nonforfeiture benefits. An insurer which adopts a standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided in this section, with the approval of the director or his designee, may adopt a lower standard of valuation, but not lower than the minimum provided in this section. However, for purposes of this subsection, the holding of additional reserves previously determined by the appointed actuary to be necessary to render the opinion required by subsection (D) must not be deemed to be the adoption of a higher standard of valuation.

(K) If in a contract year the gross premium charged by a company on a policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for the policy or contract is the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy or contract, or the reserve calculated by the method actually used for the policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this subsection are those standards stated in subsections (E)(1) and (F). For a life insurance policy issued after December 31, 1985, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for the excess and which provides an endowment benefit or a cash surrender value or a combination of them in an amount greater than the excess premium, this subsection must be applied as if the method actually used in calculating the reserve for the policy were the method described in subsection (G), ignoring the second paragraph of subsection (G). The minimum reserve at each policy anniversary of the policy is the greater of the minimum reserve calculated in accordance with subsection (G), including the second paragraph of that subsection, and the minimum reserve calculated in accordance with this subsection.

(L) For a plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or for a plan of life insurance or annuity which is of a nature so that the minimum reserves cannot be determined by the methods described in subsections (G), (H), and (K), the reserves which are held under the plan must be:

(1) appropriate in relation to the benefits and the pattern of premiums for that plan;

(2) computed by a method which is consistent with the principles of this Standard Valuation Law, as determined by regulations promulgated by the director.

(M) For accident and health insurance contracts issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection (C)(2).

(N)(1) For policies issued on or after the operative date of the valuation manual, the standard prescribed in the valuation manual is the minimum standard of valuation required under subsection (C)(2), except as provided under items (5) or (7).

(2) The operative date of the valuation manual is January first of the first calendar year following July first as of which all of the following have occurred:

(a) The valuation manual has been adopted by the NAIC by an affirmative vote of at least forty-two members, or three-fourths of the members voting, whichever is greater.

(b) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than seventy-five percent of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements; health annual statements; or fraternal annual statements.

(c) The Standard Valuation Law, as amended by the NAIC in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least forty-two of the following fifty-five jurisdictions: the fifty states of the United States, American Samoa, the American Virgin Islands, the District of Columbia, Guam, and Puerto Rico.

(3) Unless a change in the valuation manual specifies a later effective date, changes to the valuation manual shall be effective on January first following the date when the change to the valuation manual has been adopted by the NAIC by an affirmative vote representing:

(a) at least three-fourths of the members of the NAIC voting, but not less than a majority of the total membership; and

(b) members of the NAIC representing jurisdictions totaling greater than seventy-five percent of the direct premiums written as reported in the following annual statements most recently available prior to the vote in subitem (a): life, accident and health annual statements, health annual statements, or fraternal annual statements.

(4) The valuation manual must specify all of the following:

(a) minimum valuation standards for and definitions of the policies or contracts subject to subsection (C)(2). These minimum valuation standards must be:

(i) the commissioner's reserve valuation method for life insurance contracts, other than annuity contracts, subject to subsection (C)(2);

(ii) the commissioner's annuity reserve valuation method for annuity contracts subject to subsection (C)(2); and

(iii) minimum reserves for all other policies or contracts subject to subsection (C)(2);

(b) the policies or contracts or types of policies or contracts that are subject to the requirements of a principle-based valuation in subsection (O)(1) and the minimum valuation standards consistent with those requirements;

(c) for policies and contracts subject to a principle-based valuation under subsection (O):

(i) requirements for the format of reports to the director under subsection (O)(2)(c) and which must include information necessary to determine if the valuation is appropriate and in compliance with this section;

(ii) assumptions must be prescribed for risks over which the company does not have significant control or influence;

(iii) procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of the procedures;

(d) for policies not subject to a principle-based valuation under subsection (O), the minimum valuation standard must either:

(i) be consistent with the minimum standard of valuation prior to the operative date of the valuation manual; or

(ii) develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring;

(e) other requirements, including, but not limited to, those relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, risk measurement, disclosure, certifications, reports, actuarial opinions and memorandums, transition rules and internal controls; and

(f) the data and form of the data required under subsection (O), with whom the data must be submitted, and may specify other requirements including data analyses and reporting of analyses.

(5) In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual is not, in the opinion of the director or his designee, in compliance with this section, then the company shall, with respect to such requirements, comply with minimum valuation standards prescribed by the director by regulation.

(6) The director or his designee may engage a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and opine on the appropriateness of any reserve assumption or method used by the company, or to review and opine on a company's compliance with any requirement set forth in this section. The director or his designee may rely upon the opinion, regarding provisions contained within this section, of a qualified actuary engaged by the commissioner of another state, district, or territory of the United States. As used in this item, the term 'engage' includes employment and contracting.

(7) The director or his designee may require a company to change any assumption or method that, in the opinion of the director or his designee, is necessary in order to comply with the requirements of the valuation manual or this section; and the company shall adjust the reserves as required by the director or his designee. The director or his designee may take other disciplinary action as permitted pursuant to Sections 38-2-10 and 38-5-120.

(O)(1) A company must establish reserves using a principle-based valuation that meets the following conditions for policies or contracts as specified in the valuation manual:

(a) Quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the lifetime of the contracts. For polices or contracts with significant tail risk, reflects conditions appropriately adverse to quantify the tail risk.

(b) Incorporate assumptions, risk analysis methods and financial models, and management techniques that are consistent with, but not necessarily identical to, those utilized within the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods.

(c) Incorporate assumptions that are prescribed in the valuation manual or for assumptions that are not prescribed, the assumptions must be established using the company's available experience, to the extent it is relevant and statistically credible; or to the extent that company data

is not available, relevant, or statistically credible, be established utilizing other relevant, statistically credible experience.

(d) Provide margins for uncertainty including adverse deviation and estimation error, such that the greater the uncertainty, the larger the margin and resulting reserve.

(2) A company using a principle-based valuation for one or more policies or contracts subject to this section as specified in the valuation manual shall:

(a) establish procedures for corporate governance and oversight of the actuarial valuation function consistent with those described in the valuation manual;

(b) provide to the director and the company's board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation. These controls must be designed to assure that all material risks inherent in the liabilities and associated assets subject to such valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification must be based on the controls in place as of the end of the preceding calendar year; and

(c) develop, and file with the director or his designee upon request, a principle-based valuation report that complies with standards prescribed in the valuation manual.

(3) A principle-based valuation may include a prescribed formulaic reserve component.

(P) A company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

(Q)(1) For purposes of this subsection, 'confidential information' means:

(a) a memorandum in support of an opinion submitted pursuant to subsection (D) and any other documents, materials, and other information, including, but not limited to, all working papers, and copies created, produced or obtained by, or disclosed to the director or any other person in connection with the memorandum;

(b) all documents, materials, and other information, including, but not limited to, all working papers, and copies, created, produced or obtained by, or disclosed to the director or any other person in the course of an examination made pursuant to subsection (N)(6); provided, however, that if an examination report or other material prepared in connection with an examination made under Section 38-13-20 is not held as private and confidential information under Section 38-13-10, et seq., an examination report or other material prepared in connection with an

examination made under subsection (N)(6) is not 'confidential information' to the same extent as if such examination report or other material had been prepared under Section 38-13-10, et seq.;

(c) any reports, documents, materials, and other information developed by a company in support of, or in connection with, an annual certification by the company pursuant to subsection (O)(2)(b) evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including, but not limited to, all working papers, and copies, created, produced or obtained by, or disclosed to the director or any other person in connection with such reports, documents, materials, and other information;

(d) any principle-based valuation report developed under subsection (O)(2)(c) of this section and any other documents, materials, and other information, including, but not limited to, all working papers, and copies of them, created, produced or obtained by, or disclosed to the director or any other person in connection with the report; and

(e) any documents, materials, data and other information submitted by a company pursuant to subsection (P), collectively, 'experience data', and any other documents, materials, data and other information, including, but not limited to, all working papers, and copies created or produced in connection with the experience data, in each case that includes any potentially company-identifying or personally identifiable information, that is provided to or obtained by the director or his designee, together with any 'experience data', 'experience materials', and any other documents, materials, data and other information, including, but not limited to, all working papers, and copies, created, produced, or obtained by, or disclosed to the director or any other person in connection with such experience materials.

(2)(a) Except as provided in this subsection, a company's confidential information is confidential by law and privileged, is not subject to disclosure pursuant to the Freedom of Information Act, and is not subject to subpoena or discovery or admissible in evidence in any private civil action; provided, however, that the director or his designee is authorized to use the confidential information in the furtherance of any regulatory or legal action brought against the company as a part of the director's or his designee's official duties.

(b) Neither the director nor any person who received confidential information while acting under the authority of the director is permitted or required to testify in any private civil action concerning any confidential information.

(c) In order to assist in the performance of the director's or his designee's duties, the director or his designee may share confidential information with other state, federal, and international regulatory agencies and with the NAIC and its affiliates and subsidiaries, and in the case of confidential information specified in item (1)(a) and (d) only, with the Actuarial Board for Counseling and Discipline, or its successor, upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings and with state, federal, and international law enforcement officials, provided that such recipient agrees, and has the legal authority to agree, to maintain the confidentiality and privileged status of such documents, materials, data and other information in the same manner and to the same extent as required for the director or his designee.

(d) The director or his designee may receive documents, materials, data and other information, including otherwise confidential and privileged documents, materials, data or information, from the NAIC and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions and from the Actuarial Board for Counseling and Discipline or its successor and shall maintain as confidential or privileged any document, material, data or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

(e) The director or his designee may enter into agreements governing sharing and use of information consistent with item (2).

(f) No waiver of any applicable privilege or claim of confidentiality in the confidential information shall occur as a result of disclosure to the director or his designee under this section or as a result of sharing as authorized in item (2)(c).

(g) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this item (2) must be available and enforced in any proceeding in, and in any court of, this State.

(h) As used in this subsection, 'regulatory agency', 'law enforcement agency' and the 'NAIC' include, but are not limited to, their employees, agents, consultants and contractors.

(3) Notwithstanding item (2), any confidential information specified in item (1)(a) and (d):

(a) may be subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under subsection (D) or principle-based valuation report developed under

subsection (O)(2)(c) by reason of an action required by this section or by regulations promulgated under this section;

(b) may otherwise be released by the director with the written consent of the company; and

(c) once any portion of a memorandum in support of an opinion submitted under subsection (D) or a principle-based valuation report developed under subsection (O)(2)(c) is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of the memorandum or report must no longer be confidential.

(R)(1) The director may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in this State from the requirements of subsection (N) provided:

(a) the director has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing; and

(b) the company computes reserves using assumptions and methods used prior to the operative date of the valuation manual in addition to any requirements established by the director and promulgated by regulation.

(2) For any company granted an exemption under this section, subsections (D) through (M) are applicable. With respect to any company applying this exemption, any reference to subsection (N) found in subsections (D) through (M) is not applicable.

(S)(1) A company that has less than three hundred million dollars of ordinary life premium and that is licensed and doing business in this State and that is subject to the requirements of subsections (N) and (O), may hold reserves based on the mortality tables and interest rates defined by the valuation manual for net premium reserves as defined by the valuation manual and using the methodology defined in subsections (G), (I), (J), (K), and (L) as they apply to ordinary life insurance in lieu of the reserves required by subsections (N) and (O), provided that:

(a) if the company is a member of a group of life insurers, the group has combined ordinary life premiums of less than six hundred million dollars;

(b) the company reported total adjusted capital of at least four hundred and fifty percent of authorized control level risk-based capital in the risk-based capital report for the prior calendar year;

(c) the appointed actuary has provided an unqualified opinion on the reserves in accordance with subsection (D) for the prior calendar year; and

(d) the company has provided a certification by a qualified actuary that any universal life policy with a secondary guarantee issued after the operative date of the valuation manual meets the definition of a nonmaterial secondary guarantee universal life product as defined in the valuation manual.

(2) For purposes of item (1), ordinary life premiums are measured as direct premium plus reinsurance assumed from an unaffiliated company, as reported in the prior calendar year annual statement.

(3) A domestic company meeting the requirement of items (1) and (2) may file a statement prior to July first with the director or his designee certifying that these conditions are met for the current calendar year based on premiums and other values from the prior calendar year financial statements. The director or his designee may reject the statement before September first and require a company to comply with the valuation manual requirements for life insurance reserves."

Operative date of the valuation manual defined

SECTION 2. Section 38-63-510 of the 1976 Code is amended to read:

"Section 38-63-510. (1) This article is known and may be cited as the 'Standard Nonforfeiture Law for Life Insurance'.

(2) The term 'operative date of the valuation manual' means January first of the first calendar year that the valuation manual, as defined in Section 38-9-180, is effective."

Commissioners' Standard Mortality table to be used after operative date of the valuation manual

SECTION 3. Section 38-63-600(8) and (9) of the 1976 Code is amended to read:

"(8) All adjusted premiums and present values referred to in this article:

(A) must for all policies of ordinary insurance be calculated on the basis of (i) the Commissioners' 1980 Standard Ordinary Mortality Table or (ii) at the election of the insurer for any one or more specified plans of life insurance, the Commissioners' 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors;

(B) must for all policies of industrial insurance be calculated on the basis of the Commissioners' 1961 Standard Industrial Mortality Table; and

(C) must for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this section for policies issued in that calendar year. However:

(a) At the option of the insurer, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year.

(b) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by Section 38-63-520, must be calculated on the basis of the mortality table and rate of interest used in determining the amount of the paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(c) An insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(d) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners' 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners' 1961 Industrial Extended Term Insurance Table for policies of industrial insurance.

(e) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.

(f) For policies issued prior to the operative date of the valuation manual, any Commissioners' Standard ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the department for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners' 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners' 1980 Extended Term Insurance Table.

For policies issued on or after the operative date of the valuation manual, the valuation manual shall provide the Commissioners' Standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners' 1980 Standard Ordinary Mortality Table with or without the Ten-Year Select Mortality Factors or for the Commissioners' 1980 Extended Term Insurance Table. If the director approves, by regulation, any

Commissioners' Standard ordinary mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfetiture standard for policies issued on or after the operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

(g) For policies issued prior to the operative date of the valuation manual, any Commissioners' industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the department for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners' 1961 Standard Industrial Mortality Table or the Commissioners' 1961 Industrial Extended Term Insurance Table.

For policies issued on or after the operative date of the valuation manual, the valuation manual must provide the Commissioners' Standard mortality table for use in determining the minimum nonforfeiture standard that may be substituted for the Commissioners' 1961 Standard Industrial Mortality Table or the Commissioners' 1961 Industrial Extended Term Insurance Table. If the director approves, by regulation, any Commissioners' Standard industrial mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, then that minimum nonforfeiture standard supersedes the minimum nonforfeiture standard provided by the valuation manual.

(9) The nonforfeiture interest rate is:

(a) for policies issued prior to the operative date of the valuation manual, the nonforfeiture interest rate is per annum for any policy issued in a particular calendar year must be equal to one hundred twenty-five percent of the calendar year statutory valuation interest rate for the policy as defined in the Standard Valuation Law rounded to the nearest one-quarter of one percent, provided, however, that the nonforfeiture interest rate shall not be less than four percent; and

(b) for policies issued on and after the operative date of the valuation manual, the nonforfeiture interest rate per annum for any policy issued in a particular calendar year must be provided by the valuation manual."

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 19th day of April, 2016.

Approved the 21st day of April, 2016.

No. 149

(R154, S1049)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 33-47-1160 SO AS TO ALLOW A MARKETING COOPERATIVE ASSOCIATION WHOSE TERM OF EXISTENCE HAS EXPIRED TO APPLY TO THE SECRETARY OF STATE FOR REINSTATEMENT WITHIN TWO YEARS OF ITS EXPIRATION.

Be it enacted by the General Assembly of the State of South Carolina:

Reinstatement of a marketing cooperative association

SECTION 1. Article 13, Chapter 47, Title 33 of the 1976 Code is amended by adding:

"Section 33-47-1160. (A) An association whose term of existence has expired may apply to the Secretary of State for reinstatement within two years after the effective date of expiration. The application must:

(1) recite the name of the association and the effective date of its expiration; and

(2) include revised articles of incorporation with a new term as required by Section 33-47-210(4).

(B) If the Secretary of State determines the application contains the information required by subsection (A) and the information is correct, the Secretary of State shall cancel the expiration and prepare a certificate of reinstatement reciting its determination and the effective date of reinstatement, file the original of the certificate, and provide a copy to the association.

(C) When reinstatement is effective, it relates back to and takes effect as of the effective date of the expiration and the association shall resume carrying on its activities as if the expiration had never occurred."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 19th day of April, 2016.

Approved the 21st day of April, 2016.

No. 150

(R155, S1076)

AN ACT TO AMEND SECTION 48-39-130, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PERMITS TO UTILIZE CRITICAL AREAS, SO AS TO ESTABLISH THAT AN INDIVIDUAL DOES NOT NEED TO APPLY FOR A PERMIT TO DREDGE A MANMADE, PREDOMINATELY ARMORED, RECREATIONAL USE OR ESSENTIAL ACCESS CANAL.

Be it enacted by the General Assembly of the State of South Carolina:

Dredging permit not required for an individual to dredge in certain circumstances

SECTION 1. Section 48-39-130(D)(10) of the 1976 Code, as added by Act 41 of 2011, is amended to read:

"(10) Dredging in existing navigational canal community developments by individuals, counties, or municipalities of manmade, predominately armored, recreational use canals and essential access canals conveyed to the State or dedicated to the public for that purpose between 1965 and the effective date of this act if the maintenance dredging is authorized by a permit from the United States Army Corps of Engineers pursuant to the Federal Clean Water Act, as amended, or

the Rivers and Harbors Act of 1899. All other department administered certifications for such dredging are deemed waived."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 19th day of April, 2016.

Approved the 21st day of April, 2016.

No. 151

(R156, H3204)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44-29-185 SO AS TO ENACT THE "CERVICAL CANCER PREVENTION ACT", TO PROVIDE THAT BEGINNING WITH THE 2016-2017 SCHOOL YEAR, THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL MAY OFFER THE CERVICAL CANCER VACCINATION SERIES TO ADOLESCENT STUDENTS ENROLLING IN THE SEVENTH GRADE OF ANY PUBLIC OR PRIVATE SCHOOL OR HOMESCHOOLING PROGRAM IN THIS STATE, TO PROVIDE THAT NO STUDENT IS REQUIRED TO HAVE THE VACCINE BEFORE ENROLLING IN OR ATTENDING SCHOOL, TO PROVIDE THAT THE DEPARTMENT MAY DEVELOP AN INFORMATIONAL BROCHURE RELATED TO OFFERING THIS VACCINATION WITH SPECIFIC CONTENT REQUIREMENTS, TO REQUIRE THE DEPARTMENT TO DISCLOSE CERTAIN INFORMATION ABOUT THE VACCINATION SERIES, TO DEFINE "CERVICAL CANCER VACCINATION SERIES", TO PROVIDE THAT IMPLEMENTATION OF THIS ACT IS CONTINGENT UPON RECEIPT OF CERTAIN FUNDS, AND TO PROHIBIT THE DEPARTMENT FROM CONTRACTING WITH A HEALTH CARE PROVIDER TO OFFER THE VACCINATION SERIES IF THE HEALTH CARE PROVIDER PERFORMS ABORTIONS.

Be it enacted by the General Assembly of the State of South Carolina:

Cervical Cancer Prevention Act

SECTION 1. This act may be cited as the "Cervical Cancer Prevention Act".

Adolescent cervical cancer vaccinations

SECTION 2. Chapter 29, Title 44 of the 1976 Code is amended by adding:

"Section 44-29-185. (A)(1) Beginning with the 2016-2017 school year, the Department of Health and Environmental Control may offer the cervical cancer vaccination series for adolescent students. Adolescent students include children enrolling in the seventh grade in any school, public, private, or home schooling program in this State.

(2) No student is required to have the cervical cancer vaccination series before enrolling in or attending school. Consent of a parent or guardian is required for a student to receive the cervical cancer vaccination from the department, except as provided under Section 63-5-340.

(B)(1) The department may develop and provide, to each school and home schooling program whose grade levels include grade six, informational brochures concerning adolescent vaccinations, including the cervical cancer vaccination series. The brochure specifically must state the benefits and side effects of the cervical cancer vaccination series and that the vaccination series is optional. The brochure must encourage the parent or guardian of a student to take the child to the child's own health care provider to be vaccinated. At the beginning of the school year, each school and home schooling program may provide this informational brochure to the parents or guardians of all students in the sixth grade.

(2) The department shall disclose the benefits, adverse risks, and side effects of the adolescent vaccination series offered, which must take into account medical findings by the health care profession in this State, another state, or any other country. The department shall encourage the parent or guardian of a student to take the child to the child's own health care provider for a full discussion of the benefits and side effects of receiving any adolescent vaccination series.

(C) For the purposes of this section 'cervical cancer vaccination series' means the human papillomavirus vaccination series.

(D) Implementation of this section is contingent upon the appropriation of state and federal funding to the department to fully cover the costs of providing this vaccination series to eligible students as well as the availability of funds to produce the informational brochure provided for in subsection (B)(1).

(E) The department may not contract with a health care provider to offer the vaccination series if the health care provider performs abortions."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 19th day of April, 2016.

Approved the 21st day of April, 2016.

No. 152

(R157, H3265)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT "RONALD ROUSE'S LAW"; TO AMEND SECTION 59-32-30, AS AMENDED, RELATING TO PUBLIC SCHOOL COMPREHENSIVE HEALTH EDUCATION PROGRAMS, SO AS TO PROVIDE THAT STUDENTS MUST RECEIVE INSTRUCTION IN CARDIOPULMONARY RESUSCITATION AND AWARENESS OF THE USE OF AUTOMATED EXTERNAL DEFIBRILLATORS AT LEAST ONCE DURING THE ENTIRE FOUR YEARS OF GRADES NINE THROUGH TWELVE, TO SPECIFY SKILLS THIS INSTRUCTION MUST INCLUDE, TO PROVIDE FOR ADAPTATION OF THE PROGRAM FOR VIRTUAL SCHOOLS, TO PROVIDE FOR WAIVERS IN CERTAIN CIRCUMSTANCES, TO PROVIDE RELATED REQUIREMENTS OF LOCAL SCHOOL DISTRICTS AND THE STATE DEPARTMENT OF EDUCATION; TO PROVIDE STUDENTS WHO HAVE ALREADY COMPLETED THE REQUISITE HEALTH COURSE ARE NOT REQUIRED TO TAKE THE COURSE A SECOND TIME; TO PROVIDE THE

DEPARTMENT MAY INCLUDE LANGUAGE FROM ANY SECTION OF THIS ACT IN THE SOUTH CAROLINA HEALTH AND SAFETY EDUCATION CURRICULUM STANDARDS; AND TO PROVIDE SCHOOL DISTRICTS MUST BEGIN COMPLYING WITH THE PROVISIONS OF THIS ACT NO LATER THAN THE 2017-2018 SCHOOL YEAR.

Be it enacted by the General Assembly of the State of South Carolina:

Citation

SECTION 1. This act may be referred to and cited as "Ronald Rouse's Law".

Instruction in CPR and AED use awareness in high schools

SECTION 2. Section 59-32-30(A) of the 1976 Code, as last amended by Act 58 of 2015, is further amended by adding an appropriately numbered item at the end to read:

"( ) At least one time during the entire four years of grades nine through twelve, each student shall receive instruction in cardiopulmonary resuscitation (CPR), which must include, but not be limited to, hands-only CPR and must include awareness in the use of an automated external defibrillator (AED). Each school district shall use a program that incorporates the instruction of the psychomotor skills necessary to perform CPR developed by the American Heart Association, the American Red Cross, or an instructional program that is nationally recognized and based on the most current national evidence-based emergency cardiovascular care guidelines for CPR and awareness in the use of an AED. Local and statewide school districts shall coordinate with entities that have the experience and necessary equipment for the instruction of CPR and awareness in the use of AEDs; provided, however, that virtual schools may administer the instruction virtually and are exempt from any in-person instructional requirements. A school district must adopt a policy providing a waiver for this requirement for a student absent on the day the instruction occurred, a student with a disability whose individualized education program indicates such student is unable to complete all or a portion of the hands-only CPR requirement, or a student whose parent or guardian completes, in writing, a form approved by the school district opting out of hands-only CPR instruction and AED awareness. The State Board of

Education shall incorporate CPR training and AED awareness into the South Carolina Health and Safety Education Curriculum Standards and promulgate regulations to implement this section."

Exemption

SECTION 3. Students who have already completed the requisite health course will not be required to take the course a second time.

South Carolina Health and Safety Education Curriculum Standards

SECTION 4. The State Department of Education may include language from any section of this act in the South Carolina Health and Safety Education Curriculum Standards.

Compliance before 2017-2018 school year required

SECTION 5. School districts must begin complying with the provisions of this act no later than the 2017-2018 school year.

Time effective

SECTION 6. This act takes effect upon approval by the Governor.

Ratified the 19th day of April, 2016.

Approved the 21st day of April, 2016.

No. 153

(R158, H3325)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 61, TITLE 15 SO AS TO ENACT THE "CLEMENTA C. PINCKNEY UNIFORM PARTITION OF HEIRS' PROPERTY ACT"; TO DEFINE NECESSARY TERMS; TO PROVIDE FOR A PRELIMINARY HEARING TO DETERMINE WHETHER THE PROPERTY IN AN ACTION TO PARTITION REAL PROPERTY IS HEIRS' PROPERTY; TO PROVIDE FOR

NOTICE BY PUBLICATION IN A PARTITION ACTION; TO PROVIDE PROCEDURES FOR A COURT TO FOLLOW IN DETERMINING THE VALUE OF THE PROPERTY AND FACTORS FOR A COURT TO CONSIDER FOR DIFFERENT TYPES OF PARTITIONS; TO PROVIDE FOR OPEN-MARKET SALES, SEALED BIDS, OR AUCTIONS, TO DESIGNATE THE EXISTING PROVISIONS OF CHAPTER 61 AS ARTICLE 1; TO AMEND SECTION 15-61-10, RELATING TO PARTITION ACTIONS, SO AS TO PROVIDE FOR A COURT HEARING TO DETERMINE IF THE PARTITION ACTION CONCERNS HEIRS' PROPERTY; AND TO AMEND SECTION 15-61-100, RELATING TO WRITS OF PARTITION, SO AS TO DELETE OBSOLETE REFERENCES.

Be it enacted by the General Assembly of the State of South Carolina:

Clementa C. Pinckney Uniform Partition of Heirs' Property Act enacted

SECTION 1. Chapter 61, Title 15 of the 1976 Code is amended by adding:

"Article 3

Clementa C. Pinckney Uniform Partition of Heirs' Property Act

Section 15-61-310. This article may be cited as the 'Clementa C. Pinckney Uniform Partition of Heirs' Property Act'.

Section 15-61-320. As used in this article:

(1) 'Ascendant' means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

(2) 'Collateral' means an individual who is related to another individual under the law of intestate succession of this State, but who is not the other individual's ascendant or descendant.

(3) 'Descendant' means an individual who follows another individual in lineage, in the direct line of descent from the other individual.

(4) 'Determination of value' means a court order determining the fair market value of heirs' property under Section 15-61-360 or Section

15-61-400 or adopting the valuation of the property agreed to by all cotenants.

(5) 'Heirs' property' means real property held in tenancy in common that satisfies all of the following requirements as of the filing of a partition action:

(a) there is no agreement in a record binding all of the cotenants that governs the partition of the property;

(b) one or more of the cotenants acquired title from a relative, whether living or deceased; and

(c) any of the following applies:

(i) twenty percent or more of the interests are held by cotenants who are relatives;

(ii) twenty percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

(iii) twenty percent or more of the cotenants are relatives.

(6) 'Manifest prejudice' or 'Manifest injury' means a result that is obviously unfair or shocking to the conscience and is direct, obvious, and observable when considering the factors under Section 15-61-390(A).

(7) 'Partition by allotment' means a court-ordered partition of the heirs' property where ownership to all or a portion of the heirs' property is granted to one or more cotenants proportionate in value to their interests in the entire heirs' property parcel, with adjustments being made for payment to compensate other cotenants for the value of their respective interests in the heirs' property.

(8) 'Partition by sale' means a court-ordered sale of the entire heirs' property, whether by auction, sealed bids, or open-market sale, conducted under Section 15-61-400.

(9) 'Partition in kind' means the division of heirs' property into physically distinct and separately titled parcels.

(10) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) 'Relative' means an ascendant, descendant, or collateral, or an individual otherwise related to another individual by blood, marriage, adoption, or law of this State other than this article, and for purposes of this article, who owned or owns an interest in the heirs' property.

(12) 'Time computed' means computation of time as prescribed by this section, which shall be governed by Rule 6, South Carolina Rules of Civil Procedure, so that when the period of time prescribed or allowed

is seven days or less, intermediate Saturdays, Sundays, and holidays are excluded in the computation.

Section 15-61-330. (A) In an action to partition real property under Article 1, upon motion of a party or from statements contained in the pleadings, the court shall determine, in a preliminary hearing held after the filing of the action, whether the property is heirs' property. If the court determines that the property is heirs' property, the partition of the heirs' property is governed by the provisions of this article, unless all cotenants otherwise agree in a record.

(B) This article supplements the provisions of Article 1 and if the provisions of this article differ from the provisions of Article 1, the provisions of this article control for partitions of heirs' property.

Section 15-61-340. (A) This article does not limit or affect the method by which service of pleading in a partition action may be made.

(B) If the plaintiff in a partition action seeks notice by publication and the court determines that notice by publication is required and, pursuant to Section 15-61-330, that the property may be heirs' property, the plaintiff, not later than ten days after the determination of the court, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action in addition to compliance with the requirements for notice by publication. The sign must state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require, through its order, the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

Section 15-61-350. Pursuant to Rule 71, South Carolina Rules of Civil Procedure, this article does not affect a court's power, in partition proceedings, to dispense with the issuing of a writ of partition when, in the judgment of the court, it would involve unnecessary expense to issue such a writ. A court may, in all partition proceedings, without recourse to such writ, determine by means of testimony taken before the proper officer and reported to the court whether a partition in kind or partition by allotment among the parties is practicable or expedient and, when such cannot be fairly and equally made, may order the sale of the property and a division of the proceeds according to the rights of the parties. If a court issues a writ of partition and appoints commissioners pursuant to Rule 71, South Carolina Rules of Civil Procedure, each commissioner, in addition to the requirements and disqualifications

applicable to commissioners in Rule 71, must be disinterested and impartial and not a party to or a participant in the action.

Section 15-61-360. (A) Except as otherwise provided in subsections (B) and (C), if a court determines that property that is the subject of a partition action is heirs' property, the court shall determine the fair market value of the property by ordering an appraisal pursuant to subsection (D).

(B) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

(C) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall establish by order the fair market value of the property. The court shall send notice of the order to the party that filed the partition action. Within one week from the date notice was sent, the party that filed the partition action shall send a copy of the order establishing the fair market value of the property to all other cotenants with a known address.

(D) If a court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this State to determine the fair market value of the property assuming sole ownership of the fee simple estate. On appointment of the appraiser, the court shall order the appraiser to file with the court a sworn or verified appraisal upon its completion and the court shall send to the party that filed the partition action a notice of the appraisal filing stating:

(1) the appraised fair market value of the property;

(2) that the appraisal is available at the clerk's office; and

(3) that a party may file with the court an objection to the appraisal no later than thirty days after the notice is sent, stating the grounds for the objection.

(E) If an appraisal is filed pursuant to subsection (D), within one week from the date the notice was sent, the party that filed the partition action shall send notice to all other cotenants with a known address, stating:

(1) the appraised fair market value of the property;

(2) that the appraisal is available at the clerk's office; and

(3) that a party may file with the court an objection to the appraisal no later than thirty days after the notice is sent stating the grounds for the objection.

(F) If an appraisal is filed with the court pursuant to subsection (D), the court shall conduct a hearing to determine the fair market value of

the property not sooner than sixty days after a copy of the notice of the appraisal is sent to each party under subsections (D) and (E), whether or not an objection to the appraisal is filed. In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(G) After a hearing under subsection (F), but before considering the merits of the partition action, the court, by order, shall determine the fair market value of the property. The court shall send notice of the order to the party that filed the partition action and, within one week from the date notice was sent, the party filing the partition action shall send copies of the fair market value order to all other cotenants with a known address.

(H) The court, in its discretion, shall determine allocation of payment from the parties to cover the costs of the appraisal.

Section 15-61-370. (A) If any cotenant requests partition by sale, after the determination of value pursuant to Section 15-61-360, the party filing the partition action, after receipt of the value information from the clerk's office, shall send notice to the parties that any cotenant, except a cotenant that requested partition by sale, may buy all of the interests of the cotenants that requested partition by sale.

(B) A cotenant, except a cotenant that requested partition by sale, who is interested in purchasing the interests of the cotenants that requested partition by sale, shall notify the court of that interest no later than ten days prior to the date set for the partition trial. A cotenant that did not request partition by sale must be allowed to purchase the interests of any cotenant who requested a partition by sale, as provided in this article, whether default has been entered against the cotenant or not.

(C) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined pursuant to Section 15-61-360 multiplied by the cotenant's fractional ownership of the entire parcel.

(D) After the expiration of the period in subsection (B), the following requirements apply:

(1) If only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify the party filing the partition action of that fact. After receiving notice from the court, the party filing the partition action shall notify all the parties of that same fact.

(2) If more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court, by order, shall allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the

entire parcel divided by the total existing fractional ownership of all cotenants electing to buy. The court shall send notice of the order to the party that filed the partition action and, within one week from the date notice was sent, the party filing the partition action shall send a copy of the order showing the price to be paid by each electing cotenant to all other cotenants with a known address.

(3) If no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify the party filing the partition action to send notice to all the parties of that fact and the court shall resolve the partition action, by order, pursuant to Section 15-61-380.

(E) If notices are sent to the parties under subsection (D)(1) or (2), the court shall set a date, not sooner than sixty days after the date the notice was sent, by which electing cotenants must pay their apportioned price into the court. After this date, the following requirements apply:

(1) If all electing cotenants timely pay their apportioned price into court, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them.

(2) If no electing cotenant timely pays its apportioned price, the court shall resolve the partition action pursuant to Section 15-61-380(A) and (B), as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court, on motion, shall order the party so moving to give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all the interests.

(F) Not later than twenty days after notice is sent pursuant to subsection (E)(3), any cotenant who paid may elect to purchase all of the remaining interest by paying the entire price into the court. After an additional twenty-day period, the following requirements apply:

(1) If only one cotenant pays the entire price for the remaining interests, the court shall issue an order reallocating the remaining interests to that cotenant and disburse the amounts held by it to the persons entitled to them.

(2) If no cotenant pays the entire price for the remaining interests, the court shall resolve the partition action pursuant to Section 15-61-380, as if the interests of the cotenants that requested partition by sale were not purchased.

(3) If more than one cotenant pays the entire price for the remaining interests, the court shall reapportion the remaining interests

among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interests. The court shall issue promptly an order reallocating all of the cotenants' interests, disburse the amounts held by it to the persons entitled to them, and promptly refund any excess payment held by the court.

(G) Not later than forty days after the party filing the partition action sends notice to the parties pursuant to subsection (A), any cotenant entitled to buy an interest under this section may request the court to authorize a sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint, but that did not appear in the action.

(H) If the court receives a timely request under subsection (G), the court, after a hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(1) A sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under subsections (A) through (F) have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections.

(2) The purchase price for the interest of a nonappearing cotenant is based on the court's determination of value pursuant to Section 15-61-360.

Section 15-61-380. (A) If all the interests of the cotenants that requested partition by sale are not purchased by other cotenants pursuant to Section 15-61-370 or if, after conclusion of the buyout pursuant to Section 15-61-370, a cotenant remains that has requested a partition in kind or a partition by allotment, the court shall order a partition in kind or a partition by allotment, unless the court, after consideration of the factors listed in Section 15-61-390, finds that partition in kind or partition by allotment may result in manifest prejudice or manifest injury to the cotenants as a group. In considering whether to order partition in kind or partition by allotment, the court shall approve a request by two or more parties to have their individual interests aggregated.

(B) If the court does not order partition in kind or partition by allotment under subsection (A), the court shall order partition by sale pursuant to Section 15-61-400 or, if no cotenant requested partition by sale, the court shall dismiss the action.

(C) If the court orders partition in kind or partition by allotment pursuant to subsection (A), the court may require that one or more

cotenants pay one or more of the other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind or the partition by allotment just and proportionate in value to the fractional interests held.

Section 15-61-390. (A) In determining pursuant to Section 15-61-380(A) whether partition in kind or partition by allotment would result in manifest prejudice or manifest injury to the cotenants as a group, the court shall consider the following:

(1) whether the heirs' property practicably can be divided among the cotenants;

(2) whether partition in kind or partition by allotment would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;

(3) evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;

(4) a cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

(5) the lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

(6) the degree to which the cotenants have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and

(7) any other relevant factor.

(B) The court may not consider any one factor in subsection (A) to be dispositive without weighing the totality of all relevant factors and circumstances.

Section 15-61-400. (A) If the court orders a sale of heirs' property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group.

(B) If the court orders an open-market sale and the parties, not later than thirty days after the entry of the order, agree on a real estate broker licensed in this State to offer the property for sale, the court, upon

consultation with the parties, shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this State to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

(C) If a broker appointed under subsection (B) obtains within a reasonable time an offer to purchase the property for at least the determination of value:

(1) the broker shall comply with the reporting requirements in Section 15-61-410;

(2) the sale may be completed in accordance with state law other than this article; and

(3) the commission of the real estate broker must be paid from the proceeds of the sale.

(D) If the broker appointed under subsection (B) does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after a hearing, may:

(1) approve the highest outstanding offer, if any;

(2) redetermine the value of the property and order that the property continue to be offered for an additional time; or

(3) order that the property be sold by sealed bids or at an auction.

(E) If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted pursuant to procedures governing judicial sales and auctions.

(F) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

Section 15-61-410. (A) Unless required otherwise to do so within a shorter time, a broker appointed under Section 15-61-400, to offer heirs' property for open-market sale shall file a report with the court not later than ten days after receiving an offer to purchase the property for at least the value determined pursuant to Section 15-61-360 or 15-61-400.

(B) The report required by subsection (A) must contain the following information:

(1) a description of the property to be sold to each buyer;

(2) the name of each buyer;

(3) the proposed purchase price;

(4) the terms and conditions of the proposed sale, including the terms of any owner financing;

(5) the amounts to be paid to lienholders;

(6) a statement of contractual or other arrangements or conditions of the broker's commission; and

(7) other material facts relevant to the sale.

Section 15-61-420. This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b), except to the extent that South Carolina law, rules, and regulations so authorize."

Sections designated

SECTION 2. Sections 15-61-10 through 15-61-110 are designated as Article 1, Chapter 61, Title 15, to be entitled "General Provisions".

Court shall determine if property is heirs' property

SECTION 3. Section 15-61-10 of the 1976 Code is amended to read:

"Section 15-61-10. (A) All joint tenants and tenants in common who hold, jointly or in common, for a term of life or years or of whom one has an estate for a term of life or years with the other that has an estate of inheritance or freehold in any lands, tenements or hereditaments shall be compellable to make severance and partition of all such lands, tenements and hereditaments.

(B) In an action to partition real property, upon motion of a party or from statements contained in the pleadings, a court shall determine, in a preliminary hearing held after the filing of the action, whether the property is heirs' property. If the court determines that the property is heirs' property, the property must be partitioned under Article 3, Chapter 61, Title 15, unless all of the cotenants otherwise agree in a record."

Rule 71, South Carolina Rules of Civil Procedure shall not affect the power of a court to hear a partition action

SECTION 4. Section 15-61-100 of the 1976 Code is amended to read:

"Section 15-61-100. Nothing in Rule 71, South Carolina Rules of Civil Procedure, concerning partition actions, shall be construed to affect the power of a court hearing a partition action to dispense with the issuing of a writ of partition when, in the judgment of the court, it would involve unnecessary expense to issue such writ. And the court may in all proceedings in partition, without recourse to such writ, determine by means of testimony taken before the proper officer and reported to the court whether a partition in kind among the parties be practicable or expedient and, when such partition cannot be fairly and equally made, may order a sale of the property and a division of the proceeds according to the rights of the parties."

Severability Clause

SECTION 5. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time Effective

SECTION 6. This act takes effect on January 1, 2017, and applies to partition actions filed on or after that date.

Ratified the 19th day of April, 2016.

Approved the 21st day of April, 2016.

No. 154

(R159, H3545)

AN ACT TO AMEND THE "OMNIBUS CRIME REDUCTION AND SENTENCING REFORM ACT OF 2010", CODE OF LAWS OF SOUTH CAROLINA, 1976, TO AMEND SECTION 16-11-110, RELATING TO ARSON, SO AS TO RESTRUCTURE THE ELEMENTS OF THE DEGREES OF ARSON; TO AMEND SECTION 16-23-500, RELATING TO THE UNLAWFUL POSSESSION OF A FIREARM OR AMMUNITION BY A PERSON CONVICTED OF A VIOLENT CRIME CLASSIFIED AS A FELONY, SO AS TO PROVIDE PROCEDURES FOR THE RETURN OF FIREARMS OR AMMUNITION TO AN INNOCENT OWNER UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 22-3-560, AS AMENDED, RELATING TO THE ABILITY OF MAGISTRATES TO PUNISH BREACHES OF THE PEACE, SO AS TO PROVIDE THAT MAGISTRATES MAY PUNISH BREACHES OF THE PEACE BY A FINE NOT EXCEEDING FIVE HUNDRED DOLLARS OR IMPRISONMENT FOR A TERM NOT EXCEEDING THIRTY DAYS, OR BOTH; TO AMEND SECTION 24-19-10, AS AMENDED, RELATING TO THE DEFINITION OF "YOUTHFUL OFFENDER", SO AS TO PROVIDE THAT IF THE OFFENDER COMMITTED BURGLARY IN THE SECOND DEGREE PURSUANT TO SECTION 16-11-312(B), THE OFFENDER MUST RECEIVE AND SERVE A MINIMUM SENTENCE OF AT LEAST THREE YEARS, NO PART OF WHICH MAY BE SUSPENDED, AND THE PERSON IS NOT ELIGIBLE FOR CONDITIONAL RELEASE UNTIL THE PERSON HAS SERVED THE THREE-YEAR MINIMUM SENTENCE; TO AMEND SECTIONS 24-21-5 AND 24-21-100, RELATING TO ADMINISTRATIVE MONITORING BY THE DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, BOTH SO AS TO PROVIDE THE PROCEDURES THE DEPARTMENT SHALL FOLLOW WHEN NOTIFYING PERSONS UNDER ADMINISTRATIVE MONITORING; TO AMEND SECTION 24-21-280, AS AMENDED, RELATING TO COMPLIANCE CREDITS OF PERSONS UNDER THE SUPERVISION OF THE DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, SO AS TO PROVIDE THAT AN INDIVIDUAL MAY EARN UP TO TWENTY DAYS OF

COMPLIANCE CREDITS FOR EACH THIRTY-DAY PERIOD IN WHICH THE DEPARTMENT DETERMINES THAT THE INDIVIDUAL HAS SUBSTANTIALLY FULFILLED ALL OF THE CONDITIONS OF SUPERVISION; TO AMEND SECTIONS 44-53-370 AND 44-53-375, BOTH AS AMENDED, RELATING TO CONTROLLED SUBSTANCE OFFENSES, BOTH SO AS TO REMOVE CERTAIN PROVISIONS PERTAINING TO PRIOR AND SUBSEQUENT CONTROLLED SUBSTANCE CONVICTIONS; TO AMEND SECTION 44-53-470, AS AMENDED, RELATING TO WHEN A CONTROLLED SUBSTANCE OFFENSE IS CONSIDERED A SECOND OR SUBSEQUENT OFFENSE, SO AS TO PROVIDE THAT A CONVICTION FOR TRAFFICKING IN CONTROLLED SUBSTANCES MUST BE CONSIDERED A PRIOR OFFENSE FOR PURPOSES OF ANY CONTROLLED SUBSTANCE PROSECUTION; AND TO AMEND SECTION 56-1-396, RELATING TO THE DRIVER'S LICENSE SUSPENSION AMNESTY PERIOD, SO AS TO PROVIDE THAT QUALIFYING SUSPENSIONS DO NOT INCLUDE SUSPENSIONS PURSUANT TO SECTION 56-5-2990 OR 56-5-2945, AND DO NOT INCLUDE SUSPENSIONS PURSUANT TO SECTION 56-1-460, IF THE PERSON DRIVES A MOTOR VEHICLE WHEN THE PERSON'S LICENSE HAS BEEN SUSPENDED OR REVOKED PURSUANT TO SECTION 56-5-2990 OR 56-5-2945.

Be it enacted by the General Assembly of the State of South Carolina:

Arson, elements restructured

SECTION 1. Section 16-11-110 of the 1976 Code is amended to read:

"Section 16-11-110. (A) A person who wilfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures a burning that results in damage to a building, structure, or any property specified in subsections (B) and (C), whether the property of the person or another, which results, either directly or indirectly, in death or serious bodily injury to a person is guilty of the felony of arson in the first degree and, upon conviction, must be imprisoned not less than thirty years.

(B) A person who wilfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures a burning that results in damage to a dwelling house, church or place of

worship, public or private school facility, manufacturing plant or warehouse, building where business is conducted, institutional facility, or any structure designed for human occupancy including local and municipal buildings, whether the property of the person or another, is guilty of the felony of arson in the second degree and, upon conviction, must be imprisoned not less than three nor more than twenty-five years.

(C) A person commits a violation of the provisions of this subsection who wilfully and maliciously:

(1) causes an explosion, sets fire to, burns, or causes a burning which results in damage to a building or structure other than those specified in subsections (A) and (B), a railway car, a ship, boat, or other watercraft, an aircraft, an automobile or other motor vehicle, or personal property; or

(2) aids, counsels, or procures a burning that results in damage to a building or structure other than those specified in subsections (A) and (B), a railway car, a ship, boat, or other watercraft, an aircraft, an automobile or other motor vehicle, or personal property with intent to destroy or damage by explosion or fire, whether the property of the person or another.

A person who violates the provisions of this subsection is guilty of the felony of arson in the third degree and, upon conviction, must be imprisoned not more than fifteen years.

(D) For purposes of this section, 'damage' means an application of fire or explosive that results in burning, charring, blistering, scorching, smoking, singeing, discoloring, or changing the fiber or composition of a building, structure, or any property specified in this section."

Firearms, return of a firearm to innocent owner

SECTION 2. Section 16-23-500 of the 1976 Code is amended to read:

"Section 16-23-500. (A) It is unlawful for a person who has been convicted of a violent crime, as defined by Section 16-1-60, that is classified as a felony offense, to possess a firearm or ammunition within this State.

(B) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than five years, or both.

(C)(1) In addition to the penalty provided in this section, the firearm or ammunition involved in the violation of this section must be confiscated. The firearm or ammunition must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation

occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated firearm or ammunition may use it within the agency, transfer it to another law enforcement agency for the lawful use of that agency, trade it with a retail dealer licensed to sell firearms or ammunition in this State for a firearm, ammunition, or any other equipment approved by the agency, or destroy it. A firearm or ammunition must not be disposed of in any manner until the results of any legal proceeding in which it may be involved are finally determined. If the State Law Enforcement Division seized the firearm or ammunition, the division may keep the firearm or ammunition for use by its forensic laboratory. Records must be kept of all confiscated firearms or ammunition received by the law enforcement agencies under the provisions of this section.

(2) A law enforcement agency that receives a firearm or ammunition pursuant to this section shall administratively release the firearm or ammunition to an innocent owner. The firearm or ammunition must not be released to the innocent owner until the results of any legal proceedings in which the firearm or ammunition may be involved are finally determined. Before the firearm or ammunition may be released, the innocent owner shall provide the law enforcement agency with proof of ownership and shall certify that the innocent owner will not release the firearm or ammunition to the person who has been charged with a violation of this section which resulted in the confiscation of the firearm or ammunition. The law enforcement agency shall notify the innocent owner when the firearm or ammunition is available for release. If the innocent owner fails to recover the firearm or ammunition within thirty days after notification of the release, the law enforcement agency may maintain or dispose of the firearm or ammunition as otherwise provided in this section.

(D) The judge that hears the case involving the violent offense, as defined by Section 16-1-60, that is classified as a felony offense, shall make a specific finding on the record that the offense is a violent offense, as defined by Section 16-1-60, and is classified as a felony offense. A judge's failure to make a specific finding on the record does not bar or otherwise affect prosecution pursuant to this subsection and does not constitute a defense to prosecution pursuant to this subsection."

Breach of peace

SECTION 3. Section 22-3-560 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

"Section 22-3-560. Magistrates may punish breaches of the peace by a fine not exceeding five hundred dollars or imprisonment for a term not exceeding thirty days, or both."

Youthful offenders, burglary in the second degree three-year minimum sentence

SECTION 4. Section 24-19-10(d) of the 1976 Code, as last amended by Act 255 of 2012, is further amended to read:

"(d) 'Youthful offender' means an offender who is:

(i) under seventeen years of age and has been bound over for proper criminal proceedings to the court of general sessions pursuant to Section 63-19-1210, for allegedly committing an offense that is not a violent crime, as defined in Section 16-1-60, and that is a misdemeanor, a Class D, Class E, or Class F felony, as defined in Section 16-1-20, or a felony which provides for a maximum term of imprisonment of fifteen years or less;

(ii) seventeen but less than twenty-five years of age at the time of conviction for an offense that is not a violent crime, as defined in Section 16-1-60, and that is a misdemeanor, a Class D, Class E, or Class F felony, or a felony which provides for a maximum term of imprisonment of fifteen years or less;

(iii) under seventeen years of age and has been bound over for proper criminal proceedings to the court of general sessions pursuant to Section 63-19-1210, for allegedly committing burglary in the second degree (Section 16-11-312). If the offender committed burglary in the second degree pursuant to Section 16-11-312(B), the offender must receive and serve a minimum sentence of at least three years, no part of which may be suspended, and the person is not eligible for conditional release until the person has served the three-year minimum sentence;

(iv) seventeen but less than twenty-one years of age at the time of conviction for burglary in the second degree (Section 16-11-312). If the offender committed burglary in the second degree pursuant to Section 16-11-312(B), the offender must receive and serve a minimum sentence of at least three years, no part of which may be suspended, and the person is not eligible for conditional release until the person has served the three-year minimum sentence;

(v) under seventeen years of age and has been bound over for proper criminal proceedings to the court of general sessions pursuant to Section 63-19-1210 for allegedly committing criminal sexual conduct with a minor in the third degree, pursuant to Section 16-3-655(C), and

the alleged offense involved consensual sexual conduct with a person who was at least fourteen years of age at the time of the act; or

(vi) seventeen but less than twenty-five years of age at the time of conviction for committing criminal sexual conduct with a minor in the third degree, pursuant to Section 16-3-655(C), and the conviction resulted from consensual sexual conduct, provided the offender was eighteen years of age or less at the time of the act and the other person involved was at least fourteen years of age at the time of the act."

Probation, Parole and Pardon Services, administrative monitoring procedures, notice

SECTION 5. Section 24-21-5(1) of the 1976 Code, as added by Act 273 of 2010, is amended to read:

"(1) 'Administrative monitoring' means a form of monitoring by the department beyond the end of the term of supervision in which the only remaining condition of supervision not completed is the payment of financial obligations. Under administrative monitoring, the only condition of the monitoring shall be the requirement that reasonable progress be made toward the payment of financial obligations. The payment of monitoring mandated fees shall continue. When an offender is placed on administrative monitoring, the offender shall register with the department's representative in the offender's county, notify the department of the offender's current address each quarter, and make payments on financial obligations owed, until the financial obligations are paid in full or a consent order of judgment is filed. Written notice of petitions for civil contempt as set forth in Section 24-21-100, scheduled hearings or proceedings, or any other event or modification associated with administrative monitoring must be given by the department by depositing the notice in the United States mail with postage prepaid addressed to the person at the address contained in the records of the department. The giving of notice by mail is complete ten days after the deposit of the notice. A certificate by the director of the department or the director's designee that the notice has been sent as required in this section is presumptive proof that the requirements as to notice of petitions for civil contempt as set forth in Section 24-21-100, scheduled hearings or proceedings, or any other event or modification associated with administrative monitoring have been met even if the notice has not been received by the offender. If an offender fails to appear for the civil contempt proceeding, the court may issue a bench warrant for the offender's arrest for failure to appear, or the court may proceed in the

offender's absence and issue a bench warrant along with an order imposing a term of confinement as set forth in Section 24-21-100."

Probation, Parole and Pardon Services, administrative monitoring procedures, notice

SECTION 6. Section 24-21-100(A) of the 1976 Code, as added by Act 273 of 2010, is amended to read:

"(A) Notwithstanding the provisions of Section 24-19-120, 24-21-440, 24-21-560(B), or 24-21-670, when an individual has not fulfilled the individual's obligations for payment of financial obligations by the end of the individual's term of supervision, then the individual shall be placed under quarterly administrative monitoring, as defined in Section 24-21-5, by the department until such time as those financial obligations are paid in full or a consent order of judgment is filed. If the individual under administrative monitoring fails to make reasonable progress toward the payment of such financial obligations, as determined by the department, the department may petition the court to hold an individual in civil contempt for failure to pay the financial obligations. The department shall provide written notice of the petition and any scheduled contempt hearing by depositing the notice in the United States mail with postage prepaid addressed to the person at the address contained in the records of the department. The giving of notice by mail is complete ten days after the deposit of the notice. A certificate by the director of the department or the director's designee that the notice has been sent as required in this section is presumptive proof that the requirements as to notice of petition and any scheduled contempt hearing have been met even if the notice has not been received by the offender. If the court finds the individual has the ability to pay but has not made reasonable progress toward payment, the court may hold the individual in civil contempt of court and may impose a term of confinement in the local detention center until payment of the financial obligations, but in no case to exceed ninety days of confinement. Following any term of confinement, the individual shall be returned to quarterly administrative monitoring by the department. If the individual under administrative monitoring does not have the ability to pay the financial obligations and has no reasonable likelihood of being able to pay in the future, the department may submit a consent order of judgment to the court, which shall relieve the individual of any further administrative monitoring."

Probation, Parole and Pardon Services, compliance credits

SECTION 7. Section 24-21-280(D) of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

"(D) A probation agent, in consultation with the probation agent's supervisor, shall identify each individual under the department's supervision, with a term of supervision of more than one year, and shall calculate and award compliance credits as provided in this section. Credits may be earned from the first day of supervision on a thirty-day basis, but must not be applied until after each thirty-day period of supervision has been completed. Compliance credits may be denied for noncompliance on a thirty-day basis as determined by the department. The denial of nonearned compliance credits is a final decision of the department and is not subject to appeal. An individual may earn up to twenty days of compliance credits for each thirty-day period in which the department determines that the individual has substantially fulfilled all of the conditions of the individual's supervision."

Controlled substance offenses, removal of certain prior history consideration

SECTION 8. Section 44-53-370(b) of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

"(b) A person who violates subsection (a) with respect to:

(1) a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a felony and, upon conviction, for a first offense must be imprisoned not more than fifteen years or fined not more than twenty-five thousand dollars, or both. For a second offense, the offender must be imprisoned not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both. For a third or subsequent offense, the offender must be imprisoned not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third

or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted;

(2) any other controlled substance classified in Schedule I, II, or III, flunitrazepam or a controlled substance analogue, is guilty of a felony and, upon conviction, for a first offense must be imprisoned not more than five years or fined not more than five thousand dollars, or both. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than ten thousand dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not less than five years nor more than twenty years, or fined not more than twenty thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted;

(3) a substance classified in Schedule IV except for flunitrazepam is guilty of a misdemeanor and, upon conviction, for a first offense must be imprisoned not more than three years or fined not more than three thousand dollars, or both. In the case of second or subsequent offenses, the person is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than six thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance

pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted;

(4) a substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, for a first offense must be imprisoned not more than one year or fined not more than one thousand dollars, or both. In the case of second or subsequent offenses, the sentence must be twice the first offense. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted."

Controlled substance offenses, removal of certain prior history consideration

SECTION 9. Section 44-53-375(B) of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

"(B) A person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44-53-370, is guilty of a felony and, upon conviction:

(1) for a first offense, must be sentenced to a term of imprisonment of not more than fifteen years or fined not more than twenty-five thousand dollars, or both;

(2) for a second offense, the offender must be imprisoned for not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both;

(3) for a third or subsequent offense, the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both.

Possession of one or more grams of methamphetamine or cocaine base is prima facie evidence of a violation of this subsection. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted."

Controlled substance offenses, convictions for trafficking offenses to be considered in prior history

SECTION 10. Section 44-53-470 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

"Section 44-53-470. (A) An offense is considered a second or subsequent offense if:

(1) for an offense involving marijuana pursuant to the provisions of this article, the offender has been convicted within the previous five years of a first violation of a marijuana possession provision of this article or of another state or federal statute relating to marijuana possession;

(2) for an offense involving marijuana pursuant to the provisions of this article, the offender has at any time been convicted of a first, second, or subsequent violation of a marijuana offense provision of this article or of another state or federal statute relating to marijuana offenses, except a first violation of a marijuana possession provision of this article or of another state or federal statute relating to marijuana offenses;

(3) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has been convicted within the previous ten years of a first violation of a controlled substance offense provision, other than a marijuana offense provision, of this

article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs; and

(4) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has at any time been convicted of a second or subsequent violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs.

(B) In addition to the above provisions, a conviction of trafficking in marijuana or trafficking in any other controlled substance in violation of this article or of another state or federal statute relating to trafficking in controlled substances must be considered a prior offense for purposes of any prosecution pursuant to this article.

(C) If a person is sentenced to confinement as the result of a conviction pursuant to this article, the time period specified in this section begins on the date of the conviction or on the date the person is released from confinement imposed for the conviction, whichever is later. For purposes of this section, confinement includes incarceration and supervised release, including, but not limited to, probation, parole, house arrest, community supervision, work release, and supervised furlough."

Driver's license suspension amnesty period, certain driving offenses excluded

SECTION 11. Section 56-1-396(F) of the 1976 Code, as added by Act 273 of 2010, is amended to read:

"(F) Qualifying suspensions include, and are limited to, suspensions pursuant to Sections 34-11-70, 56-1-120, 56-1-170, 56-1-185, 56-1-240, 56-1-270, 56-1-290, 56-1-460(A)(1), 56-2-2740, 56-9-351, 56-9-354, 56-9-357, 56-9-430, 56-9-490, 56-9-610, 56-9-620, 56-10-225, 56-10-240, 56-10-270, 56-10-520, 56-10-530, and 56-25-20. Qualifying suspensions do not include suspensions pursuant to Section 56-5-2990 or 56-5-2945, and do not include suspensions pursuant to Section 56-1-460, if the person drives a motor vehicle when the person's license has been suspended or revoked pursuant to Section 56-5-2990 or 56-5-2945."

Savings clause

SECTION 12. The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 13. This act takes effect upon approval by the Governor.

Ratified the 19th day of April, 2016.

Approved the 21st day of April, 2016.

No. 155

(R160, H3576)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 41-1-120 SO AS TO PROVIDE THAT CERTAIN WRITTEN AGREEMENTS BETWEEN NONPROFIT YOUTH SPORTS ORGANIZATIONS AND COACHES PROVIDE CONCLUSIVE EVIDENCE THAT THE COACH IS AN INDEPENDENT CONTRACTOR RATHER THAN AN EMPLOYEE OF THE ORGANIZATION AND THAT THE ORGANIZATION IS EXEMPT FROM CERTAIN OBLIGATIONS CONCERNING WORKERS' COMPENSATION COVERAGE AND INCOME TAX WITHHOLDINGS, TO PROVIDE SPECIFIC REQUIREMENTS FOR THESE WRITTEN AGREEMENTS, TO PROVIDE THESE WRITTEN AGREEMENTS ARE NOT CONCLUSIVE PROOF OF THE

EXISTENCE OF AN INDEPENDENT CONTRACTOR RELATIONSHIP FOR PURPOSES OF REQUIRED COVERAGE OF UNEMPLOYMENT INSURANCE AND OF ANY CIVIL ACTIONS INSTITUTED BY THIRD PARTIES, AND TO DEFINE THE TERM "NONPROFIT YOUTH SPORTS ORGANIZATION".

Be it enacted by the General Assembly of the State of South Carolina:

Establishing independent contractor status, purposes, limits, definitions

SECTION 1. Chapter 1, Title 41 of the 1976 Code is amended by adding:

"Section 41-1-120. (A) Notwithstanding another provision of law, a written agreement between a nonprofit youth sports organization and a coach which specifies that the coach is an independent contractor and not an employee of the nonprofit youth sports organization and also which otherwise satisfies the requirements of this section constitutes conclusive evidence that the relationship between the nonprofit youth sports organization and the coach is that of an independent contractor relationship rather than an employment relationship for the purposes of this section, and that the nonprofit youth sports organization consequently is not obligated to:

(1) secure compensation for the coach pursuant to the workers' compensation law; and

(2) withhold federal and state income taxes from money paid to the coach for services he provides to the organization pursuant to the contract.

(B) A written agreement provided in subsection (A) must contain a conspicuously located disclosure appearing in bold-faced, underlined, or large type. This agreement must be acknowledged by the parties as indicated by their signatures, initials, or other means to evince that the parties have read and understand the disclosure. This disclosure clearly must state that the coach is:

(1) an independent contractor and not an employee of the nonprofit youth sports organization for the purposes listed in subsection (A)(1) and (2);

(2) not entitled to workers' compensation benefits in connection with his or her contract with the nonprofit youth sports organization; and

(3) obligated to pay federal and state income tax on any money paid pursuant to the contract for coaching services, and that as a consequence the nonprofit youth sports organization will not withhold any amounts from the coach for purposes of satisfying the coach's income tax liability.

(C) A written agreement between a nonprofit youth sports organization and a coach formed pursuant to this subsection may not, in and of itself, be construed as conclusive evidence that an independent contractor relationship exists for purposes of required coverage under the state unemployment compensation law or any civil action instituted by a third party.

(D) As used in this section, 'nonprofit youth sports organization' means an organization that is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and is primarily engaged in conducting organized sports programs for persons under twenty-one years of age."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 19th day of April, 2016.

Approved the 21st day of April, 2016.

No. 156

(R161, H3706)

AN ACT TO AMEND CHAPTER 99, TITLE 44, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EMERGENCY TREATMENT FOR MEDICAL HAZARDS CAUSED BY INSECT STINGS, SO AS TO RENAME THE CHAPTER THE "EMERGENCY ANAPHYLAXIS TREATMENT ACT"; TO DEFINE CERTAIN TERMS, INCLUDING "AUTHORIZED ENTITY", "EPINEPHRINE AUTO-INJECTOR", AND "HEALTH CARE PRACTITIONER"; TO ALLOW THE PRESCRIPTION OF EPINEPHRINE AUTO-INJECTORS TO AUTHORIZED ENTITIES; TO ALLOW AUTHORIZED ENTITIES TO ACQUIRE AND STOCK EPINEPHRINE

AUTO-INJECTORS; TO ALLOW CERTAIN INDIVIDUALS TO PROVIDE AND ADMINISTER EPINEPHRINE AUTO-INJECTORS AND TO ESTABLISH TRAINING REQUIREMENTS; AND TO PROVIDE FOR IMMUNITY FROM LIABILITY FOR CERTAIN INDIVIDUALS AND ENTITIES, WITH EXCEPTIONS.

Be it enacted by the General Assembly of the State of South Carolina:

Emergency Anaphylaxis Treatment Act

SECTION 1. This act may be cited as the "Emergency Anaphylaxis Treatment Act".

Emergency anaphylaxis treatment

SECTION 2. Chapter 99, Title 44 of the 1976 Code is amended to read:

"CHAPTER 99

Emergency Anaphylaxis Treatment Act

Section 44-99-10. As used in this chapter:

(1) 'Administer' means the direct application of an epinephrine auto-injector to the body of an individual.

(2) 'Authorized entity' means any entity or organization, other than a school described in Section 59-63-95, in connection with or at which allergens capable of causing anaphylaxis may be present including, but not limited to, recreation camps, colleges and universities, daycare facilities, places of worship, youth sports leagues, amusement parks, restaurants, places of employment, and sports arenas.

(3) 'Department' means the South Carolina Department of Health and Environmental Control.

(4) 'Epinephrine auto-injector' means a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body.

(5) 'Health care practitioner' means a physician, an advanced practice registered nurse authorized to prescribe medication pursuant to Section 40-33-34, or a physician assistant authorized to prescribe medication pursuant to Sections 40-47-955 through 40-47-965.

(6) 'Physician' means a person authorized to practice medicine pursuant to Article 1, Chapter 47, Title 40.

(7) 'Provide' means the supply of one or more epinephrine auto-injectors to an individual.

Section 44-99-20. Notwithstanding any other provision of law, a health care practitioner may prescribe epinephrine auto-injectors in the name of an authorized entity for use in accordance with this chapter. Notwithstanding any other provision of law, pharmacists and health care practitioners may dispense epinephrine auto-injectors pursuant to a prescription issued in the name of an authorized entity. A prescription issued pursuant to this chapter is valid for two years. For the purposes of administering and storing epinephrine auto-injectors, authorized entities are not subject to Chapter 43, Title 40 or Chapter 99 of the South Carolina Code of State Regulations.

Section 44-99-30. Notwithstanding any other provision of law, an authorized entity may acquire and stock a supply of epinephrine auto-injectors pursuant to a prescription issued in accordance with this chapter. Epinephrine auto-injectors acquired pursuant to this chapter must be stored in a location readily accessible in an emergency and in accordance with the epinephrine auto-injector's instructions for use, requirements that may be established by the South Carolina Department of Health and Environmental Control, and recommendations included as part of an approved training. An authorized entity shall designate employees or agents who have completed the training required by Section 44-99-50, to be responsible for the storage, maintenance, control, and general oversight of epinephrine auto-injectors acquired by the authorized entity.

Section 44-99-40. Notwithstanding any other provision of law, an employee, agent, or other individual associated with an authorized entity, who has completed the training required by Section 44-99-50, may use epinephrine auto-injectors prescribed pursuant to Section 44-99-20 to:

(1) provide an epinephrine auto-injector to any individual who the employee, agent, or other individual believes in good faith is experiencing anaphylaxis, or the parent, guardian, or caregiver of that individual, for immediate administration, regardless of whether the individual has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy; and

(2) administer an epinephrine auto-injector to any individual who the employee, agent, or other individual believes in good faith is experiencing anaphylaxis, regardless of whether the individual has a

prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.

Section 44-99-50. (A) An employee, agent, or other individual described in Section 44-99-30 or 44-99-40, before undertaking an act authorized by this chapter, shall complete an anaphylaxis training program and must complete an anaphylaxis training program at least every two years following completion of the initial anaphylaxis training program. The training must be conducted by the South Carolina Department of Health and Environmental Control, a licensed medical provider, a nationally recognized organization experienced in training laypersons in emergency health treatment, the manufacturer of an epinephrine auto-injector, an organization with a training program that has been approved in at least three states, or an entity or individual approved by the department. The department also may approve specific entities or individuals or may approve classes of entities or individuals to conduct training.

(B) Training may be conducted online or in person and, at a minimum, must address:

(1) how to recognize signs and symptoms of severe allergic reactions, including anaphylaxis;

(2) standards and procedures for the storage and administration of an epinephrine auto-injector; and

(3) emergency follow-up procedures.

(C) The entity that conducts the training shall issue a certificate to each person who successfully completes the anaphylaxis training program. The certificate, at a minimum, must include:

(1) the name of the organization or individual conducting the training;

(2) the name of the individual being trained; and

(3) the date the training occurred.

Section 44-99-60. (A) An authorized entity that possesses and makes available epinephrine auto-injectors, and its employees, agents, and other individuals, a health care practitioner that prescribes or dispenses epinephrine auto-injectors to an authorized entity, a pharmacist or health care practitioner that dispenses epinephrine auto-injectors to an authorized entity, a third party that facilitates the availability of epinephrine auto-injectors to an authorized entity, the department or other state agency engaged in approving training or in providing guidance to implement this chapter, and an individual or entity that conducts the training described in Section 44-99-50, are not liable

for any injuries or related damages that result from any act or omission taken pursuant to this chapter; however, this immunity does not apply to acts or omissions constituting negligence, gross negligence, or wilful, wanton, or reckless disregard for the safety of others or for an act or omission that is performed while the individual is impaired by alcohol or drugs.

(B) The administration of an epinephrine auto-injector in accordance with this chapter is not the practice of medicine or any other profession that otherwise requires licensure.

(C) This chapter does not eliminate, limit, or reduce any other immunities or defenses that may be available pursuant to state law, including those available pursuant to Section 15-1-310 and Chapter 78, Title 15.

(D) An entity located in this State is not liable for any injuries or related damages that result from the provision or administration of an epinephrine auto-injector outside of this State if the entity:

(1) would not have been liable for the injuries or related damages had the provision or administration occurred within this State; or

(2) is not liable for the injuries or related damages under the law of the state in which such provision or administration occurred."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 19th day of April, 2016.

Approved the 21st day of April, 2016.

No. 157

(R162, H3788)

AN ACT TO AMEND SECTION 56-28-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CERTAIN TERMS AND THEIR DEFINITIONS REGARDING THE ENFORCEMENT OF MOTOR VEHICLE EXPRESS WARRANTIES, SO AS TO REVISE THE DEFINITIONS OF THE TERMS "MOTOR VEHICLE" AND A "NEW MOTOR VEHICLE".

Be it enacted by the General Assembly of the State of South Carolina:

Definitions

SECTION 1. Section 56-28-10(4) and (5) of the 1976 Code is amended to read:

"(4) 'Motor vehicle' means:

(a) a private passenger motor vehicle, as classified by Section 56-3-630, but excluding the living portion of recreational vehicles and off-road vehicles, which is sold and registered in this State; and

(b) a motorcycle as defined in Section 56-1-10(8), including a motorcycle three-wheel vehicle as defined in Section 56-1-10(18), which is sold and registered in this State.

(5) A 'new motor vehicle' means a motor vehicle which has been sold to a new motor vehicle dealer by a manufacturer and which has not been used for other than demonstration purposes and on which the original title has not been issued from the new motor vehicle dealer."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 19th day of April, 2016.

Approved the 21st day of April, 2016.

No. 158

(R163, H3911)

AN ACT TO AMEND SECTION 56-3-1230, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ISSUANCE, CONTENT, AND PRODUCTION COSTS OF MOTOR VEHICLE LICENSE PLATES, SO AS TO REVISE THE INTERVAL IN WHICH THE DEPARTMENT OF MOTOR VEHICLES MUST REISSUE A LICENSE PLATE FROM SIX YEARS TO TEN YEARS.

Be it enacted by the General Assembly of the State of South Carolina:

License plates

SECTION 1. Section 56-3-1230(A) of the 1976 Code, as last amended by Act 57 of 2005, is further amended to read:

"(A) License plates must be at least six inches wide and not less than twelve inches in length and must show in bold characters the year of registration, the serial number, the full name or the abbreviation of the name of the state, and other distinctive markings the department may consider advisable to indicate the class of the weight of the vehicle for which the license plate was issued. The plate must be of a strength and quality to provide a minimum service of five years. A new license plate including personalized and special plates, but excluding license plates provided in Sections 56-3-660 and 56-3-670, must be provided by the department at intervals the department considers appropriate, but at least every ten years. A new license plate for vehicles contained in Sections 56-3-660 and 56-3-670, must be provided by the department at intervals the department considers appropriate. Beginning with the vehicle registration and license fees required by this title which are collected after July 1, 2002, except for the fees collected pursuant to Sections 56-3-660 and 56-3-670, two dollars of each biennial fee and one dollar of each annual fee collected from the vehicle owner must be placed by the Comptroller General in a special restricted account to be used solely by the Department of Motor Vehicles for the costs associated with the production and issuance of new license plates. The department is not authorized to use this set aside money for any other purpose. License plates issued for vehicles in excess of twenty-six thousand pounds must be issued biennially, and no revalidation sticker may be issued for the plates. License plates issued as permanent may be revalidated and replaced at intervals determined by the department."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 19th day of April, 2016.

Approved the 21st day of April, 2016.

No. 159

(R164, H4141)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "LIMITED LINES TRAVEL INSURANCE ACT" BY ADDING ARTICLE 6 TO CHAPTER 43, TITLE 38 SO AS TO PROVIDE A CITATION, TO DEFINE NECESSARY TERMS, TO PROVIDE REQUIREMENTS ONLY UNDER WHICH TRAVEL RETAILERS MAY OFFER AND DISSEMINATE TRAVEL INSURANCE UNDER A LIMITED LINES TRAVEL INSURANCE PRODUCER BUSINESS ENTITY LICENSE FOR COMPENSATION, TO PROVIDE THAT TRAVEL INSURANCE MAY BE PROVIDED UNDER AN INDIVIDUAL POLICY OR UNDER A GROUP OR MASTER POLICY, TO PROVIDE THAT LIMITED LINES TRAVEL INSURANCE PRODUCERS ACTING AS AN INSURANCE DESIGNEE ARE RESPONSIBLE FOR THE ACTS OF THE TRAVEL RETAILER AND SHALL USE REASONABLE MEANS TO ENSURE COMPLIANCE BY THE TRAVEL RETAILER WITH THIS ARTICLE, AND TO PROVIDE PENALTIES FOR VIOLATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

Limited Lines Travel Insurance Act

SECTION 1. Chapter 43, Title 38 of the 1976 Code is amended by adding:

"Article 6

Limited Lines Travel Insurance Act

Section 38-43-710. This article must be known and may be cited as the 'Limited Lines Travel Insurance Act'.

Section 38-43-720. For the purposes of this article:

(1) 'Limited lines travel insurance producer' means one of the following when designated by an insurer as the travel insurance supervising entity:

(a) a licensed managing general underwriter;

(b) a licensed managing general agent or third party administrator; or

(c) a licensed insurance producer.

(2) 'Offer and disseminate' means providing general information, including a description of the coverage and price, as well as processing the application, collecting premiums, and performing other nonlicensable activities permitted by the State.

(3) 'Travel insurance' means insurance coverage for personal risks incident to planned travel including, but not limited to:

(a) interruption or cancellation of trip or event;

(b) loss of baggage or personal effects;

(c) damages to accommodations or rental vehicles; and

(d) sickness, accident, disability, or death occurring during travel. However, travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting six months or longer, such as those working overseas as an expatriate or military personnel being deployed.

(4) 'Travel retailer' means a business entity that makes, arranges, or offers travel services and may offer and disseminate travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.

Section 38-43-730. (A) A travel retailer only may offer and disseminate travel insurance under a limited lines travel insurance producer business entity license if:

(1) the limited lines travel insurance producer or travel retailer provides purchasers of travel insurance the following information on a form prescribed by the director:

(a) a description of the material terms or the actual material terms of the insurance coverage;

(b) a description of the process for filing a claim;

(c) a description of the review or cancellation process for the travel insurance policy; and

(d) the identity and contact information of the insurer and limited lines travel insurance producer;

(2) the limited lines travel insurance producer, at the time of licensure, establishes and subsequently maintains and updates a register of each travel retailer that offers insurance on its behalf, including the name, address, and contact information of the travel retailer and an officer or person who directs or controls the operations of the travel

retailer, and the federal employment identification number of the travel retailer;

(3) the limited lines travel insurance producer submits the register to the department upon reasonable request;

(4) the limited lines travel insurance producer certifies that the travel retailers registered comply with 18 U.S.C. Section 1033;

(5) the limited lines travel insurance producer designates one of its employees, who is a licensed individual producer, as the 'Designated Responsible Producer' or 'DRP' who is responsible for compliance of the limited lines travel insurance producer with the travel insurance laws, rules, and regulations of the State;

(6) the DRP, president, secretary, treasurer, and another officer or person who directs or controls the insurance operations of the limited lines travel insurance producer each comply with the fingerprinting requirements applicable to insurance producers in the resident state of the limited lines travel insurance producer;

(7) the limited lines travel insurance producer has paid all applicable insurance producer licensing fees; and

(8) the limited lines travel insurance producer requires each employee of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, subject to review by the director, and which shall contain instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers, among other things.

(B) A travel retailer who offers or disseminates travel insurance shall make brochures or other written materials available to prospective purchasers, and these brochures or other written materials must:

(1) provide the identity and contact information of the insurer and the limited lines travel insurance producer;

(2) explain that the purchase of travel insurance is not required in order to purchase another product or service from the travel retailer; and

(3) explain that an unlicensed travel retailer is permitted to provide general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance offered by the travel retailer or to evaluate the adequacy of the customer's existing insurance coverage.

(C) A travel retailer who is not licensed as an insurance producer may not:

(1) evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance coverage;

(2) evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

(3) hold himself or itself out as a licensed insurer, licensed producer, or insurance expert.

Section 38-43-740. A travel retailer, whose insurance-related activities are limited to offering and disseminating travel insurance on behalf of and under the direction of a limited lines travel insurance producer, may receive compensation for these activities upon registration by the limited lines travel insurance producer as provided in Section 38-43-730(A)(2).

Section 38-43-750. Travel insurance may be provided under an individual policy or under a group or master policy.

Section 38-43-760. As the insurer designee, the limited lines travel insurance producer is responsible for the acts of the travel retailer and shall use reasonable means to ensure compliance by the travel retailer with this article.

Section 38-43-770. The director may, after notice and opportunity for a hearing, respond to a violation of a provision of this article by a limited lines travel insurance producer or by the travel retailer offering and disseminating travel insurance under the provisions of Section 38-2-10 by:

(1) revoking or suspending the license of the limited lines travel insurance producer; or

(2) imposing other penalties, including directing the suspension or termination of authority of the involved travel retailer to offer and disseminate travel insurance, as the director considers necessary or convenient to carry out the purposes of this article."

Time effective

SECTION 2. This act takes effect ninety days after approval by the Governor.

Ratified the 19th day of April, 2016.

Approved the 21st day of April, 2016.

No. 160

(R165, H4328)

AN ACT TO AMEND SECTION 12-8-1530, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE QUARTERLY INCOME TAX WITHHOLDINGS, SO AS TO CHANGE THE DUE DATE OF THE FOURTH QUARTER RETURN FROM THE LAST DAY OF FEBRUARY TO THE LAST DAY OF JANUARY; TO AMEND SECTION 12-8-1550, RELATING TO THE DUE DATE FOR FILING STATEMENTS REGARDING INCOME TAX WITHHOLDINGS WITH THE DEPARTMENT OF REVENUE, SO AS TO CHANGE THE DUE DATE FROM THE LAST DAY OF FEBRUARY TO THE LAST DAY OF JANUARY; TO AMEND SECTION 12-6-40, AS AMENDED, RELATING TO THE APPLICATION OF THE INTERNAL REVENUE CODE TO STATE INCOME TAX LAWS, SO AS TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE TO THE YEAR 2015 AND TO PROVIDE THAT IF THE INTERNAL REVENUE CODE SECTIONS ADOPTED BY THIS STATE ARE EXTENDED, THEN THESE SECTIONS ALSO ARE EXTENDED FOR SOUTH CAROLINA INCOME TAX PURPOSES; TO AMEND SECTION 12-6-4970, RELATING TO THE TIME TO FILE RETURNS, SO AS TO ADD REQUIREMENTS FOR WHEN A PARTNERSHIP MUST FILE; TO AMEND SECTION 12-8-590, RELATING TO TAX WITHHOLDING ON DISTRIBUTIONS TO NONRESIDENTIAL SHAREHOLDERS OF "S" CORPORATIONS AND NONRESIDENT PARTNERS, SO AS TO CHANGE THE DUE DATE FOR FILING WITHHOLDINGS FOR NONRESIDENT PARTNERS; TO AMEND SECTION 12-13-80, RELATING TO INCOME TAX RETURNS ON BUILDING AND LOAN ASSOCIATIONS, SO AS TO CHANGE THE DUE DATE FOR FILING RETURNS; TO AMEND SECTION 12-20-20, RELATING TO ANNUAL REPORTS FILED BY CORPORATIONS, SO AS TO CHANGE THE DUE DATE OF THE ANNUAL REPORTS; TO AMEND SECTION 12-28-110, RELATING TO MOTOR FUEL USER FEE DEFINITIONS, SO AS TO ADD A DEFINITION FOR "DIESEL GALLON EQUIVALENT" AND "GASOLINE GALLON EQUIVALENT"; BY ADDING SECTION 12-28-120 SO AS TO CLARIFY CERTAIN REFERENCES TO THE TERM "GALLON"; TO

AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO EXEMPTIONS FROM THE SALES TAX, SO AS TO ADD CERTAIN GASES TO THE SALES TAX EXEMPTION; AND TO AMEND SECTION 12-28-1125, RELATING TO THE REQUIREMENTS OF AN OCCASIONAL IMPORTER'S LICENSE OR BONDED IMPORTER'S LICENSE TO BRING CERTAIN MOTOR FUEL INTO THIS STATE, SO AS TO REQUIRE A LICENSE REGARDLESS OF THE METHOD OF TRANSPORTATION USED TO DELIVER THE MOTOR FUEL.

Be it enacted by the General Assembly of the State of South Carolina:

Conforming due date of fourth quarter withholding returns

SECTION 1. Section 12-8-1530(A) of the 1976 Code is amended to read:

"(A) A withholding agent shall file a quarterly return in a form prescribed by the department indicating the total amount withheld pursuant to this chapter during the calendar quarter. The return must be filed even in quarters when no income tax has been withheld. The return must be filed on or before dates required for filing federal quarterly withholding returns specified in Internal Revenue Code Section 6071 and Internal Revenue Code Regulation Section 31.6071(a)(1), except the fourth quarter return. The fourth quarter return is due on or before the last day of January following the calendar year of the withholding."

Conforming due date of certain withholding return filings

SECTION 2. Section 12-8-1550(A) of the 1976 Code is amended to read:

"(A) On or before the last day of January following the calendar year of the withholding, the following items must be filed with the department:

(1) the original copy of the statement required by Section 12-8-1540;

(2) a recapitulation and reconciliation of taxes withheld and paid in the form the department prescribes."

Internal Revenue Code conformity

SECTION 3. Section 12-6-40(A)(1)(a) and (c) of the 1976 Code, as last amended by Act 5 of 2015, is further amended to read:

"(a) Except as otherwise provided, 'Internal Revenue Code' means the Internal Revenue Code of 1986, as amended through December 31, 2015, and includes the effective date provisions contained in it.

(c) If Internal Revenue Code sections adopted by this State which expired or portions thereof expired on December 31, 2015, are extended, but otherwise not amended, by congressional enactment during 2016, these sections or portions thereof also are extended for South Carolina income tax purposes in the same manner that they are extended for federal income tax purposes."

Conforming filing dates for "S" corporations and partnerships

SECTION 4. A. Section 12-6-4970(B) of the 1976 Code is amended to read:

"(B)(1) Returns of 'S' corporations and partnerships must be filed on or before the fifteenth day of the third month following the taxable year.

(2) Returns for foreign corporations that do not maintain an office or place of business in the United States must be filed on or before the fifteenth day of the sixth month following the taxable year."

B. Section 12-8-590(C) of the 1976 Code is amended to read:

"(C) Partnerships are required to withhold income taxes at a rate of five percent on a nonresident partner's share of South Carolina taxable income of the partnership, whether distributed or undistributed, and pay the withheld amount to the department in the manner prescribed by the department. The partnership shall make a return and pay over the withheld funds on or before the fifteenth day of the third month following the close of its tax year. Taxes withheld in the name of the nonresident partner must be used as credit against taxes due at the time the nonresident files income taxes for the taxable year."

C. Section 12-13-80 of the 1976 Code is amended to read:

"Section 12-13-80. Returns with respect to the income tax herein imposed shall be in such form as the department may prescribe. Returns

shall be filed with the department on or before the fifteenth day of the fourth month following the close of the accounting period of the association."

D. Section 12-20-20(B) of the 1976 Code is amended to read:

"(B) Unless otherwise provided, corporations shall file an annual report on or before the fifteenth day of the fourth month following the close of the taxable year."

E. This SECTION takes effect upon approval by the Governor and first applies to tax years beginning after 2015.

Definitions

SECTION 5. Section 12-28-110 of the 1976 Code is amended by adding two appropriately numbered items to read:

"( ) 'Diesel gallon equivalent' or 'DGE' means the amount of liquefied natural gas containing the same energy content as one gallon of diesel. For purposes of calculating the motor fuel user fee on liquefied natural gas that is used or consumed in this State in producing or generating power for propelling a motor vehicle, each 6.06 pounds of liquefied natural gas equals one gallon of motor fuel.

( ) 'Gasoline gallon equivalent' or 'GGE' means the amount of compressed natural gas or liquefied petroleum gas containing the same energy content as one gallon of gasoline. For purposes of calculating the motor fuel user fee on compressed natural gas or liquefied petroleum gas that is used or consumed in South Carolina in producing or generating power for propelling a motor vehicle, each 126.67 cubic feet of compressed natural gas, or 5.66 pounds if the compressed natural gas is dispensed via a mass flow meter, equals one gallon of motor fuel and each gallon of liquefied petroleum gas equals .73 of a gallon of motor fuel."

Clarifying certain references to the term gallon

SECTION 6. Article 1, Chapter 28, Title 12 of the 1976 Code is amended by adding:

"Section 12-28-120. For purposes of this chapter, any reference to the term gallon with respect to liquefied natural gas means diesel gallon

equivalent (DGE) and any reference to the term gallon with respect to compressed natural gas or liquefied petroleum gas means gasoline gallon equivalent (GGE). For any gaseous product for which a conversion factor is not provided for in this chapter, based on the best information available, the department shall establish a temporary conversion factor to determine the gallon equivalent. The department shall subsequently submit to the General Assembly a recommended legislative change for this conversion factor."

Sales tax exemption for certain gases

SECTION 7. Section 12-36-2120(15) of the 1976 Code is amended by adding two appropriately lettered subitems to read:

"( ) natural gas sold to a person with a miscellaneous motor fuel user fee license pursuant to Section 12-28-1139, who will compress it to produce compressed natural gas, or cool it to produce liquefied natural gas, for use as a motor fuel and remit the motor fuel user fees as required by law; and

( ) liquefied petroleum gas sold to a person with a miscellaneous motor fuel user fee license pursuant to Section 12-28-1139, who will use the liquefied petroleum gas as a motor fuel and remit the motor fuel user fees as required by law;"

Licenses required for importing certain motor fuel

SECTION 8. Section 12-28-1125(A) of the 1976 Code is amended to read:

"(A) Each person who wishes to cause motor fuel subject to the user fee to be delivered into this State on his behalf, for his own account, or for resale to a purchaser in this State, from another state by any means into storage facilities other than a qualified terminal, shall apply and obtain an occasional importer's license or a bonded importer's license, at the discretion of the applicant."

Severability

SECTION 9. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the

General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 10. This act takes effect upon approval by the Governor.

Ratified the 19th day of April, 2016.

Approved the 21st day of April, 2016.

No. 161

(R166, H4662)

AN ACT TO REENACT THE INTERSTATE INSURANCE PRODUCT REGULATION COMPACT AND RELATED PROVISIONS, ENACTED BY SECTIONS 1, 2, 3, AND 5, ACT 339 OF 2008, WHICH EXPIRED ON JUNE 1, 2014, AND TO MAKE THESE REENACTED PROVISIONS RETROACTIVE TO THIS EXPIRATION DATE, AND TO SPECIFICALLY NOT REENACT CERTAIN OBSOLETE PROVISIONS.

Whereas, the South Carolina General Assembly finds that it enacted the Interstate Insurance Product Regulation Compact in Act 339 of 2008, effective January 1, 2009, for the purposes of regulating certain designated insurance products and advertisement of those products uniformly among the states that are compact members and to authorize this State to join the compact; and

Whereas, the South Carolina General Assembly finds that the Interstate Insurance Product Regulation Compact proved very successful and was very beneficial to this State; and

Whereas, the South Carolina General Assembly finds that the provisions of Act 339 of 2008 expired on June 1, 2014, pursuant to the provisions

of Section 6 of the act, but now should be reenacted retroactive to this expiration date in light of the success and benefits of the compact. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

Certain expired provisions reenacted, retroactive application

SECTION 1. The Interstate Insurance Product Regulation Compact, as established by Section 2, Act 339 of 2008, and contained in Chapter 95, Title 38, and related provisions contained in Sections 1, 3, and 5, Act 339 of 2008, all are reenacted as provided in Act 339 of 2008, retroactive to June 1, 2014, when the act expired. The reporting requirements of Section 4, and the expiration provision of Section 6, Act 339 of 2008, are not reenacted.

Time effective

SECTION 2. This act takes place upon approval of the Governor.

Ratified the 19th day of April, 2016.

Approved the 21st day of April, 2016.

No. 162

(R167, H4816)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 53-3-205 SO AS TO DESIGNATE JUNE TWENTY-SEVENTH OF EACH YEAR AS SOUTH CAROLINA POST-TRAUMATIC STRESS INJURY (PTSI) AWARENESS DAY.

Whereas, the brave men and women who proudly serve the United States Armed Forces by risking their lives to protect our nation and its ideals deserve the investment of all possible resources to their long-term psychological, physical and emotional health; and

Whereas, the acronym PTSI refers to the term post-traumatic stress injury; and

Whereas, post-traumatic stress injury occurs after a person has experienced severe trauma and can result from the stress produced in combat, as well as in car accidents, plane crashes, bombings, child abuse or natural disaster; and

Whereas, post-traumatic stress injuries can be characterized by numerous symptoms including: flashbacks, avoidance, hyper-vigilance, depression, anxiety, insomnia, fatigue, and thoughts of suicide; and

Whereas, more than two million American service men and women have been deployed by the United States Armed Forces since September 11, 2001; and

Whereas, many members of the United States Armed Forces deploy more than once, increasing the risk of developing post-traumatic stress injuries; and

Whereas, the reference to the word "disorder" when describing a post-traumatic stress injury may imply a negative connotation; and

Whereas, this negative connotation can discourage United States Armed Forces service men and women, as well as other citizens who experience post-traumatic stress injuries from seeking and receiving aid; and

Whereas, the establishment of Post-Traumatic Stress Injury Awareness Day would raise public awareness of the injury; and

Whereas, the establishment of Post-Traumatic Stress Injury Awareness Day also would increase awareness of the need to develop effective treatments and aid the effort to eliminate any negative stigmas associated with post-traumatic stress injuries. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

PTSI Awareness Day designated

SECTION 1. Chapter 3, Title 53 of the 1976 Code is amended by adding:

"Section 53-3-205. June twenty-seventh of each year is designated as South Carolina Post-Traumatic Stress Injury (PTSI) Awareness Day."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 19th day of April, 2016.

Approved the 21st day of April, 2016.

No. 163

(R168, S849)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 20 TO CHAPTER 71, TITLE 38 SO AS TO PROVIDE PROCEDURES GOVERNING THE MAXIMUM ALLOWABLE COST REIMBURSEMENTS FOR GENERIC PRESCRIPTION DRUGS BY PHARMACY BENEFIT MANAGERS, TO PROVIDE NECESSARY DEFINITIONS, TO EXEMPT THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES IN THE PERFORMANCE OF ITS DUTIES IN ADMINISTERING MEDICAID UNDER TITLES XIX AND XXI OF THE SOCIAL SECURITY ACT, TO PROVIDE REQUIREMENTS FOR PLACING DRUGS ON MAXIMUM ALLOWABLE COST LISTS BY PHARMACY BENEFIT MANAGERS, AND TO PROVIDE VARIOUS REQUIREMENTS OF PHARMACY BENEFIT MANAGERS; TO PROVIDE THE ARTICLE IS APPLICABLE TO CONTRACTS BETWEEN PHARMACIES AND PHARMACY BENEFIT MANAGERS THAT ARE ENTERED INTO, RENEWED, OR EXTENDED ON OR AFTER THE EFFECTIVE DATE OF THIS ACT; AND TO MAKE THE PROVISIONS OF THIS ACT EFFECTIVE JANUARY 1, 2016.

Be it enacted by the General Assembly of the State of South Carolina:

Pharmacy Benefit Managers

SECTION 1. Chapter 71, Title 38 of the 1976 Code is amended by adding:

"Article 20

Pharmacy Benefit Managers

Section 38-71-2110. (A) As used in this article:

(1) 'Claim' means a request from a pharmacy or pharmacist to be reimbursed for the cost of filling or refilling a prescription for a drug or for providing a medical supply or device.

(2) 'Insurer' means an entity that provides health insurance coverage in this State as defined in Section 38-71-670(7) and Section 38-71-840(16).

(3) 'Pharmacist' has the same meaning given that term in Section 40-43-30(39).

(4) 'Pharmacy' has the same meaning given that term in Section 40-43-30(41).

(5) 'Pharmacy benefit manager' means an entity that contracts with pharmacists or pharmacies on behalf of an insurer, third party administrator, or the South Carolina Public Employee Benefit Authority to:

(a) process claims for prescription drugs or medical supplies or provide retail network management for pharmacies or pharmacists;

(b) pay pharmacies or pharmacists for prescription drugs or medical supplies; or

(c) negotiate rebates with manufacturers for drugs paid for or procured as described in this section.

(6) 'List' means the list of drugs for which a pharmacy benefit manager has established a maximum allowable cost.

(7) 'Maximum allowable cost' means the maximum amount that a pharmacy benefit manager will reimburse a pharmacist or pharmacy for the cost of a generic drug.

(8) 'Network providers' means those pharmacists and pharmacies who provide covered health care services or supplies to an insured or a member pursuant to a contract with a network plan to act as a participating provider.

(B) This article does not apply to the South Carolina Department of Health and Human Services in the performance of its duties in administering Medicaid under Titles XIX and XXI of the Social Security Act.

Section 38-71-2120. To place a drug on a maximum allowable cost list, a pharmacy benefit manager must ensure that the drug is:

(1) listed as 'A' or 'B' rated in the most recent version of the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book, or has an 'NR' or 'NA' rating, or a similar rating, by a nationally recognized reference;

(2) generally available for purchase by pharmacies in the State from national or regional wholesalers; and

(3) not obsolete.

Section 38-71-2130. A pharmacy benefit manager must:

(1) make available to each network provider at the beginning of the term of the network provider's contract, and upon renewal of the contract, the sources utilized to determine the maximum allowable cost pricing;

(2) provide a process for network pharmacy providers to readily access the maximum allowable cost specific to that provider;

(3) review and update maximum allowable cost price information at least once every seven business days to reflect any modification of maximum allowable cost pricing; and

(4) ensure that dispensing fees are not included in the calculation of maximum allowable cost.

Section 38-71-2140. (A) A pharmacy benefit manager must establish a process by which a contracted pharmacy can appeal the provider's reimbursement for a drug subject to maximum allowable cost pricing. A contracted pharmacy has ten calendar days after the applicable fill date to appeal a maximum allowable cost if the reimbursement for the drug is less than the net amount that the network provider paid to the supplier of the drug. A pharmacy benefit manager must respond to a challenge within ten calendar days of the contracted pharmacy making the claim for which appeal has been submitted.

(B) At the beginning of the term of the network provider's contract, and upon renewal, a pharmacy benefit manager must provide to network providers a telephone number at which a network provider can contact the pharmacy benefit manager to process an appeal.

(C) If an appeal is denied, the pharmacy benefit manager must provide the reason for the denial and the name and the national drug code number from national or regional wholesalers operating in South Carolina.

(D) If an appeal is sustained, the pharmacy benefit manager must make an adjustment in the drug price effective the date the challenge is

resolved and make the adjustment applicable to all similarly situated network pharmacy providers, as determined by the managed care organization or pharmacy benefit manager, as appropriate."

Applicability to certain contractual agreements

SECTION 2. This article applies to contracts between pharmacies and pharmacy benefit managers that are entered into, renewed, or extended on or after the effective date of this act.

Severability

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 4. The provisions of this act take effect on January 1, 2016.

Ratified the 26th day of April, 2016.

Approved the 2nd day of May, 2016.

No. 164

(R170, S1090)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 24-19-5 SO AS TO PROVIDE THAT CHAPTER 19 OF TITLE 24 MAY BE CITED AS THE "JUDGE WILLIAM R. BYARS YOUTHFUL OFFENDER ACT".

Be it enacted by the General Assembly of the State of South Carolina:

Judge William R. Byars Youthful Offender Act

SECTION 1. Chapter 19, Title 24 of the 1976 Code is amended by adding:

"Section 24-19-5. This chapter may be cited as the 'Judge William R. Byars Youthful Offender Act'."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 26th day of April, 2016.

Approved the 29th day of April, 2016.

No. 165

(R171, H3768)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 5, TITLE 11 SO AS TO ESTABLISH THE "SOUTH CAROLINA ABLE SAVINGS PROGRAM", TO ALLOW INDIVIDUALS WITH A DISABILITY AND THEIR FAMILIES TO SAVE PRIVATE FUNDS TO SUPPORT THE INDIVIDUAL WITH A DISABILITY, TO PROVIDE GUIDELINES TO THE STATE TREASURER FOR THE MAINTENANCE OF THESE ACCOUNTS, AND TO ESTABLISH THE SAVINGS PROGRAM TRUST FUND AND SAVINGS EXPENSE TRUST FUND; TO AMEND SECTION 12-6-1140, AS AMENDED, RELATING TO INDIVIDUAL INCOME TAX DEDUCTIONS, SO AS TO PROVIDE A DEDUCTION FOR CONTRIBUTIONS MADE TO CERTAIN INVESTMENT TRUST ACCOUNTS; AND TO DESIGNATE THE EXISTING SECTIONS OF CHAPTER 5, TITLE 11 AS ARTICLE 1 AND ENTITLE THEM "GENERAL PROVISIONS".

Be it enacted by the General Assembly of the State of South Carolina:

South Carolina ABLE Savings Program

SECTION 1. Chapter 5, Title 11 of the 1976 Code is amended by adding:

"Article 3

ABLE Savings Program

Section 11-5-400. There is established the 'South Carolina ABLE Savings Program'. The purpose of the South Carolina ABLE Savings Program is to authorize the establishment of savings accounts empowering individuals with a disability and their families to save private funds which can be used to provide for disability-related expenses in a way that supplements, but does not supplant, benefits provided through private insurance, the Medicaid program under Title XIX of the Social Security Act, the supplemental security income program under Title XVI of the Social Security Act, the beneficiary's employment, and other sources; and to provide guidelines for the maintenance of these accounts.

Section 11-5-410. As used in this article:

(1) 'ABLE savings account' or 'account' means an individual savings account established in accordance with the provisions of this article and pursuant to Section 529A of the federal Internal Revenue Code of 1986, as amended.

(2) 'Account owner' means the person who enters into an ABLE savings agreement pursuant to the provisions of this article. The account owner also must be the designated beneficiary; however, a trustee, guardian, or conservator may be appointed as an account owner for a designated beneficiary who is a minor or lacks capacity to enter into an agreement. Also, the agent of the designated beneficiary acting under durable power of attorney may open and manage an account on behalf of and in the name of a designated beneficiary who lacks capacity.

(3) 'Designated beneficiary' means an eligible individual whose qualified disability expenses may be paid from the account. The designated beneficiary must be an eligible individual at the time the account is established. The account owner may change the designated beneficiary so long as the new beneficiary is an eligible individual who

is a qualified member of the family of the designated beneficiary at the time of the change.

(4) 'Eligible individual', as defined in Section 529A(e)(1) of the federal Internal Revenue Code of 1986, as amended, means:

(a) an individual who is entitled to benefits based on blindness or disability pursuant to 42 U.S.C. Section 401, et seq. or 42 U.S.C. Section 1381, as amended, and the blindness or disability occurred before the date on which the individual attained age twenty-six; or

(b) an individual with respect to which a disability certification, as defined in Section 529A(e)(2) of the federal Internal Revenue Code of 1986, as amended, to the satisfaction of the Secretary of the United States Treasury is filed with the Secretary for a taxable year and the blindness or disability occurred before the date on which the individual attained age twenty-six.

(5) 'Financial organization' means an organization authorized to do business in this State and is:

(a) licensed or chartered by the Director of Insurance;

(b) licensed or chartered by the State Commissioner of Banking;

(c) chartered by an agency of the federal government; or

(d) subject to the jurisdiction and regulation of the federal Securities and Exchange Commission.

(6) 'Management contract' means a contract executed by the State Treasurer and a program manager selected to act as a depository or manager of the program, or both.

(7) 'Member of the family' has the meaning defined in Section 529A of the federal Internal Revenue Code of 1986, as amended.

(8) 'Nonqualified withdrawal' means a withdrawal from an account which is not:

(a) a qualified withdrawal; or

(b) a rollover distribution.

(9) 'Program' means the South Carolina ABLE Savings Program established pursuant to this article.

(10) 'Program manager' means a financial organization or an agency or department of another state that has been designated to administer a qualified ABLE Savings Program selected by the State Treasurer to act as a depository or manager of the program, or both.

(11) 'Qualified disability expense' means any qualified disability expense included in Section 529A of the federal Internal Revenue Code of 1986, as amended.

(12) 'Qualified withdrawal' means a withdrawal from an account to pay the qualified disability expenses of the designated beneficiary of the account.

(13) 'Rollover distribution' means a rollover distribution as defined in Section 529A of the federal Internal Revenue Code of 1986, as amended.

(14) 'Savings agreement' means an agreement between the program manager or the State Treasurer and the account owner.

(15) 'Secretary' means the Secretary of the United States Treasury.

Section 11-5-420. (A) The State Treasurer shall implement and administer the program under the terms and conditions established by this article. The State Treasurer has the authority and responsibility to:

(1) develop and implement the program in a manner consistent with the provisions of this article;

(2) engage the services of consultants on a contract basis for rendering professional and technical assistance and advice;

(3) seek rulings and other guidance from the Secretary and the federal Internal Revenue Service relating to the program;

(4) make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by Section 529A of the federal Internal Revenue Code of 1986, as amended;

(5) charge, impose, and collect administrative fees and service charges in connection with any agreement, contract, or transaction relating to the program;

(6) develop marketing plans and promotional materials;

(7) establish the methods by which the funds held in accounts must be dispersed;

(8) establish the method by which funds must be allocated to pay for administrative costs;

(9) do all things necessary and proper to carry out the purposes of this article;

(10) adopt rules and promulgate regulations necessary to effectuate the provisions of this article;

(11) prepare an annual report of the ABLE Savings Program to the Governor, the Senate, and the House of Representatives; and

(12) notify the Secretary when an account has been opened for a designated beneficiary and submit other reports concerning the program required by the Secretary.

(B) The State Treasurer may contract with other states in developing the program.

Section 11-5-430. (A) The State Treasurer may implement the program through use of program managers as account depositories or managers, or both. The State Treasurer may solicit proposals from

program managers to act as depositories or managers of the program, or both. Program managers submitting proposals shall describe the investment instruments to be held in accounts. The State Treasurer may select more than one program manager and investment instrument for the program. The State Treasurer may select as program depositories or managers the program managers, from among the bidding program managers, that demonstrate the most advantageous combination, both to potential program participants and this State, of the following factors:

(1) financial stability and integrity of the program manager;

(2) the safety of the investment instrument being offered;

(3) the ability of the program manager to satisfy recordkeeping and reporting requirements;

(4) the program manager's plan for promoting the program and the investment the organization is willing to make to promote the program;

(5) the fees, if any, proposed to be charged to the account owners;

(6) the minimum initial deposit and minimum contributions that the financial organization requires;

(7) the ability of the program manager to accept electronic withdrawals, including payroll deduction plans; and

(8) other benefits to the State or its residents included in the proposal, including fees payable to the State to cover expenses of the operation of the program.

(B) The State Treasurer may enter into contracts with program managers necessary to effectuate the provisions of this article. A management contract must include, at a minimum, terms requiring the program managers to:

(1) take action required to keep the program in compliance with requirements of this article and take actions not contrary to its contract to manage the program to qualify as a 'qualified ABLE Savings Program' as defined in Section 529A of the federal Internal Revenue Code of 1986, as amended;

(2) keep adequate records of each account, keep each account segregated, and provide the State Treasurer with the information necessary to prepare the statements required by Section 11-5-440;

(3) compile and total information contained in statements required to be prepared under Section 11-5-440 and provide compilations to the State Treasurer;

(4) if there is more than one program manager, provide the State Treasurer with information as is necessary to determine compliance with Section 11-5-440;

(5) provide the State Treasurer with access to the books and records of the program manager to the extent needed to determine compliance with the contract, this article, and Section 529A of the federal Internal Revenue Code of 1986, as amended;

(6) hold all accounts for the benefit of the account owner, owners, or the designated beneficiary;

(7) be audited at least annually by a firm of certified public accountants selected by the program manager, with the approval of the State Treasurer, and provide the results of the audit to the State Treasurer;

(8) provide the State Treasurer with copies of all regulatory filings and reports made by the program manager during the term of the management contract or while the program manager is holding any accounts, other than confidential filings or reports that are not part of the program. The program manager shall make available for review by the State Treasurer the results of the periodic examination of the manager by any state or federal banking, insurance, or securities commission, except to the extent that a report or reports may not be disclosed under law; and

(9) ensure that any description of the program, whether in writing or through the use of any media, is consistent with the marketing plan developed pursuant to the provisions of this article.

(C) The State Treasurer may:

(1) enter into contracts as he considers necessary and proper for the implementation of the program;

(2) require that an audit be conducted of the operations and financial position of the program depository and manager at any time if the State Treasurer has any reason to be concerned about the financial position, the recordkeeping practices, or the status of accounts of the program depository and manager; and

(3) terminate or not renew a management agreement. If the State Treasurer terminates or does not renew a management agreement, the State Treasurer shall take custody of accounts held by the program manager and shall seek to promptly transfer the accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

(D) The State Treasurer, the Department of Social Services, the Department of Health and Human Services, and the Department of Disability and Special Needs are authorized to exchange data regarding eligible individuals to carry out the purposes of this article.

Section 11-5-440. (A) An ABLE savings account established pursuant to the provisions of this article must be opened by a designated beneficiary, a designated beneficiary's agent under a durable power of attorney, a trustee holding funds for the benefit of a designated beneficiary, or a court-appointed guardian or conservator of a designated beneficiary. Each designated beneficiary may have only one account. The State Treasurer may establish a nonrefundable application fee. An application for an account must be in the form prescribed by the State Treasurer and contain the following:

(1) name, address, and social security number of the account owner;

(2) name, address, and social security number of the designated beneficiary, if the account owner is the beneficiary's trustee or guardian;

(3) certification relating to no excess contributions; and

(4) additional information as the State Treasurer may require.

(B) A person may make contributions to an ABLE savings account after the account is opened, subject to the limitations imposed by Section 529A of the federal Internal Revenue Code of 1986, as amended, or any adopted rules and regulations promulgated by the State Treasurer pursuant to this article.

(C) Contributions to an ABLE savings account may be made only in cash. The State Treasurer or program manager shall reject or withdraw contributions promptly:

(1) in excess of the limits established pursuant to subsection (B); or

(2) the total contributions if the:

(a) value of the account is equal to or greater than the account maximum established by the State Treasurer. The account maximum must be equal to the account maximum for post-secondary education savings accounts; or

(b) designated beneficiary is not an eligible individual in the current calendar year.

(D)(1) An account owner may:

(a) change the designated beneficiary of an account to an individual who is a qualified member of the family of the prior designated beneficiary in accordance with procedures established by the State Treasurer; and

(b) transfer all or a portion of an account to another ABLE savings account, the designated beneficiary of which is a member of the family as defined in Section 529A of the federal Internal Revenue Code of 1986, as amended.

(2) An account owner may not use an interest in an account as security for a loan. A pledge of an interest in an account is of no effect.

(E)(1) If there is any distribution from an account to an individual or for the benefit of an individual during a calendar year, the distribution must be reported to the federal Internal Revenue Service and each account owner, the designated beneficiary, or the distributee to the extent required by state or federal law.

(2) A statement must be provided to each account owner annually and at other increments established by the State Treasurer in the program guidelines. The statement must contain the information the State Treasurer requires to be reported to the account owner.

(3) A statement and information relating to an account must be prepared and filed to the extent required by this article and other state or federal law.

(F)(1) The program shall provide separate accounting for each designated beneficiary. An annual fee may be imposed upon the account owner for the maintenance of an account.

(2) Funds held in an ABLE savings account:

(a) are exempt from attachment, execution, or garnishment for claims of creditors of the contributor and the designated beneficiary;

(b) to the fullest extent permissible under state and federal law, will be disregarded for the purposes of determining a designated beneficiary's eligibility to receive, or the amount of, any public assistance available to the designated beneficiary, including Medicaid; and

(c) following the death of a designated beneficiary, may be subject to recovery by the South Carolina Department of Health and Human Services up to an amount equal to the total of Medicaid benefits, if any, paid on behalf of the designated beneficiary by the state Medicaid program, but only to the extent recovery is required by state or federal law. Recovery by the State is subject to regulations imposed by the Secretary.

(3) The amount distributed from an ABLE savings account for the purposes of paying qualified disability expenses:

(a) are exempt from attachment, execution, or garnishment for claims of creditors of the contributor and the designated beneficiary; and

(b) to the fullest extent permissible under state and federal law, will be disregarded for the purposes of determining a designated beneficiary's eligibility to receive, or the amount of, any public assistance available to the designated beneficiary, including Medicaid.

(G) To the extent earnings in an ABLE savings account and distributions from an ABLE savings account, or a qualified account

under Section 529A located in another state, are not subject to federal income tax, they will not be subject to state income tax.

Section 11-5-450. (A) Nothing in this article may create or be construed to create any obligation of the State Treasurer, the State, or any agency or instrumentality of the State to guarantee for the benefit of an account owner or designated beneficiary with respect to the:

(1) return of principal;

(2) rate of interest or other return on an account; or

(3) payment of interest or other return on an account.

(B) The State Treasurer may adopt rules and promulgate regulations to provide that each contract, application, or other similar document that may be used in connection with opening an account clearly indicates that the account is not insured by the State and that the principal deposited and the investment return are not guaranteed by the State.

Section 11-5-460. (A) The South Carolina ABLE Savings Program Trust Fund is established in the Office of the State Treasurer. The trust fund must be utilized if the State Treasurer elects to accept deposits from contributors rather than have deposits sent directly to the program manager. The trust fund must consist of any monies deposited by account owners and other contributors pursuant to the provisions of this article which are not deposited directly with the program manager. All interest derived from the deposit and investment of monies in the trust fund must be credited to the fund. At the end of each fiscal year, all unexpended and unencumbered monies in the trust fund must remain in the fund and not be credited or transferred to the state general fund or to another fund.

(B)(1) The South Carolina ABLE Savings Expense Fund is established in the Office of the State Treasurer. The expense fund must consist of monies received from the ABLE Savings Program manager or managers, governmental or private grants, and state general fund appropriations, if any, for the program.

(2) All expenses incurred by the State Treasurer in developing and administering the ABLE Savings Program must be payable from the South Carolina ABLE Savings Expense Fund."

Individual income tax deductions

SECTION 2. Section 12-6-1140 of the 1976 Code, as last amended by Act 134 of 2014, is further amended by adding an appropriately numbered item at the end to read:

"( )(a) Contributions made to each investment trust account created pursuant to Article 3, Chapter 5, Title 11, or a qualified account under Section 529A located in another state, by a resident of this State or a nonresident required to file a State of South Carolina income tax return up to the limit of maximum contributions allowed to such accounts under Section 529A of the federal Internal Revenue Code of 1986, as amended, including funds transferred to an investment trust account from another qualified plan, as allowable under Section 529A of the federal Internal Revenue Code of 1986, as amended.

(b) Any interest, dividends, gains, property, or income accruing on the payments made to an investment trust agreement pursuant to Article 3, Chapter 5, Title 11, or on any account in the South Carolina ABLE Savings Expense Fund or a qualified fund under Section 529A located in another state, must be excluded from the gross income of any such account owner, contributor, or beneficiary for purposes of South Carolina income taxes, to the extent the amounts remain on deposit in the South Carolina ABLE Savings Expense Fund or are withdrawn pursuant to a qualified withdrawal.

(c) The earnings portion of any withdrawals from an account that are not qualified withdrawals must be included in the gross income of the resident recipient of the withdrawal for purposes of South Carolina income taxes in the year of the withdrawal. Withdrawals of the principal amount of contributions that are not qualified withdrawals must be recaptured into South Carolina income subject to tax to the extent the contributions were previously deducted from South Carolina taxable income."

Code sections designated

SECTION 3. Sections 11-5-10 through 11-5-280 of the 1976 Code are designated as Article 1, Chapter 5, Title 11 entitled "General Provisions". The Code Commissioner is directed to change references from "chapter" to "article" as appropriate to reflect the redesignated provisions.

Time effective

SECTION 4. This act takes effect upon approval by the Governor and applies for tax years beginning after 2015.

Ratified the 26th day of April, 2016.

Approved the 29th day of April, 2016.

No. 166

(R172, H4709)

AN ACT TO AMEND SECTION 50-5-15, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TERMS AND THEIR DEFINITIONS CONTAINED IN THE SOUTH CAROLINA MARINE RESOURCES ACT OF 2000, SO AS TO PROVIDE A DEFINITION FOR THE TERM "SOUTHERN COBIA MANAGEMENT ZONE"; AND TO AMEND SECTION 50-5-2730, AS AMENDED, RELATING TO CERTAIN FEDERAL FISHING REGULATIONS, SO AS TO PROVIDE THAT THESE REGULATIONS DO NOT APPLY TO COBIA LOCATED IN THE SOUTHERN COBIA MANAGEMENT ZONE.

Be it enacted by the General Assembly of the State of South Carolina:

Southern Cobia Management Zone defined

SECTION 1. Section 50-5-15 of the 1976 Code, as last amended by Act 72 of 2013, is further amended by adding the following appropriately numbered item at the end:

"( ) 'Southern Cobia Management Zone' means all waters of this State south of 032° 31.0′ N latitude, the approximate latitude of Jeremy Inlet, Edisto Island."

Federal fishing regulations

SECTION 2. Section 50-5-2730 of the 1976 Code, as last amended by Act 83 of 2013, is further amended to read:

"Section 50-5-2730. (A) Unless otherwise provided by law, any regulations promulgated by the federal government under the Fishery Conservation and Management Act (PL 94-265) or the Atlantic Tuna Conservation Act (PL 94-70) which establishes seasons, fishing periods, gear restrictions, sales restrictions, or bag, catch, size, or possession limits on fish are declared to be the law of this State and apply statewide including in state waters.

(B) This provision does not apply to:

(1) black sea bass (Centropristis striata) whose lawful catch limit is five fish per person per day or the same as the federal limit for black sea bass, whichever is higher. The lawful minimum size is thirteen inches total length. Additionally, there is no closed season on the catching of black sea bass (Centropristis striata); or

(2) cobia (Rachycentron canadum) located in the Southern Cobia Management Zone. Subject to the size limit established by federal regulation, possession of cobia caught in the Southern Cobia Management Zone is limited to one per person per day, and no more than three per boat per day, from June 1 to April 30. It is unlawful to take and possess cobia in the Southern Cobia Management Zone from May 1 to May 31, and at any time federal regulations provide for the closure of the recreational cobia season in the waters of the South Atlantic Ocean."

Time Effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 26th day of April, 2016.

Approved the 29th day of April, 2016.

No. 167

(R173, H4712)

AN ACT TO AMEND SECTION 12-43-230, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TREATMENT OF AGRICULTURAL REAL PROPERTY, MOBILE HOME, AND LESSEE IMPROVEMENTS TO REAL PROPERTY, SO AS TO CLASSIFY OFF-PREMISES OUTDOOR ADVERTISING SIGNS AS PERSONAL PROPERTY AND TO PROVIDE THAT UNDER CERTAIN CIRCUMSTANCES AN OFF-PREMISES SIGN SITE MUST BE TAXED AT ITS VALUE WHICH EXISTED BEFORE THE ERECTION OF THE SIGN.

Be it enacted by the General Assembly of the State of South Carolina:

Off-premises outdoor advertising signs

SECTION 1. Section 12-43-230 of the 1976 Code is amended by adding a new subsection to read:

"(e)(1) For ad valorem property tax purposes, an off-premises outdoor advertising sign must be classified as tangible personal property. The sign owner must file a business personal property tax return annually with the South Carolina Department of Revenue based upon the original cost of the sign structure less allowable depreciation. Any sign permit required by local, state, or federal law must be considered as intangible personal property for ad valorem property tax purposes.

(2)(a) If an off-premises outdoor advertising sign site is one-quarter of an acre or less, or is otherwise limited to an area large enough only to accommodate the necessary building structure, foundation, and provide for service or maintenance, is leased from an unrelated third party, or the sign is owned by the owner of the site, and the sign owner has filed a business personal property tax return with the Department of Revenue, then the off-premises outdoor advertising sign site real property must be assessed to the site owner at its value before the lease or construction of the sign without regard to the structure, the lease, or lease income, and no separate assessment may be issued for the sign company's lease or ownership interest. The lease or construction of such property does not constitute an assessable transfer of interest pursuant to Article 25, Chapter 37, Title 12, and the real property constituting the sign site must maintain its same property tax

classification as commercial, manufacturing, agricultural, or utility property as it had before the lease.

(b) The provisions of this item do not apply to:

(i) real property whose property tax classification is subject to change due to the addition of buildings, structures, or other improvements subsequent to the erection of the sign on the property; and

(ii) real property whose property tax classification was changed due to the erection of an on-premises outdoor advertising sign on existing buildings, structures, or other improvements unless the existing buildings, structures, or other improvements qualify within the same property tax classification pursuant to Chapter 43 of this title.

(3) For purposes of this subsection:

(a) 'Intangible personal property' has the same meaning as contained in Section 3(j), Article X, of the Constitution of this State.

(b) 'Off-premises outdoor advertising sign' means a lawfully erected, permanent sign which relates in its subject matter to products, accommodations, services, or activities sold or offered elsewhere other than upon the premises on which the sign is located.

(c) 'Sign owner' means the owner of an off-premises outdoor advertising sign."

Time effective

SECTION 2. This act takes effect upon approval by the Governor and first applies to property tax years after 2014. Upon the site owner providing written or electronic notice to the county assessor that his affected property was assessed other than as provided by this act, county tax officials shall adjust values and assessment ratios to reflect the provisions of this act, but no refund is allowed on account of the provisions of this act.

Ratified the 26th day of April, 2016.

Approved the 29th day of April, 2016.

No. 168

(R174, S339)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT "HOPE'S LAW" BY ADDING SECTION 44-115-160 SO AS TO REQUIRE MAMMOGRAM PROVIDERS TO PROVIDE A MAMMOGRAM REPORT TO PATIENTS ABOUT BREAST DENSITY AND TO REQUIRE THESE PROVIDERS TO INCLUDE A CONSPICUOUS NOTICE WHEN A MAMMOGRAM SHOWS THE PRESENCE OF DENSE BREAST TISSUE.

Be it enacted by the General Assembly of the State of South Carolina:

Hope's Law

SECTION 1. This act is entitled "Hope's Law".

Mammogram report requirements

SECTION 2. Chapter 115, Title 44 of the 1976 Code is amended by adding:

"Section 44-115-160. A mammography report must be provided to a patient by the mammogram provider, and this report must include information about breast density based on the requirements of the Breast Imaging Reporting and Data System established by the American College of Radiology. Where applicable, this report must include:

(1) a notice in conspicuous language which states: 'Your mammogram shows that your breast tissue is dense. Dense tissue is common and is not abnormal. However, dense breast tissue can make it harder to evaluate the results of your mammogram and also may be associated with an increased risk of breast cancer. This information about the results of your mammogram is given to you to raise your awareness and to inform your conversations with your doctor. Together, you can decide which screening options are right for you. A report of your results was sent to your physician.'; and

(2) consumer or patient information available from the American College of Radiology about breast density and mammogram reports."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 11th day of May, 2016.

Approved the 12th day of May, 2016.

No. 169

(R175, S780)

AN ACT TO AMEND SECTION 50-13-1630, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SALE AND TRAFFICKING IN FISH, SO AS TO MAKE TECHNICAL CHANGES, TO PROVIDE THAT THE SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES MAY ISSUE PERMITS FOR THE RELEASE OR STOCKING OF STERILE WHITE AMUR, GRASS CARP, OR GRASS CARP HYBRIDS IN THIS STATE, AND TO PROVIDE THAT THE DEPARTMENT MAY ISSUE PERMITS FOR THE IMPORTATION, BREEDING, AND POSSESSION OF GRASS CARP.

Be it enacted by the General Assembly of the State of South Carolina:

Sale and trafficking of fish

SECTION 1. Section 50-13-1630(A) through (D) of the 1976 Code, as last amended by Act 114 of 2012, is further amended to read:

"(A) A person may not possess, sell, offer for sale, import, bring, cause to be brought or imported into this State, or release in this State the following species at any stage of its life cycle:

(1) carnero or candiru catfish (Vandellia cirrhosa);

(2) freshwater electric eel (Electrophorus electricus);

(3) white amur or grass carp (Ctenopharyngodon idella);

(4) walking catfish or a member of the clariidae family (Clarias, Heteropneustea, Gymnallabes, Channallabes, or Heterobranchus genera);

(5) piranha (all members of Serrasalmus, Rooseveltiella, and Pygocentrus genera);

(6) stickleback;

(7) Mexican banded tetra;

(8) sea lamprey;

(9) rudd (Scardinius erythrophtalmu-Linneaus);

(10) snakehead (all members of family Channidae);

(11) rusty crayfish (Orconectes rusticus); and

(12) other nonindigenous species not established, except by permit, exclusive of the recognized pet trade species.

(B) The department may issue special import permits to qualified persons for research and education only.

(C)(1) The department may issue permits for the release or the stocking of sterile white amur, grass carp, or grass carp hybrids in this State. The permits must certify that the permittee's white amur, grass carp, or grass carp hybrids have been tested and determined to be sterile. The department may charge a testing fee of one dollar for each white amur, grass carp, or grass carp hybrid that measures five inches or longer or twenty-five cents for each white amur, grass carp, or grass carp hybrid that measures less than five inches. The fee collected for sterility testing must be retained by the department and used to offset the costs of the testing.

(2) The department is authorized to promulgate regulations to establish a fee schedule to replace the fee schedule contained in item (1) of this subsection. Upon these regulations taking effect, the fee schedule contained in item (1) of this subsection no longer applies.

(D) The department may issue permits for the importation, breeding, and possession of nonsterile white amur, grass carp, or grass carp hybrids. The permits must be issued pursuant to the provisions of the Aquaculture Enabling Act in Article 2, Chapter 18 of this title. Provided, however, that no white amur, grass carp, or grass carp hybrids imported, bred, or possessed pursuant to this subsection may be stocked in this State except as provided in subsection (C) of this section."

Sale and trafficking of fish

SECTION 2. Section 50-13-1630(F) of the 1976 Code, as last amended by Act 114 of 2012, is further amended to read:

"(F) The department shall prescribe the qualifications, methods, controls, and restrictions required of a person or his agent to whom a permit is issued. The department shall condition all permits issued under

this section to safeguard public safety and welfare and to prevent the introduction into the wild or release of nonnative species of fish or other organisms into this State. The department may promulgate regulations necessary to effectuate this section and specifically to prohibit additional species of fish from being imported, possessed, or sold in this State when the department determines the species of fish are potentially dangerous. A violation of the terms of the permit may result in recovation and a civil penalty of up to five thousand dollars. An appeal is pursuant to the provisions of Article 3, Chapter 23, Title 1 (the Administrative Procedures Act)."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 11th day of May, 2016.

Approved the 12th day of May, 2016.

No. 170

(R177, S1013)

AN ACT TO AMEND CHAPTER 57, TITLE 40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO REAL ESTATE BROKERS, SALESMEN, AND PROPERTY MANAGERS, SO AS TO RETITLE THE CHAPTER "REAL ESTATE BROKERS, SALESPERSONS, AND PROPERTY MANAGERS", AND TO REVISE THE CHAPTER IN ITS ENTIRETY; TO PROVIDE FOR THE CONTINUITY OF EXISTING REGULATIONS PROMULGATED UNDER AUTHORIZATION OF THE CHAPTER REGARDLESS OF WHETHER THEIR RESPECTIVE AUTHORIZING PROVISIONS ARE REDESIGNATED.

Be it enacted by the General Assembly of the State of South Carolina:

Real Estate Brokers, Salespersons, and Property Managers

SECTION 1. Chapter 57, Title 40 of the 1976 Code is amended to read:

"CHAPTER 57

Real Estate Brokers, Salespersons, and Property Managers

Article 1

General Provisions

Section 40-57-5. Unless otherwise provided in this chapter, the provisions of Article 1, Chapter 1 apply to real estate brokers, salespersons, and property managers. The provisions of this chapter control when they conflict with the provisions of Article 1, Chapter 1.

Section 40-57-10. There is created the South Carolina Real Estate Commission under the administration of the Department of Labor, Licensing and Regulation. The purpose of this commission is to regulate the real estate industry so as to protect the public's interest when involved in real estate transactions.

Section 40-57-20. It is unlawful for an individual to act as a real estate broker, real estate salesperson, or real estate property manager or to advertise or provide services as such without an active, valid license issued by the commission.

Section 40-57-30. For purposes of this chapter:

(1) 'Agent' means one authorized and empowered by a written agency agreement to perform actions for a client. A real estate brokerage firm is the agent of a buyer, seller, landlord, or tenant, and the real estate brokerage firm's 'associated licensees' are its subagents.

(2) 'Associated licensee' means a licensee affiliated with and under the supervision of a broker-in-charge or property manager-in-charge.

(3) 'Broker' means an associated licensee who has met the experience and education requirements and has passed the examination for a broker license and who, for a fee, salary, commission, referral fee, or other valuable consideration, or who, with the intent or expectation of receiving compensation:

(a) negotiates or attempts to negotiate the listing, sale, purchase, exchange, lease, or other disposition of real estate or the improvements to the real estate;

(b) auctions or offers to auction real estate in accordance with Section 40-6-250;

(c) for a fee or valuable consideration solicits a referral;

(d) offers services as a real estate consultant, counselor, or transaction manager;

(e) offers to act as a subagent of a real estate brokerage firm representing a client in a real estate transaction; or

(f) advertises or otherwise represents to the public as being engaged in any of the foregoing activities.

(4) 'Broker-in-charge' means a broker designated to have responsibility over the actions of all associated licensees and also has the responsibility and control over and liability for a real estate trust account.

(5) 'Buyer agency' means a form of agency in which a real estate brokerage firm represents the buyer in an agency capacity as defined in this chapter.

(6) 'Client' means a person who enters a written agreement establishing an agency relationship with a real estate brokerage firm through its broker-in-charge, a property manager-in-charge, or an associated licensee.

(7) 'Commission' means the South Carolina Real Estate Commission and its members, who are charged by law with the responsibility of licensing or otherwise regulating the practice of real estate in the State of South Carolina.

(8) 'Conversion' means to use trust funds for a purpose other than the purpose for which they are held. Conversion is a breach of trust and is a crime as provided by law.

(9) 'Customer' means a buyer, seller, landlord, or tenant who uses the services of a real estate licensee but does not established an agency relationship through a written agency agreement with the licensee's real estate brokerage firm.

(10) 'Department' means the Department of Labor, Licensing and Regulation.

(11) 'Designated agency' means a form of agency in which two clients represented by a real estate brokerage firm in the same transaction may be given almost equivalent treatment as a single agency.

(12) 'Dual agency' means a form of agency in which a real estate brokerage firm with two clients in the same transaction gives limited agency services.

(13) 'Email' means a system for sending and receiving a message electronically over a computer network and a message sent or received by the system.

(14) 'Licensee' means an individual currently licensed under this chapter.

(15) 'Limited function referral office' means a brokerage where the office policy allows only the placement of referrals through the broker-in-charge.

(16) 'Material adverse fact' means:

(a) a condition or occurrence that is generally recognized as:

(i) significantly and adversely affecting the value of the real estate;

(ii) significantly reducing the structural integrity of improvements to real estate; or

(iii) presenting a significant health risk to occupants of the real estate; or

(b) information that indicates that a party to a transaction is not able to or does not intend to meet an obligation under a contract or agreement made concerning the transaction.

(17) 'Ministerial act' means an act performed by a licensee not involving an exercise of discretion or judgment of a licensee on behalf of a person who is not a client and that assists the nonclient to consummate a real estate transaction.

(18) 'Office' means the office location where a broker-in-charge or a property manager-in-charge is licensed to conduct real estate business.

(19) 'Personal trust account' means an escrow account or demand deposit bank account properly designated and titled to include the words 'trust' or 'escrow' that is established and maintained by a licensee to safeguard funds belonging to parties to a real estate transaction when the transaction involves the licensee's personal real estate and the real estate is not managed or listed through a real estate brokerage firm.

(20) 'Property manager' means an associated licensee who meets educational requirements and passes the examination for a property manager license, and who will for a fee, salary, commission, other valuable consideration or with the intent or expectation of receiving compensation:

(a) negotiates or attempts to negotiate the rental or leasing of real estate or improvements to the real estate;

(b) lists or offers to list and provide a service in connection with the leasing or rental of real estate or improvements to the real estate; or

(c) advertises or otherwise represents to the public as being engaged in an activity in subitems (a) and (b).

(21) 'Property manager-in-charge' means a property manager who is designated as having the responsibility over the actions of associated licensees and also the responsibility and control over and liability for real estate trust accounts.

(22) 'Real estate' means land, buildings, and other appurtenances, including all interests in land, whether corporeal, incorporeal, freehold, or nonfreehold, whether the real estate is within or outside of the boundaries of this State.

(23) 'Real estate brokerage' means the aspect of the real estate business that involves activities relative to property management or a real estate sale, exchange, purchase, lease.

(24) 'Real estate brokerage firm' means a real estate company engaged in the business of real estate brokerage.

(25) 'Real estate transaction' means an activity involving the sale, purchase, exchange, or lease of real estate.

(26) 'Salesperson' means an associated licensee who:

(a) meets experience and education requirements;

(b) passes an examination for a salesperson license; and

(c) engages in or participates in an activity enumerated in item (3) for a fee, salary, commission, or other valuable consideration, or with the intent or expectation of receiving compensation.

(27) 'Seller agency' means a form of agency in which a real estate brokerage firm represents the seller in an agency capacity as defined in this chapter.

(28) 'Subagent' means an agent of an agent. An 'associated licensee' is a subagent of the real estate brokerage firm if the firm is an agent of a buyer, seller, landlord, or tenant.

(29) 'Substantive contact' means contact in which a discussion or dialogue between the consumer and the associated licensee moves from casual introductory talk to a meaningful conversation regarding the selling or buying motives or objectives of the seller or buyer, financial qualifications, and other confidential information that if disclosed could harm the consumer's bargaining position.

(30) 'Team' means two or more associated licensees working together as a single unit within an office established with the commission and supervised by a broker-in-charge.

(31) 'Trust account' means an escrow account or properly designated demand deposit bank account that is:

(a) properly designated and titled to include the word 'trust' or 'escrow'; and

(b) established and maintained by a broker-in-charge or a property manager-in-charge to safeguard funds belonging to parties to a real estate transaction.

(32) 'Trust funds' means funds received on behalf of another person by a licensee in the course of performing a real estate activity.

(33) 'Transaction broker' means a real estate brokerage firm that provides customer service to a buyer, a seller, or both in a real estate transaction. A transaction broker may be a single agent of a party in a transaction giving the other party customer service. A transaction broker also may facilitate a transaction without representing either party.

Section 40-57-40. (A) The South Carolina Real Estate Commission consists of ten members elected or appointed as follows:

(1) seven members who are professionally engaged in the active practice of real estate, one elected from each congressional district by a majority of house members and senators representing the house and senate districts located within each congressional district;

(2) two members representing the public who are not professionally engaged in the practice of real estate, each appointed by the Governor with the advice and consent of the Senate;

(3) the elected and appointed members shall elect from the State at large one additional member who must be in the active practice of real estate.

(B) A commission member serves a term of four years and until his successor is elected or appointed and qualifies. A vacancy on the commission must be filled in the manner of the original election or appointment for the remainder of the unexpired term.

(C) Before discharging of the duties of his office, a member's election or appointment must be certified by the Secretary of State, and the member shall, in writing, take an oath to perform the duties of the office as a member of the commission and to uphold the constitutions of this State and the United States.

(D) The term of a member commences on the date on which his election or appointment is certified by the Secretary of State.

(E) A member may be removed from office in accordance with Section 1-3-240.

Section 40-57-50. The commission annually shall elect from its total membership a chair, vice chair, and other officers the commission determines necessary at the first meeting in the fiscal year of the State. The commission may adopt an official seal and shall adopt rules and procedures reasonably necessary for the performance of its duties and the governance of its operations and proceedings.

Section 40-57-60. (A) The commission shall administer and enforce this chapter and regulations promulgated under this chapter. In addition

to powers contained in Section 40-1-70, the powers and duties include, but are not limited to:

(1) determining the standards for the qualifications and eligibility of applicants for licensure, the qualifications of education providers and instructors, and the conditions for license renewal;

(2) conducting disciplinary hearings on alleged violations of this chapter and regulations promulgated under this chapter and deciding disciplinary actions as provided in this chapter for those found to be in violation;

(3) recommending changes in legislation and promulgating regulations governing the real estate industry relative to the protection, safety, and welfare of the public; and

(4) establishing a fee schedule.

(B) The commission may not be involved in a resolution of disputes between licensees over the payment or division of a commission or fee.

(C) The commission staff shall conduct periodic inspections of the offices of licensees to assist with and ensure compliance with this chapter.

Section 40-57-65. The commission shall submit an annual report in accordance with established guidelines to the department and the Chairs of the Senate Labor, Commerce and Industry Committee and House Labor, Commerce and Industry Committee.

Section 40-57-70. (A) Fees relevant to the licensure and regulation of real estate brokers, salespersons, and property managers must be established in accordance with Section 40-1-50(D) and promulgated by regulation prior to implementation.

(B) Application and license fees must be paid to the commission in advance and must accompany an examination application or a license application. An application fee is nonrefundable.

(C)(1) The department may allocate up to ten dollars of each license renewal fee to the South Carolina Real Estate Commission Education and Research Fund which is established as a separate and distinct account within the Office of the State Treasurer. The funds collected must be deposited in this account and used exclusively for the:

(a) advancement of education and research for the benefit of those licensed under this chapter and for the improvement and increased efficiency of the real estate industry in this State;

(b) analysis and evaluation of factors which affect the real estate industry in this State; and

(c) dissemination of the results of the research.

(2) The commission annually by August first shall submit a report on how the funds were expended for the preceding fiscal year to the Chairs of the Senate Labor, Commerce and Industry Committee and House Labor, Commerce and Industry Committee.

Section 40-57-80. Reserved.

Section 40-57-90. An application for examination or licensure must be made in writing on a form prescribed by the commission and must be accompanied by all applicable fees.

Section 40-57-100. Reserved.

Section 40-57-110. (A) The commission shall issue licenses in the classifications of broker, broker-in-charge, or salesperson, to individuals who qualify under and comply with the requirements of this chapter; provided the commission may deny a license to an applicant it finds to have engaged in misconduct as provided in Section 40-57-710 or otherwise. No individual may be licensed in more than one classification at the same time. The license must be in the form and size as the commission prescribes and is not transferable.

(B) A licensee may place a license on inactive status by informing the commission in writing. To maintain an inactive license status, the license must be renewed in the same manner as provided for active license renewals. Upon proper compliance with the renewal requirements, a license may remain on inactive status for an indefinite period of time. An individual seeking to reactivate a license shall apply for the same license classification which was placed on inactive status, pay the appropriate fee, and meet the continuing education requirements as prescribed.

(C) A license only may be renewed in accordance with procedures established by the commission pursuant to Section 40-1-50(D). A licensee is responsible for renewing his license whether or not he receives notice.

(D) A license that is not renewed before its expiration date lapses.

(E) A license that has lapsed and is not reinstated by the last day of the sixth month following expiration is canceled.

Section 40-57-115. In addition to other requirements established by law and for the purpose of determining an applicant's eligibility for licensure as a salesperson, broker, broker-in-charge, property manager, and property manager-in-charge, the commission shall require initial

applicants to submit to a state criminal records check, by a source approved by the commission, and a national criminal records check. Costs of conducting a criminal records check must be borne by the applicant. The commission shall keep information received pursuant to this section confidential, except that information relied upon in denying licensure may be disclosed as necessary to support the administrative action.

Section 40-57-120. (A) The commission may recognize nonresident real estate licenses on active status from other jurisdictions only if the other jurisdiction recognizes South Carolina real estate licenses on active status. An applicant from another jurisdiction successfully shall complete the state portion of the applicable examination before license recognition will be acknowledged.

(B) A nonresident licensee, acknowledged by the commission, is not required to maintain a place of business in this State if the nonresident maintains an active place of business in the state of residence. A nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against him in the proper court in a judicial circuit of the state in which a cause of action may arise or in which the plaintiff may reside.

(C)(1) A resident licensee who becomes a nonresident must notify the commission in writing, within thirty days, of the change in residency and comply with nonresident requirements or place his license on inactive status to avoid cancellation of the license.

(2) A nonresident licensee who becomes a resident of South Carolina must notify the commission in writing, within thirty days, of the change in residency and comply with the requirements of this chapter or place his license on inactive status to avoid cancellation of the license.

(3) Failure to timely notify the commission of a change in residency and compliance to comply with the requirements of this subsection are violations of this chapter subject to penalties provided in Section 40-57-710.

(D) A nonresident applicant or licensee must comply with all requirements of commission regulations and of this chapter. The commission may adopt regulations necessary for the regulation of nonresident licensees.

(E) A resident licensee may pay a part of his commission as a referral fee on a cooperative basis to a brokerage of another state or jurisdiction if that brokerage's license does not conduct, in this State, a real estate brokerage service for which a fee, compensation, or commission is paid.

Section 40-57-135. (A) A broker-in-charge or property manager-in-charge shall:

(1) adequately supervise employees or associated licensees to ensure their compliance with this chapter;

(2) review and approve all forms of listing agreements, agency agreements, offers, sale contracts, purchase contracts, leases, options, contract addenda, or other contractual or disclosure documents routinely used by the real estate brokerage firm;

(3) maintain adequate, reasonable, and regular contact with associated licensees engaged in real estate transactions so as to prevent or curtail practices by a licensee which would violate any provision of this chapter, Chapter 1, Title 40, the Interstate Land Sales Practices Act, or the Vacation Time Sharing Plans Act;

(4) be available to the public during business hours in order to discuss or resolve complaints and disputes that arise during the course of real estate transactions in which the broker-in-charge or property manager-in-charge or an associated licensee is involved;

(5) establish and maintain a written office policy in accordance with Section 40-57-510(B) and make that policy readily accessible to associated licensees;

(6) ensure that all associated licensees have an active real estate license;

(7) establish and maintain control of and responsibility for an active trust account when in possession of trust funds belonging to others resulting from a real estate transaction; and

(8) notify the commission by mail within ten days of any change of office name, address, email address, or telephone number.

(B) An associated licensee may not receive compensation from an activity requiring a real estate license from an entity or person other than the one for which the license is issued. An associated licensee may form a business entity allowing the licensee's broker-in-charge or property manager-in-charge to pay fees or commissions to that entity if the principals in that entity hold an active real estate license.

(C)(1) A licensed broker-in-charge or property manager-in-charge shall establish and maintain a specific office location which must be accessible by the public, investigators, and inspectors during reasonable business hours.

(2) A broker-in-charge or property manager-in-charge may maintain one or more offices at different locations. Each office must be managed by a broker-in-charge or property manager-in-charge who is licensed for that real estate brokerage firm's location. The same person may request to be licensed as broker-in-charge or property

manager-in-charge of more than one office if the broker-in-charge or property manager-in-charge making the request acknowledges in writing that the applicant understands the duties and can fully assume the responsibility to ensure compliance with this chapter.

(3) A licensee may not conduct real estate business under another name or at an address other than the one for which his license is issued.

(4) In the event of the medical incapacitation of a broker-in-charge or property manager-in-charge which precludes him from carrying out the duties of a broker-in-charge or property manager-in-charge as required in this chapter, or in the event of the death of a broker-in-charge or a property manager-in-charge, the department may permit an associated licensee to act as broker-in-charge or property manager-in-charge for up to six months.

(D)(1) A broker-in-charge or property manager-in-charge shall for a minimum of five years maintain and furnish to the commission upon request a written copy, when applicable, of a:

(a) lease;
(b) contract of sale and any addenda;
(c) listing contract or buyer agency agreement;
(d) transaction broker agreement;
(e) option contract;
(f) property management agreement; and
(g) residential property disclosure form.

(2) These records may be maintained electronically as long as a backup copy is stored in a separate, off-site location including, but not limited to, electronic and Internet, cloud-based storage systems.

(E)(1) A licensee may not advertise, market, or offer to conduct a real estate transaction involving real estate owned, in whole or in part, by another person without first obtaining a written listing agreement between the property owner and the real estate brokerage firm with whom the licensee is associated.

(2) When advertising or marketing real estate owned, in whole or in part, by another person in any medium, including site signage, a licensee clearly must identify the full name of the real estate brokerage firm with which the licensee is associated. When advertising on the Internet or in another electronic media, this requirement may be met by including a link from the advertisement to the homepage of the brokerage firm.

(3) If a real estate brokerage firm operates under a trade or franchise name, the identity of the franchisee or holder of the trade name clearly must be revealed.

(F)(1) A licensee clearly shall reveal his license status in a personal transaction involving the purchase, sale, exchange, rental, lease, or auction of real estate at first substantive contact with a consumer and in advertising or marketing in any media. A licensee also shall disclose his licensed status in bold underlined capital letters on the first page of a contract for the purchase, sale, exchange, rental, or lease of real property.

(2) Trust funds received in a licensee's personal rental or transaction must be deposited in the licensee's personal trust account and may not be deposited in the real estate brokerage firm's trust account unless the real property is managed, listed, or owned by the real estate brokerage firm.

(G) No licensee either directly or indirectly may buy for his own account or for a corporation or another business in which he holds an interest or for a close relative, real estate listed with him or real estate for which he has been approached by the seller or prospective buyer to act as agent, without first making his true position clearly known in writing to all parties involved. Upon request of the department, the licensee shall provide evidence of having made this disclosure.

(H) With regard to offers to purchase real estate, a licensee shall:

(1) upon receipt, prepare all offers in writing and promptly present them to the seller;

(2) upon obtaining a written acceptance of an offer, promptly deliver true, executed copies to all parties;

(3) ensure that all of the terms and conditions of the transaction are included in the offer to purchase; and

(4) ensure that changes or modifications made during negotiation are in writing and initialed and dated by both parties before proceeding with the transaction.

(I)(1) A licensee shall properly complete an agency agreement, transaction broker agreement, offer, and counteroffer.

(2) A listing or buyer's representation agreement must be in writing and must set forth all material terms of the parties' agency relationship including, but not limited to:

(a) a description of the agent's duties or services to be performed for the client including, but not limited to, an explanation of the office policy regarding dual agency, designated agency, and transaction brokerage if offered by the real estate brokerage firm;

(b) the amount of compensation to be paid if a flat fee or the method to be used in calculating the amount of compensation to be paid;

(c) an explanation of how and when compensation is earned;

(d) an explanation of how compensation will be divided among participating or cooperating brokers, if applicable;

(e) the amount of retainer fees, deposits, or any other money collected before the agent's performance of a service on behalf of the client and an explanation of conditions, if any, in which such monies are refundable or payable to or on behalf of the client;

(f) the duration of the agency relationship, setting forth specific dates for the beginning and ending of the relationship;

(g) the signature of all parties;

(h) a listing agreement or buyer's representation agreement clearly must state that it terminates on the definite expiration date unless a written extension is signed;

(i) a listing agreement or buyer's representation agreement clearly must state, if applicable, that it is either an 'exclusive agency' listing or buyer's representation agreement or 'exclusive right to represent' listing contract or 'exclusive right to represent' buyer's representation contract;

(j) a listing agreement or buyer's representation agreement must clearly specify an exception or variation in an amount of commission to be paid and circumstances that would apply;

(k) a copy of the listing or buyer's representation agreement must be given to the seller or buyer at the time of, or directly following, signing; and

(l) a buyer's representation agreement must provide an adequate property description of the type of property of interest to the buyer and a price or price range for property of interest to the buyer. A listing agreement must have a legal description of the listed property or a description sufficient to identify the listed property and state the price of the listed property.

(3) If there are no clients involved in the transaction, a real estate brokerage firm acting as a transaction broker shall complete a compensation agreement to be signed by the agent and the compensating party. This agreement must contain the amount of the compensation and identify the party responsible for payment.

(4) The broker-in-charge shall ensure that associated licensees prepare all offers and counteroffers in writing, have them dated and signed by the offerors, and promptly present them to the offerees or the offerees' representative and ensure that:

(a) changes or modifications made during negotiations are in writing and initialed and dated by both parties before proceeding with the transaction;

(b) all of the terms and conditions of the transaction are included in the offer to purchase; and

(c) if associated licensees obtain a written acceptance of an offer or counteroffer, true, executed copies will be promptly delivered to all parties.

(5) If an offer is rejected without counter, an offer rejection form, promulgated by the commission, signed by the licensee affirming presentation of the offer must be provided to the offeror by the licensee, whether the agent of the buyer, the seller, or if acting as a transaction broker.

(6) An offer and counteroffer may be communicated by use of a fax or other secure electronic means including, but not limited to, the Internet, and the signatures, initials, and handwritten or typewritten modifications to the foregoing documents are considered valid and binding upon the parties as if the original signatures, initials, and handwritten, or typewritten modifications were present on the documents in the handwriting of each party.

(7) If a licensee wishes to purchase real estate listed with his brokerage firm, the broker-in-charge shall ensure that the licensee shall first make his true position clearly known in writing to all parties involved. Upon request of the commission, the broker-in-charge shall provide evidence of the licensee having made this disclosure, including:

(a) purchases made directly or indirectly by the licensee;

(b) purchases made for the licensee's own account or for a corporation or another business in which the licensee holds an interest or purchases made for a close relative; and

(c) real estate for which the licensee has been approached by the seller or prospective buyer to act as agent.

(8) In order for a real estate brokerage firm to claim a fee for the sale of a listed property to an associated licensee, a separate written agreement signed by the seller client must acknowledge the purchaser as a licensee affiliated with the real estate brokerage firm and recognize the right of the seller to not pay the brokerage fee.

(J) A real estate brokerage firm shall manage residential and commercial property under a written management agreement that shall set forth, at a minimum:

(1) the names and signatures of authorized parties to the agreement;

(2) the property identification;

(3) the method of compensation to the licensee;

(4) that a management agreement may not contain an automatic renewal clause or provision unless the management agreement also contains a clause or provision that allows either party to cancel the

management agreement for any cause or no cause with thirty days' notice after the original definite expiration date;

(5) compensation for a future lease renewal by tenants, and if included, the contract must contain a clause in underlined capital letters on the first page providing for such future compensation; and

(6) terms and conditions of tenant rental or lease arrangements. However, a management agreement may not contain a provision binding the property under a future listing agreement if the property is to be sold in the future, in which case a separate listing agreement is required.

(K) For all types of real estate transactions, including leases and sales, an unlicensed employee of the owner or an unlicensed individual working under the supervision of a broker-in-charge or a property manager-in-charge may not:

(1) discuss, negotiate, or explain a contract, listing agreement, buyer agency agreement, lease, agreement, property management agreement, or other real estate document;

(2) vary or deviate from the rental price or other terms and conditions previously established by the owner or licensee when supplying relevant information concerning the rental of property;

(3) approve applications or leases or settle or arrange the terms and conditions of a lease;

(4) indicate to the public that the unlicensed individual is in a position of authority which has the managerial responsibility of the rental property;

(5) conduct or host an open house or manage an on-site sales or leasing office;

(6) show real property for sale other than vacant units in a multifamily building;

(7) answer questions regarding company listings, title, financing, and closing issues, except for information that is otherwise publicly available;

(8) be paid solely on the basis of real estate activity including, but not limited to, a percentage of commission or an amount based on the listing or sales compensation or commission;

(9) negotiate or agree to compensation or commission including, but not limited to, commission splits, management fees, or referral fees on behalf of a licensee; or

(10) engage in an activity requiring a real estate license as required and defined by this chapter.

(L) A licensee is not required to maintain records of communications that are not designated to be retained or to create a permanent record

such as text messages, instant messaging system-formatted messages, voicemail, voice recordings, or social media posts.

Section 40-57-136. (A)(1) A broker-in-charge or a property manager-in-charge, when taking possession of trust funds, shall establish and maintain control of and responsibility for an active real estate trust account which must be a demand deposit account designated and titled to include the word 'trust' or the word 'escrow' in the name of the real estate brokerage firm for which the respective broker-in-charge's or property manager-in-charge's license is issued; provided, however, that one central trust account may be used by real estate brokerage firms with multiple offices managed by:

(a) one broker-in-charge or one property manager-in-charge; and

(b) separate brokers-in-charge or separate property managers-in-charge.

(2) A broker-in-charge and a property manager-in-charge shall maintain records which reflect the transactions in his office.

(3) A trust account maintained by a broker-in-charge or property manager-in-charge must be a demand deposit account located in an insured financial institution authorized to conduct business in South Carolina.

(4) A broker-in-charge or property manager-in-charge shall instruct employees and associated licensees on the proper handling of trust funds.

(5) A check or statement issued in connection with a real estate trust account must reflect the title and designation of the account as provided in item (1).

(B)(1)A broker-in-charge or property manager-in-charge shall ensure that accurate and complete records, as required by this chapter, are maintained for real estate trust accounts.

(2) A broker-in-charge or property manager-in-charge shall ensure that backup copies are maintained for computerized real estate trust accounts. A backup copy must be maintained on a data storage medium that is stored in a separate off-site location.

(3) A broker-in-charge or property manager-in-charge may not commingle trust funds of the client with his own money, except that he may maintain a clearly identified amount of the company's funds in the trust account to cover bank service charges or in order to avoid the closing of the account when no client's trust funds are on deposit.

(4) Trust funds received by a licensee in connection with a real estate transaction in which the licensee is engaged for the

broker-in-charge or property manager-in-charge must be delivered to the broker-in-charge or property manager-in-charge no later than the following business day.

(5) A broker-in-charge or property manager-in-charge who disburses trust funds contrary to the terms of the contract or fails to disburse trust funds not in dispute is considered to have demonstrated incompetence to act as a broker-in-charge or property manager-in-charge.

(C)(1)(a) Except as provided in subitem (b), trust funds received by a broker-in-charge or property manager-in-charge in a real estate rental or lease transaction must be deposited as follows in a real estate trust account as follows:

(i) cash or certified funds must be deposited within forty-eight hours of receipt, excluding Saturday, Sunday, and bank holidays; and

(ii) checks must be deposited within forty-eight hours after a lease or rental agreement is signed by the parties to the transaction, excluding Saturday, Sunday, and bank holidays.

(b) Rent received by a licensee who is directly employed by the owner of rental property may be deposited in an operating or other similar account, but otherwise must be properly accounted for as provided in this section. However, an advance rental deposit is a trust fund and must be treated as such.

(2) Trust funds received by a broker-in-charge or property manager-in-charge in connection with a real estate rental or lease including, but not limited to, security deposits, pet deposits, damage deposits, and advance rentals, except earned rental proceeds, and deposited in the trust account must remain in the trust account until the lease or rental transaction expires or is terminated, at which time undisputed trust funds must be disbursed pursuant to the contract which directs the broker-in-charge or property manager-in-charge to hold the trust funds, and a full accounting must be made to the landlord or tenant as appropriate. Earned rental proceeds must be disbursed to the landlord within a reasonable time after clearance of the deposit by the bank.

(D)(1)(a) Trust funds received by a broker-in-charge in a real estate sales or exchange transaction must be deposited as follows in a separate real estate trust account:

(i) cash or certified funds must be deposited within forty-eight hours of receipt, excluding Saturday, Sunday, and bank holidays;

(ii) checks must be deposited within forty-eight hours after written acceptance of an offer by the parties to the transaction, excluding Saturday, Sunday, and bank holidays.

(b) Trust funds received by a broker-in-charge in connection with a real estate sales or exchange transaction and deposited in the real estate trust account shall remain in the trust account until consummation or termination of the transaction, at which time the undisputed trust funds must be disbursed in accordance with the contract which directs the broker-in-charge to hold the trust funds, and a full accounting must be made to the parties.

(2) A broker-in-charge or property manager-in-charge who disburses trust funds from a designated trust account under the following circumstances is considered to have properly fulfilled the duty to the account:

(a) upon rejection of an offer to buy, sell, rent, lease, exchange, or option real estate;

(b) upon the withdrawal of an offer not yet accepted by the offeree; or

(c) at the closing of the transaction.

(E) If a dispute concerning the entitlement to, and disposition of, trust funds arises between a buyer and a seller, and the dispute is not resolved by reasonable interpretation of the contract by the parties to the contract, the deposit must be held in the trust account until the dispute is resolved by:

(1) a written agreement which:

(a) directs the disposition of monies signed by all parties claiming an interest in the trust monies, and

(b) must be separate from the contract which directs the broker-in-charge or property manager-in-charge to hold the monies;

(2) filing an interpleader action in a court of competent jurisdiction;

(3) an order of a court of competent jurisdiction; or

(4) voluntary mediation.

(F)(1) Records required by this chapter must be maintained for a minimum of five years and the broker-in-charge or property manager-in-charge shall furnish a copy of the records to a representative of the commission upon request. Accounting records that may be requested include, but are not limited to, journals, ledgers, folios, client subaccounts, tenant accounts, canceled checks, deposit slips, and bank statements.

(2) Brokers-in-charge or property managers-in-charge, when required by this chapter to establish and maintain a real estate trust

account, also shall maintain, in their designated principal place of business, a recordkeeping system consisting of:

(a) a journal or an accounting system that records the chronological sequence in which funds are received and disbursed for real estate sales. For funds received, the journal or accounting system must include the date of receipt, the name of the party from whom the money was received, the name of the principal, identification of the property, the date of deposit, the depository, the payee, and the check numbers, dates, and amounts. A running balance must be maintained for each entry of a receipt or disbursement. The journal or accounting system must provide a means of reconciling the accounts;

(b) a journal or an accounting system containing, for property management, the same information as stated in subitem (a) except that the required running balance may be determined at the time of reconciliation;

(c) a separate record for each tenant identifying the unit, the unit owner, amount of rent, due date, security deposit, and all receipts with dates when managing property. An owner's ledger also must be maintained for all properties owned by each owner showing receipts and disbursements applicable to each property managed. A disbursement must be documented by a bid, contract, invoice, or other appropriate written memoranda;

(d) a trust account deposit document must identify the buyer or tenant unless other appropriate written memoranda are maintained;

(e) a general ledger identifying security deposits;

(f) a monthly reconciliation of each separate account except when no deposit or disbursement is made during that month. The reconciliation must include a written worksheet comparing the reconciled bank balance with the journal balance and with the ledger total to ensure agreement.

(G) Trust funds received by a broker-in-charge or property manager-in-charge which must be deposited in a trust account may be deposited in an interest-bearing account. Interest earned on these trust funds may be retained by the broker-in-charge or property manager-in-charge if:

(1) the depositors or owners of the trust funds have been informed of their right to ownership of the interest but relinquish the right of ownership to the broker-in-charge or property manager-in-charge by written agreement; and

(2) the agreement, if part of a preprinted form, uses conspicuous language.

Section 40-57-240. This chapter does not apply to:

(1) the sale, lease, or rental of real estate by an unlicensed owner of real estate who owns any interest in the real estate if the interest being sold, leased, or rented is identical to the owner's legal interest;

(2) an attorney at law acting within the scope of his duties involved in the legal representation of a client/owner;

(3) agencies and instrumentalities of the state or federal government and their employees acting within the scope of their official duties;

(4) foresters registered under Chapter 27, Title 48, if the sale of any land is merely incidental to the sale of timber on the land; or

(5) court-appointed receivers and trustees while acting within the scope of their appointment.

Article 3

Real Estate Brokers, Brokers-in-Charge, and Salespersons

Section 40-57-310. To be eligible for licensure as a real estate broker, broker-in-charge, or salesperson, an applicant must:

(1) attain the age of twenty-one if applying for a license as a broker or broker-in-charge;

(2) attain the age of eighteen if applying for a license as a salesperson;

(3) provide a physical address at which the licensee can be contacted in the course of an investigation. A licensee shall maintain on file with the commission his current contact information for his residential address, mailing address, email address, and telephone number. Failure to update this contact information within thirty days after a change may result in an administrative suspension of the property manager, salesperson, broker, or broker-in-charge pursuant to Section 40-57-710;

(4) graduate from high school or hold a certificate of equivalency recognized by the State Department of Education;

(5) submit proof of completion of education to the commission and, if applicable, experience requirements as specified in this chapter;

(6) submit to criminal background check as provided in Section 40-57-115 for initial application; and

(7) pass the applicable examination.

Section 40-57-320. (A) As a condition for and before applying to the commission for licensure, an applicant for a salesperson, broker, or broker-in-charge license shall provide proof to the commission of having

met the following educational requirements, in addition to the other requirements of this chapter:

(1) for a salesperson license:

(a) completion of sixty hours of classroom instruction in fundamentals of real estate principles and practices and thirty hours of classroom instruction in advanced real estate principles within five years before the application, provided an applicant may take the license examination before completing the required thirty hours of advanced instruction; or

(b) evidence of holding a juris doctor degree, a bachelor of law degree, a baccalaureate degree or a master's degree with a major in real estate from an accredited college or university, or completion of another course of study approved by the commission; and

(2) for a broker license:

(a) completion of one hundred fifty hours of commission-approved real estate classroom instruction, ninety of which may be the hours required for a salesperson license, to include completion of the thirty hour Unit III A Broker Management and of the thirty hour Unit III B Brokerage Principles courses in advanced real estate principles and practices and three years active salesperson licensure within the past five years; or

(b) evidence of holding a juris doctor degree, a bachelor of law degree, a baccalaureate degree or a master's degree with a major in real estate from an accredited college or university.

(B)(1) As a condition of licensure, an applicant shall submit to an examination which must be conducted by the commission or a designated test provider at a time and place specified by the commission.

(2) The applicant must receive a passing grade on the examination, in accordance with a cut-score determination or a raw-score determination established by the commission.

(3) An applicant who applies to take the examination is granted a twelve-month eligibility period to complete successfully all portions of the examination. An applicant who fails to complete successfully the examination may reapply to become eligible for the examination if applicable qualifying courses were completed fewer than five years before applying for the examination.

(4) An applicant who passes the examination must apply for a license within one year, or the applicant must reapply and retake the examination.

(5) An applicant who is denied licensure by the commission may not reapply for licensure for a period of twenty-four months from the

date of denial unless he prevails in appealing the denial pursuant to the Administrative Procedures Act.

(6) A nonresident individual who, at the time of application, holds an active real estate license in another state or jurisdiction or whose real estate license in another state or jurisdiction expired not more than six months before he makes his application only is required to pass the state portion of the examination to qualify for licensure.

(C) The commission or test provider may collect and retain reasonable examination fees. An applicant for an examination to be conducted by a test provider shall pay the fee directly to the test provider.

Section 40-57-330. (A) A broker-in-charge license may not be issued to or renewed for an applicant unless the applicant:

(1) has an ownership interest in the applicant's company; or

(2) is actively engaged in the operation and management of the company.

(B) An individual holding an active broker or salesperson license must be licensed under a broker-in-charge who is licensed by the commission and may not be licensed during the same period with more than one broker-in-charge. When a licensee becomes disassociated with a broker-in-charge, he immediately shall notify the commission by completion of the proper form. The licensee must furnish a new business address to the commission, the authorization of the new broker-in-charge, and proof of notification to the former broker-in-charge.

Section 40-57-340. (A) As a condition of active license renewal:

(1) A broker or salesperson shall provide proof of satisfactory completion biennially of ten hours of continuing education in courses. The ten hours must include a minimum of four hours of instruction in mandated topics.

(2) A broker-in-charge shall provide proof of satisfactory completion biennially of ten hours of continuing education in courses approved by the commission. The ten hours must include a minimum of four hours of instruction in mandated topics for a broker or salesperson license and four hours of continuing education must be in advanced real estate topics designed for brokers-in-charge.

(3) A license must be renewed biennially coinciding with the licensees' continuing education deadline. Approximately one-half of the licensees must renew in even-numbered years and the remainder in odd-numbered years.

(B) Exempt from the biennial continuing education required by subsection (A) are a:

(1) salesperson who successfully completes a post-licensing course or takes a broker course is exempt for the renewal period during which the course was taken;

(2) licensee while on inactive status;

(3) nonresident broker or salesperson who has successfully satisfied the continuing education requirements in their jurisdiction of residence may be exempt with approval of the commission; or

(4) broker or salesperson with a minimum of twenty-five years of licensure may apply to be granted an experience-based partial continuing education waiver, and upon granting of the waiver, is required to complete only the mandatory four hour core course biennially to maintain active licensure. A broker-in-charge who has been granted a partial continuing education waiver is required to take the four hour core course and the mandated four hour broker-in-charge course biennially. A licensee who previously has been granted a full continuing education waiver by the commission is exempt from the continuing education requirements of this chapter.

(C) A broker or salesperson who takes more than the required number of hours during a two-year period may not carry forward any excess hours to another renewal period.

(D) A broker or salesperson who fails to complete the continuing education requirements of this section by the date of license renewal may renew by submitting applicable fees but immediately must be placed on inactive status. The license may be reactivated upon proof of completion of required continuing education and payment of applicable fees.

(E) In accordance with regulations, providers electronically shall transmit to the commission student continuing education and qualifying course records. The commission shall maintain an accurate and secure database of student records.

(F) A prelicensing and continuing education course is eligible for distance learning. Certification by the Association of Real Estate License Law Officials (ARELLO) or its subsidiary, the International Distance Education Certification Center (IDECC), is required.

(G) The commission shall qualify for continuing education credit designation and certification programs of nationally recognized real estate organizations and associations. The commission may qualify for continuing education credit other than courses currently approved for continuing credit including, but not limited to, courses offered by the South Carolina Bar Association, South Carolina Forestry Board, and the South Carolina Appraisers Board.

(H) Notwithstanding another provision of law, the commission shall qualify for continuing education credit courses that are related to real estate technology, professional development, and business ethics.

Section 40-57-350. (A) A real estate brokerage firm that provides services through an agency agreement for a client is bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting as set forth in this chapter. The following are the permissible brokerage relationships a real estate brokerage firm may establish:

(1) seller agency;
(2) buyer agency;
(3) disclosed dual agency;
(4) designated agency; or
(5) transaction brokerage.

(B) The broker-in-charge of a real estate brokerage firm shall adopt a written company policy that identifies and describes the types of real estate brokerage relationships in which associated licensees may engage, including teams and limited function referral offices. The written policy must include:

(1) the real estate brokerage firm's policy regarding cooperation with transaction brokers, or both buyer agents, and transaction brokers, and whether the broker offers compensation to these licensees;

(2) the scope of services provided to the real estate brokerage firm's clients;

(3) the scope of services provided to the real estate brokerage firm's customers;

(4) when and how associated licensees shall explain and disclose their brokerage relationships with an interested party to a potential transaction. The explanation and disclosure shall always comply with the minimum requirements set forth in this chapter;

(5) when and how an associated licensee shall explain the potential for the licensee to later act as a disclosed dual agent, designated agent, or transaction broker in specific transactions, as permitted by this chapter; and

(6) the real estate brokerage firm's policy on compliance with state and federal fair housing laws.

(C)(1) On reaching a written agency agreement to provide brokerage services for a seller of real estate, a seller's agent shall:

(a) perform the terms of the written brokerage agreement made with the seller;

(b) pursuant to subsection (A), promote the interest of the seller by performing agency duties which include:

(i) seeking a sale at the price and terms stated in the brokerage agreement or at a price and terms acceptable to the seller, except that the real estate brokerage firm is not obligated to seek additional offers to purchase unless the brokerage agreement provides otherwise while the property is subject to a contract of sale;

(ii) presenting in a timely manner all written offers and counteroffers to and from the seller, even when the property is subject to a contract of sale;

(iii) disclosing to the seller all material adverse facts concerning the transaction which are actually known to the seller's agent except as directed otherwise in this section;

(iv) advising the seller to obtain expert advice on matters that are beyond the expertise of the licensee; and

(v) accounting in a timely manner, as required by this chapter, for all money and property received in which the seller has or may have an interest;

(c) exercise reasonable skill and care in discharging the licensee's agency duties;

(d) comply with all provisions of this chapter and with regulations adopted by the commission;

(e) comply with all applicable federal, state, or local laws, rules, regulations, and ordinances related to real estate brokerage, including laws which relate to fair housing and civil rights;

(f) preserve confidential information provided by the seller during the course of and following the agency relationship that might have a negative impact on the seller's real estate activity unless:

(i) the seller to whom the confidential information pertains grants written consent to disclose the information;

(ii) disclosure is required by law; or

(iii) disclosure is necessary to defend the licensee against an accusation of wrongful conduct; or

(iv) the information becomes public from a source other than the broker.

(2) No cause of action may arise against a licensee for disclosing confidential information in compliance with item (1)(f).

(D) A licensee acting as a seller's agent may offer alternative properties to prospective buyers. A licensee acting as a seller's agent also may list for sale competing properties.

(E)(1) On reaching a written agency agreement to provide brokerage services to a potential buyer of real estate, a buyer's agent shall:

(a) perform the terms of the written brokerage agreement made with the buyer;

(b) in accordance with subsection (A), promote the interest of the buyer by performing the buyer's agent's duties which include:

(i) seeking the type of property at the price and terms stated in the brokerage agreement or at a price and terms acceptable to the buyer, except that the licensee is not obligated to seek additional properties unless the brokerage agreement provides otherwise for a buyer once the buyer becomes a party to a contract of sale;

(ii) presenting in a timely manner all written offers and counteroffers to and from the buyer;

(iii) disclosing to the buyer all material adverse facts concerning the transaction which are actually known to the licensee except as directed otherwise in this section. Nothing in this chapter may limit a buyer's obligation to inspect the physical condition of the property which the buyer may purchase;

(iv) advising the buyer to obtain expert advice on material matters that are beyond the expertise of the licensee; and

(v) accounting in a timely manner, as required by this chapter, for all money and property received in which the buyer has or may have an interest;

(c) exercising reasonable skill and care in discharging the buyer's agent's agency duties;

(d) complying with all provisions of this chapter and with regulations promulgated by the commission;

(e) complying with all applicable federal, state, or local laws, rules, regulations, and ordinances related to real estate brokerage, including laws which relate to fair housing and civil rights;

(f) preserving confidential information provided by the buyer during the course of or following the agency relationship that might have a negative impact on the buyer's real estate activity unless:

(i) the buyer to whom the confidential information pertains, grants written consent to disclose the information;

(ii) disclosure is required by law;

(iii) disclosure is necessary to defend the licensee against an accusation of wrongful conduct in a proceeding before the commission or before a professional association or professional standards committee; or

(iv) the information becomes public from a source other than the licensee.

(2) No cause of action may arise against a licensee for disclosing confidential information in compliance with item (1)(f).

(F) A licensee acting as a buyer's agent may offer properties which interest his buyer client to other potential buyers. However, if the licensee has two competing buyer clients in a single real estate transaction, the agent will give written notice to each buyer client that neither will receive the confidential information of the other.

(G)(1) A licensee shall treat all parties honestly and may not knowingly give them false or misleading information about the condition of the property which is known to the licensee. A licensee is not obligated to discover latent defects or to advise parties on matters outside the scope of the licensee's real estate expertise. Notwithstanding another provision of law, no cause of action may be brought against a licensee who has truthfully disclosed to a buyer a known material defect.

(2) No cause of action may be brought against a real estate brokerage firm or licensee by a party for information contained in reports or opinions prepared by an engineer, land surveyor, geologist, wood destroying organism control expert, termite inspector, mortgage broker, home inspector, or other home inspection expert, or other similar reports.

(3) A licensee, the real estate brokerage firm, and the broker-in-charge are not liable to a party for providing the party with false or misleading information if that information was provided to the licensee by the client or customer and the licensee did not know the information was false or incomplete.

(H) Nothing in this chapter limits the obligation of the buyer to inspect the physical condition of the property.

(I)(1) A real estate brokerage firm may act as a disclosed dual agent only with the prior informed and written consent of all parties. Consent is presumed to be informed if a party signs a completed copy of a dual agency agreement, promulgated by the commission. At the latest, the form must be signed by the buyer before writing an offer and by the seller before signing the sales contract. The agreement must specify the transaction, and must name the parties to the dual agency consent agreement, and must state that:

(a) in acting as a dual agent, the real estate brokerage firm represents clients whose interests may be adverse and that agency duties are limited;

(b) the associated licensees of the real estate brokerage firm may disclose information gained from one party to another party if the information is relevant to the transaction, except if the information concerns:

(i) the willingness or ability of a seller to accept less than the asking price;

(ii) the willingness or ability of a buyer to pay more than the offered price;

(iii) any confidential negotiating strategy not disclosed in an offer as terms of a sale; or

(iv) the motivation of a seller for selling property or the motivation of a buyer for buying property;

(c) that the clients may choose to consent to the disclosed dual agency or may reject it; and

(d) that the clients have read and understood the dual agency agreement and acknowledge that their consent to dual agency is voluntary.

(2) A broker-in-charge and associated licensees in one office of a real estate brokerage firm may conduct business with a client of another office of the real estate brokerage firm as a customer or client without creating a dual agency relationship, so long as the branch offices each have a separate broker-in-charge and do not share the same associated licensees.

(J)(1) A broker-in-charge may assign, through the adoption of a company policy, different licensees affiliated with the broker-in-charge as designated agents to exclusively represent different clients in the same transaction. A company policy adopted to fulfill the requirements of this subsection must contain provisions reasonably calculated to ensure each client is represented in accordance with the requirements of this chapter.

(2) A broker-in-charge may personally, or through the broker's duly authorized real estate licensed representative, specifically designate one or more associated licensees who will be acting as agent of the buyer client or seller client to the exclusion of all other associated licensees. Buyers and sellers shall give informed consent to enter into designated agency relationships. The informed consent must be evidenced by a designated agency agreement promulgated by the commission, and must be signed by the buyer before writing the offer and by the seller before signing the sales agreement. The designated agency agreement must include language informing the buyer and seller of the obligations of the broker-in-charge and associated licensees under this section.

(3) If a buyer client of a real estate brokerage firm wants to view a property that was personally listed by the broker-in-charge, the real estate brokerage firm shall act as a dual agent with the written consent of the buyer and seller, as required by subsection (I). If a seller client of a real estate brokerage firm wants to sell a property to a buyer client of the real estate brokerage firm that is personally represented by the broker-in-charge, the real estate brokerage firm shall act as a dual agent

with the written consent of the buyer and seller, as required by subsection (I).

(4) A designated agent of a seller client has the duties and obligations set forth in subsections (C) through (E). A designated agent of a buyer client has the duties and obligations set forth in subsections (E), (G), and (H).

(5) In a transaction where both buyer and seller are represented by designated agents, the broker-in-charge shall act as a dual agent pursuant to subsection (I). The broker-in-charge is not required to complete a dual agency agreement under this provision. Consent must be contained in the designated agency agreement.

(6) A designated agent may disclose to the designated agent's broker-in-charge, or the licensed representative appointed by the broker-in-charge, confidential information of a client for the purpose of seeking advice or assistance for the benefit of the client in regard to a transaction.

(7) If a buyer client of a real estate brokerage firm wants to view and make an offer to purchase a property owned by a seller client being represented by the same associated licensee, the real estate brokerage firm must act as a dual agent with the written consent of the buyer and seller, as required by subsection (I).

(8) If a broker-in-charge appoints different associated licensees as designated agents in accordance with subsection (J)(1), the broker-in-charge, all remaining affiliated licensees, and the real estate brokerage firm must be considered to be dual agents.

(9) There may be no imputation of knowledge or information between and among the broker-in-charge, agents, and the clients. Designated agents may not disclose, except to the designated agent's broker-in-charge or appointed representative, information made confidential by written request or instruction of the client whom the designated agent is representing, except information allowed to be disclosed by this section or required to be disclosed by this section. Unless required to be disclosed by law, the broker-in-charge of a designated agent may not reveal confidential information received from either the designated agent or the client with whom the designated agent is working. For the purposes of this section, confidential information is information the disclosure of which has not been consented to by the client and that could harm the negotiating position of the client.

(10) The designation of one or more of a broker-in-charge's associated licensees as designated agents does not permit the disclosure by the broker-in-charge or associated licensees of information made confidential by an express written request or instruction by a party before

or after the creation of the designated agency. The broker-in-charge and associated licensees shall continue to maintain this confidential information unless the party from whom the confidential information was obtained permits its disclosure by written agreement or disclosure is required by law. No liability is created as a result of a broker-in-charge's and associated licensee's compliance with this subsection.

(K) A licensee who represents one party to a real estate transaction may provide assistance to other parties to the transaction by performing ministerial acts such as writing and conveying offers, and providing information and aid concerning other professional services not related to the real estate brokerage services being performed for a client. Performing ministerial acts does not create an agency relationship.

(L)(1) A real estate brokerage firm may offer transaction brokerage to potential buyers and sellers. A transaction broker may be a single agent of a party in a transaction, giving the other party customer service or the transaction broker may facilitate the transaction without representing either party.

(2) Licensees operating as transaction brokers are required to disclose to buyers and sellers their role and duties in offering customer services to the consumer that shall include the following:

(a) honesty and fair dealing;

(b) accounting for all funds;

(c) using skill, care and diligence in the transaction;

(d) disclosing material adverse facts that affect the transaction, or the value or condition of the real property and that are not readily ascertainable;

(e) promptly presenting all written offers and counteroffers;

(f) limited confidentiality, unless waived in writing by a party. This limited confidentiality prohibits disclosing:

(i) information concerning a buyer's motivation to buy or the buyer's willingness to make a higher offer than the price submitted in a written offer;

(ii) factors motivating a seller to sell or the seller's willingness to accept an offer less than the list price;

(iii) that a seller or buyer will agree to financing terms other than those offered; and

(iv) information requested by a party to remain confidential, except information required by law to be disclosed;

(g) additional duties that are entered into by separate agreement.

(3) Prospective buyers and sellers who do not choose to establish an agency relationship with a real estate brokerage firm but who use the services of the firm are considered customers. A licensee may offer the

following services to a customer as a single agent or as a transaction broker including, but not limited to:

(a) identifying and showing property for sale, lease, or exchange;

(b) providing real estate statistics and information on property;

(c) providing preprinted real estate forms, contracts, leases, and related exhibits and addenda;

(d) acting as a scribe in the preparation of real estate forms, contracts, leases, and related exhibits and addenda;

(e) providing a list of architects, engineers, surveyors, inspectors, lenders, insurance agents, attorneys, and other professionals; and

(f) identifying schools, shopping facilities, places of worship, and other similar facilities on behalf of the parties in a real estate transaction.

(4) A licensee offering services to a customer shall:

(a) timely present all written offers to and from the parties involving the sale, lease, and exchange of property, even when the property is subject to a contract of sale;

(b) timely account for all money and property received by the broker on behalf of a party in a real estate transaction;

(c) provide a meaningful explanation of brokerage relationships in real estate transactions;

(d) provide an explanation of the scope of services to be provided by the licensee;

(e) be fair and honest and provide accurate information in all dealings;

(f) keep information confidential as requested in writing by the customer; and

(g) disclose known material facts regarding the property or the transaction.

(M) The provisions of this section which are inconsistent with applicable principles of common law supersede the common law, and the common law may be used to aid in interpreting or clarifying the duties described in this section. Except as otherwise stated, nothing in the section precludes an injured party from bringing a cause of action against licensees, their companies, or their brokers-in-charge.

Section 40-57-360. (A) The broker-in-charge must be responsible for supervising the team and all licensed members of the team. The broker-in-charge may not delegate supervisory responsibilities to the team members or team leader. Written office policy of the

broker-in-charge shall address team relationships in which associated licensees may engage.

(B) The team may act as disclosed dual agents only and with the prior informed and written consent of all parties and as addressed in the broker-in-charge's written office policy.

(C) Team members must conduct all real estate brokerage activities from their commission-established office under the supervision of a broker-in-charge.

(D) Team advertising must contain the team name and the full name of the real estate brokerage firm displayed in a conspicuous way.

(E) No team may imply that the team is a separate entity from the brokerage firm of its employment. Team names may not include the terms 'realty', 'real estate', 'realtors', or similar terms suggesting a brokerage.

(F) The team, and any and all team members, must display and promote that they are directly connected to the brokerage firm under which the team works. The brokerage firm name under which the team works is to be displayed prominently and visibly in a meaningful and conspicuous way on all methods of advertising.

(G) The commission may promulgate regulations regarding the creation and operation of real estate teams.

Section 40-57-370. (A) A licensee shall provide at the first practical opportunity to all potential buyers and sellers of real estate with whom the licensee has substantive contact:

(1) a meaningful explanation of brokerage relationships in real estate transactions that are offered by that real estate brokerage firm, including an explanation of customer and client services;

(2) Disclosure of Brokerage Relationships form prescribed by the commission.

(B) An 'Acknowledgement of Receipt of the Disclosure of Brokerage Relationships' form must be included in an agency agreement and in a sales contract. In addition, each sales contract must require the buyer and the seller to acknowledge whether they received customer or client service in that real estate transaction.

(C) At the time of first substantive contact, it is presumed that the potential buyer or seller is to be a customer of the real estate brokerage firm and that the real estate brokerage firm will be acting as a transaction broker as defined by this chapter and that the real estate brokerage firm shall offer services to a customer as defined by Section 40-57-350(L) only until the potential buyer or seller signs an agency representation agreement.

(D) If first substantive contact occurs over the telephone or other electronic means, including the Internet and electronic mail, an 'Acknowledgement of Receipt of the Disclosure of Brokerage Relationships' form may be sent by electronic means, including the Internet and electronic mail.

(E) For all real estate transactions, no agency relationship between a buyer, seller, landlord, or tenant and a real estate brokerage firm and its associated licensees exists unless the buyer, seller, landlord, or tenant and the brokerage company and its associated licensees agree, in writing, to the agency relationship. No type of agency relationship may be assumed by a buyer, seller, landlord, tenant, or licensee or created orally or by implication. A real estate brokerage firm may not be considered to have an agency relationship with a party or have agency obligations to a party but is responsible only for exercising reasonable care in the discharge of the real estate brokerage firm's specified duties, as provided in this chapter, and, in the case of a client, as specified in the agency agreement.

(F) The payment or promise of payment of compensation to a real estate brokerage firm by a seller, buyer, landlord, or tenant does not determine whether an agency relationship has been created between a real estate licensee and a seller, buyer, landlord, or tenant.

(G) The brokerage relationship disclosure requirements of this section do not apply if the:

(1) transaction is regarding the rental or lease of property; or

(2) communication from the licensee is a solicitation of business.

Section 40-57-380. A real estate broker and all associated licensees owe no duty or obligation to a client following termination, expiration, completion, or performance of an agency agreement or closing of the real property transaction, whichever occurs first, except the duties of:

(1) accounting in a timely manner for all money and property related to and received during the relationship; and

(2) keeping confidential all information received during the course of the engagement which was made confidential by request or instructions from the client, except as provided for in Section 40-57-350(C)(1)(f) and Section 40-57-350(E)(1)(f) unless the:

(a) client permits the disclosure by written agreement;

(b) disclosure is required by law;

(c) disclosure is necessary to defend the licensee against an accusation of wrongful conduct in a proceeding before the commission or before a professional association or professional standards committee; or

(d) the information becomes public from a source other than the broker.

Article 5

Property Managers

Section 40-57-510. (A) To be eligible for licensure as a property manager or property manager-in-charge, an applicant must:

(1) attain the age of twenty-one if applying for a property manager-in-charge;

(2) attain the age of eighteen if applying for a license as a property manager;

(3) provide a physical address at which the licensee can be contacted in the course of an investigation. A licensee shall maintain on file with the commission his current contact information for his residential address, mailing address, email address, and telephone number. Failure to update this contact information within thirty days after a change may result in an administrative suspension of the property manager, salesperson, broker, or broker-in-charge pursuant to Section 40-57-710;

(4) graduate from high school or hold a certificate of equivalency that is recognized by the South Carolina Department of Education;

(5) submit proof of completion of education to the commission and, if applicable, experience requirements as specified in this chapter;

(6) submit to criminal background check as provided in Section 40-57-115 for initial application; and

(7) pass the applicable examination.

(B) An application for examination or licensure must be made in writing on a form prescribed by the commission and must be accompanied by all applicable fees.

(C) As a condition for and before applying to the commission for licensure, an applicant for a property manager or property manager-in-charge license shall provide proof to the commission of having met the following educational requirements, in addition to the other requirements of this chapter:

(1) for a property manager license:

(a) completion of thirty hours of classroom instruction in property management principles and practices; or

(b) evidence of holding a juris doctor degree, a bachelor of law degree, a baccalaureate degree or a master's degree with a major in real

estate or housing from an accredited college or university, or completion of another course of study approved by the commission; and

(2) for a property manager-in-charge license:

(a) an active property manager license; and

(b) completion of seven hours of instruction in property management accounting and record keeping approved by the commission.

(D) The commission shall issue licenses in the classifications of property manager or property manager-in-charge to individuals who qualify under and comply with the requirements of this chapter. An individual may not be licensed in more than one classification at the same time. The license must be in the form and size as the commission prescribes and is not transferable.

(E) An individual holding an active property manager license must be licensed under a property manager-in-charge or broker-in-charge who is licensed by the commission or must be designated as a property manager-in-charge. A property manager may not be licensed during the same period with more than one property manager-in-charge or broker-in-charge. When a licensee becomes disassociated with a broker-in-charge or property manager-in-charge, the licensee immediately shall notify the commission by completion of the proper form. The licensee must furnish a new business address to the commission, the authorization of the new broker-in-charge or new property manager-in-charge, and proof of notification to the former broker-in-charge or property manager-in-charge.

Section 40-57-520. (A) The management of each residential multiunit rental location must be provided by an on-site licensee or an off-site licensee if there is no on-site staff.

(B) The commission may permit multiple multiunit rental property locations to be managed by one licensee.

(C) An unlicensed employee of the owner of a multiunit rental property or an unlicensed individual who works under the supervision of a licensee is permitted to perform only the following duties:

(1) maintenance;

(2) clerical or administrative support;

(3) collection of rents that are made payable to the owner or real estate company;

(4) showing rental units to prospective tenants;

(5) furnishing published information;

(6) providing applications and lease forms; and

(7) receiving applications and leases for submission to the owner or the licensee for approval.

Article 7

Misconduct and Redress

Section 40-57-710. (A) In addition to Section 40-1-110, the commission may deny issuance of a license to an applicant or may take disciplinary action against a licensee who:

(1) makes a substantial misrepresentation on an application for a real estate license;

(2) makes a substantial misrepresentation involving a real estate transaction;

(3) makes false promises likely to influence, persuade, or induce;

(4) pursues a continued and flagrant course of misrepresentation or makes false and misleading promises through any medium of advertising or otherwise;

(5) in the practice of real estate, demonstrates bad faith, dishonesty, untrustworthiness, or incompetency in a manner as to endanger the interest of the public;

(6) represents a real estate broker other than the broker-in-charge or property manager-in-charge with whom they are licensed;

(7) guarantees or authorizes and permits an associated licensee to guarantee future profits from the resale of real estate;

(8) makes a dual set of contracts, written or otherwise, by stating a sales price other than the actual sales price;

(9) is convicted of violating the federal and state fair housing laws, forgery, embezzlement, breach of trust, larceny, obtaining money or property under false pretense, extortion, fraud, conspiracy to defraud, or has been convicted of a felony sex-related, felony drug-related, felony real estate-related, felony financial, or felony violent offense, or pleading guilty or nolo contendere to such an offense in a court of competent jurisdiction of this State, another state, or a federal court;

(10) fails to report to the commission in writing by certified mail, within ten days, notice of conviction of a crime provided in item (9);

(11) fails, within a reasonable time, to account for or to remit trust funds coming into his possession which belong to others;

(12) pays a commission or compensation to an unlicensed individual for activities requiring a license under this chapter. Notwithstanding this section, a licensee may not pay or offer to pay a

referral fee or finder's fee to an unlicensed individual who is not a party in the real estate sales or rental transaction;

(13) violates a provision of law relating to the freedom of a buyer or seller to choose an attorney, insurance agent, title insurance agent, or another service provider to facilitate the real estate transaction;

(14) fails to disclose in accordance with Section 40-57-370 the party or parties for whom the licensee will be acting as an agent in a real estate transaction, if any;

(15) receives compensation in a real estate transaction or directly resulting from a real estate transaction from more than one party except with the full knowledge and written disclosure to all parties;

(16) represents more than one party in a real estate transaction without the full written knowledge and consent of all parties;

(17) acts as an undisclosed principal in a real estate transaction;

(18) accepts deposit money which is to be delivered to the licensee's principal in a real estate transaction without informing the payor and having the payor acknowledge in writing who will hold the money received by the licensee;

(19) issues a check in connection with his real estate business which is returned for insufficient funds or closed account;

(20) fails to disclose in accordance with Section 40-57-530 a known material fact concerning a real estate transaction;

(21) violates a provision of this chapter or a regulation promulgated under this chapter;

(22) violates a rule or order of the commission;

(23) knowingly gives false information to an investigator or inspector;

(24) engages in a practice or takes action inconsistent with the agency relationship that other real estate licensees have established with their clients;

(25) fails to make all records required to be maintained under this chapter available to the commission for inspection and copying by the commission upon request of an investigator of the commission, fails to appear for an interview with an investigator of the commission without due cause, or provides false information upon direct inquiry by the investigator or inspector;

(26) fails to promptly submit all offers and counteroffers in a real estate sales transaction;

(27) fails to provide current contact information to the commission; or

(28) allows or creates an unreasonable delay in the closing of a transaction or act in a manner which causes failure or termination of a

transaction due solely to a dispute among participating licensees concerning the division of a commission.

(B) If after an investigation, charges of a violation are brought against a licensee, the broker-in-charge or property manager-in-charge must be notified of the charges.

Section 40-57-720. (A) An investigation must be conducted in accordance with Section 40-1-80 and must be performed by investigators who have completed one hundred hours of training in programs that are approved by the commission and provide instruction on real estate principles, state statutory and regulatory law, and investigative techniques.

(B) A restraining order must be obtained in accordance with Section 40-1-100.

(C)(1) The department shall conclude its investigation within one hundred fifty days from receipt of the complaint or seek a waiver of this period from the commission upon a showing of due diligence and extenuating circumstances.

(2) A hearing on the charges must be at the time and place designated by the commission and must be conducted in accordance with the Administrative Procedures Act.

(3) The commission shall render a decision and shall serve, within ninety days, notice, in writing, of the commission's decision to the licensee charged. The commission also shall state in the notice the date upon which the ruling or decision becomes effective.

(4) The department shall maintain a public docket or other permanent record in which must be recorded all orders, consent orders, or stipulated settlements.

(D) A licensee may voluntarily surrender his license in accordance with Section 40-1-150.

(E)(1) The commission may impose disciplinary action in accordance with Section 40-1-120.

(2) Upon determination by the commission that one or more of the grounds for discipline exists, the commission may impose a fine of not less than five hundred or more than five thousand dollars for each violation and as provided in Section 40-1-120. The commission may recover the costs of the investigation and the prosecution as provided in Section 40-1-170.

(3) Nothing in this section prevents a licensee from voluntarily entering into a consent order with the commission wherein violations are not contested and sanctions are accepted.

(F) The department annually shall post a report that provides the data for the number of complaints received, the number of investigations initiated, the average length of investigations, and the number of investigations that exceeded one hundred fifty days.

Section 40-57-730. After revocation of a license, a person may not reapply for three years from the date of revocation. A person seeking licensure after revocation shall:

(1) submit to the commission satisfactory proof that the person is trustworthy, has a good reputation for honesty and fair dealing, and is competent to transact the business of a real estate licensee;

(2) submit proof of educational qualifications as set forth in this chapter if the proof of educational qualifications on file is more than five years old;

(3) pass the applicable examination; and

(4) meet any other qualifications and conditions that apply to individuals applying for a license who have never been licensed.

Section 40-57-740. (A) No cause of action may arise against an owner of real estate or licensed real estate agent of a party to a transaction for failure to disclose in a transaction:

(1) that the subject real estate is or was occupied by an individual who was infected with a virus or another disease which has been determined by medical evidence as being highly unlikely to be transmitted through occupancy of a dwelling place either presently or previously occupied by the infected individual;

(2) that the death of an occupant of a property has occurred or the manner of the death;

(3) any off-site condition or hazard that does not directly impact the property being transferred; or

(4) any psychological impact that has no material impact on the physical condition of the property being transferred.

(B) Nothing in subsection (A) precludes an action against an owner of real estate or agent of the owner who makes intentional misrepresentations in response to direct inquiry from a buyer or prospective buyer with regard to psychological impacts, offsite conditions, or stigmas associated with the real estate.

(C) The commission shall establish and publish standards relevant to the approval and conduct of education required by this chapter. The commission shall review, approve, and regulate education courses required by this chapter and providers and instructors of these courses

including, but not limited to, accredited colleges, universities, private business entities, organizations, schools, associations, and institutions.

(D) The commission may deny, reprimand, fine, suspend, or revoke the approval of an education provider or instructor if the commission finds that the education provider or instructor has violated or failed to satisfy the provisions of this chapter or the regulations and standards promulgated pursuant to this chapter.

(E) An application by a provider who seeks approval to offer and conduct educational instruction or an application by an instructor must be made on a form prescribed by the commission and accompanied by applicable fees not less than sixty days before a course offering and must be approved by the department before it may commence instruction.

(F) If an application for a provider, instructor, or course is not approved, the reason must be detailed and the applicant must be given thirty days to respond.

(G) If the commission approves an application, a certificate must be issued by the commission to a provider or an instructor and for an approved course to be renewed biennially.

(H) An approved course must be taught by an approved instructor who is qualified and has demonstrated knowledge of the subject matter to be taught as well as the ability to teach.

(I) Approved instructors shall attend instructor development workshops sponsored by the commission or provide evidence of equivalent hours of continuing education that increases their knowledge of the subject content in their area of expertise or their teaching techniques.

Section 40-57-750. Payment and collection of costs associated with investigations and prosecution of violations under this chapter must comply with Section 40-1-170.

Section 40-57-760. Imposition and collection of all costs and fines imposed pursuant to this chapter must comply with Section 40-1-180.

Section 40-57-770. An investigation conducted pursuant to this chapter is confidential. Related communications are privileged as provided in Section 40-1-190.

Section 40-57-780. A real estate broker, salesperson, or property manager who fails to renew or register a license and continues to engage in the business permitted pursuant to the license is guilty of a

misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both.

Section 40-57-790. A civil action may be brought for violations of this chapter as provided for violations of Article 1, Chapter 1, in accordance with Section 40-1-210.

Section 40-57-800. (A) Service of a notice provided for by law upon a nonresident licensed under this chapter or upon a resident who, having been licensed, subsequently becomes a nonresident or after due diligence cannot be found at his usual abode or place of business in this State, may be made by providing a copy of the notice, and accompanying documents. A copy of the notice, accompanying documentation, and a certified copy of the service on the administrator must be mailed to the licensee at his last known address, return receipt requested. The administrator shall keep a record of the day of the service of the notice and the return receipt must be attached to and made part of the return of service of the notice by the commission.

(B) A continuance may be given in a hearing under this chapter for which notice is given pursuant to this section so as to afford the licensee a reasonable opportunity to appear and be heard.

Section 40-57-810. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective."

Continuity of existing regulations

SECTION 2. A regulation that was promulgated to effectuate the purpose of Chapter 57, Title 40 and which is in effect on the effective date of this act is considered to be effective regardless of whether its authorizing provisions are redesignated as a new or different code section, or moved in part to a different code section by this act.

Savings

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 4. This act takes effect on January 1, 2017.

Ratified the 11th day of May, 2016.

Approved the 12th day of May, 2016.

No. 171

(R181, H3036)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 53-3-75 SO AS TO DECLARE JANUARY SEVENTEENTH OF EACH YEAR AS "EARTHA KITT DAY" IN SOUTH CAROLINA IN HONOR OF THE LATE EARTHA MAE KITT, NATIONALLY AND INTERNATIONALLY KNOWN ACTRESS, SINGER, AND NATIVE SOUTH CAROLINIAN AND TO PROMOTE CULTURAL TOURISM IN THE STATE IN ORDER TO ENHANCE THE ECONOMIC WELL-BEING AND IMPROVE THE QUALITY OF LIFE OF ALL SOUTH CAROLINIANS.

Be it enacted by the General Assembly of the State of South Carolina:

Findings

SECTION 1. (A) The General Assembly finds that it is important to support efforts to increase tourism in the State, the state's number one industry, and particularly to encourage cultural tourism with an emphasis on increasing visitors to undiscovered South Carolina rural areas outside of well-known tourist destinations in the State. The state's recognition and subsequent celebration of the lives of prominent native South Carolinians is one outstanding way to support this effort and the 2.5 million media campaign by the Department of Parks, Recreation and Tourism to attract both in-state and out-of-state visitors to the lesser-known areas of our great State.

(B) The late Eartha Mae Kitt was a nationally and internationally known actress, singer, and cabaret star who was born in the town of North, South Carolina, a small community in Orangeburg County, on January 17, 1927. Her mother was of Cherokee and African-American descent and her father of German or Dutch descent. She was raised by Anna Mae Riley, an African-American woman whom she believed to be her mother. After Riley's death, she was sent to live in New York City with Mamie Kitt, who she learned was her biological mother. She had no knowledge of her father, except that his surname was Kitt and that he was supposedly a son of the owner of the farm where she had been born.

(C) Ms. Kitt began her career as a member of the Katherine Dunham Company in 1943 and remained a member of the troupe until 1948. A talented singer with a distinctive voice, she had many hits including her most recognizable hit, "Santa Baby", which was released in 1953. Ms. Kitt's unique style was enhanced as she became fluent in the French language during her years performing in Europe. Her English-speaking performances always seemed to be enriched by a soft French feel. She had skill in other languages too, as she spoke four languages and sang in seven, which she effortlessly demonstrated in many of the live recordings of her cabaret performances.

(D) In 1950, Orson Welles gave Ms. Kitt her first starring role as Helen of Troy in his staging of "Dr. Faustus". Orson Welles and Ms. Kitt were very close professionally and he once referred to her as the "most exciting woman in the world". Throughout the rest of the 1950s and early 1960s, Ms. Kitt would record, work in film, television, and nightclubs, and return to the Broadway stage in "Mrs. Patterson" during the 1954-1955 season, and in "Shinbone Alley" in 1957. Also, in the 1960s, the television series "Batman" featured her as Catwoman after Julie Newmar left the role, and is perhaps her most famous television role.

(E) In 1968, during the administration of President Lyndon B. Johnson, she encountered a professional setback after she made anti-war statements during a White House luncheon. Ms. Kitt was invited to a White House luncheon and was asked by Lady Bird Johnson about the Vietnam War. She replied, "You send the best of this country off to be shot and maimed. No wonder the kids rebel and take pot". There was extreme public reaction to Ms. Kitt's statements, both pro and con, and for a period of time thereafter, she devoted her energies primarily to performances in Europe and Asia.

(F) Eartha Kitt was throughout her career a favorite of international audiences. She became a cultural icon among many audiences outside the United States through her famous Monty Python sketch "The Cycling Tour", which she performed before an enthusiastic crowd in Moscow, where an amnesiac believes he is first Clodagh Rodgers, then Trotsky, and finally Ms. Kitt. She was also widely followed in the United Kingdom as a recording artist. In 1984, "Where Is My Man", the first certified gold record of her career, reached the Top 40 on the UK Singles Chart where it peaked at #36. Her 1989 follow-up hit "Cha-Cha Heels", featuring Bronski Beat, received a positive response from UK dance clubs and reached #32 in the charts in that country.

(G) In her personal life, she married John Williams McDonald, an associate of a real estate investment company on June 6, 1960. They divorced in 1965. Their only child, a daughter named Kitt, was born on November 26, 1961. Kitt McDonald married Charles Lawrence Shapiro in 1987 and had two children, Jason and Rachel Shapiro. A long-time Connecticut resident, Ms. Kitt lived in a converted barn on a sprawling farm in the Merryall section of New Milford for many years and was active in local charities and causes throughout Litchfield County. In 2002, Ms. Kitt moved to the southern Fairfield County, Connecticut town of Weston, to be near her daughter's family where she died from colon cancer on Christmas Day, 2008.

(H) In 2014, the Orangeburg Times and Democrat recognized the talented songstress with the highly distinctive singing style on Day 5 of its "Vintage Orangeburg County" series, "100 Objects in 100 Days". The series highlighted the rich cultural history of Orangeburg County and told the stories of people, places, objects, and "things" that express the unique nature of Orangeburg County. The list would not be complete without the inclusion of the one-of-a-kind Eartha Mae Kitt.

(I) The members of the General Assembly believe it would be a fitting tribute to her memory and career, and an example to young South Carolinians of what a person with talent, drive, and ambition can achieve regardless of circumstances, if her birthday were officially recognized as

"Eartha Kitt Day" in South Carolina each year. In addition, establishing an official day to commemorate the life of this native South Carolinian could potentially positively impact the State economically as such a day may attract visitors to the State to patronize its businesses as this remarkable woman is celebrated thereby promoting cultural tourism in the State.

Eartha Kitt Day

SECTION 2. Chapter 3, Title 53 of the 1976 Code is amended by adding:

"Section 53-3-75. January seventeenth of each year, the birthday of the late actress, singer, and native South Carolinian Eartha Mae Kitt, is declared to be 'Eartha Kitt Day' in South Carolina."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 11th day of May, 2016.

Approved the 12th day of May, 2016.

No. 172

(R183, H5100)

AN ACT TO AMEND SECTION 38-71-1520, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS IN THE ACCESS TO EMERGENCY MEDICAL CARE ACT, SO AS TO REVISE THE DEFINITION OF "EMERGENCY MEDICAL PROVIDER" TO INCLUDE ORAL SURGEONS AND DENTISTS LICENSED BY THE STATE BOARD OF DENTISTRY; AND BY ADDING SECTION 38-71-1545 SO AS TO EXCLUDE APPLICATION OF THE ARTICLE TO CERTAIN INSURANCE POLICIES.

Be it enacted by the General Assembly of the State of South Carolina:

Emergency Medical Care Act, definitions

SECTION 1. Section 38-71-1520(3) of the 1976 Code is amended to read:

"(3) 'Emergency medical provider' means hospitals licensed by the South Carolina Department of Health and Environmental Control, hospital-based services, physicians licensed by the State Board of Medical Examiners, and oral surgeons and dentists licensed by the State Board of Dentistry who provide emergency medical care."

Exclusion of certain insurance policies

SECTION 2. Article 15, Chapter 71, Title 38 of the 1976 Code is amended by adding:

"Section 38-71-1545. The provisions of this article do not apply to a policy which provides disability or income protection coverage, hospital confinement indemnity coverage, accident-only coverage, specified disease or specified accident coverage, long-term care coverage, vision-only coverage, or coverage issued as a supplement to Medicare."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 11th day of May, 2016.

Approved the 12th day of May, 2016.

No. 173

(R178, S1016)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "EYE CARE CONSUMER PROTECTION LAW" BY ADDING CHAPTER 24 TO TITLE 40 SO AS TO ESTABLISH CERTAIN REQUIREMENTS TO DISPENSE SPECTACLES OR CONTACT LENSES.

Be it enacted by the General Assembly of the State of South Carolina:

Eye Care Consumer Protection Law

SECTION 1. Title 40 of the 1976 Code is amended by adding:

"CHAPTER 24

Eye Care Consumer Protection

Section 40-24-10. For purposes of this chapter:

(1) 'Contact lenses' means a lens placed directly on the surface of the eye, regardless of whether it is intended to correct a visual defect, and includes, but is not limited to, cosmetic, therapeutic, and corrective lenses.

(2) 'Dispense' means the act of providing a pair of spectacles or contact lenses to a patient.

(3) 'Eye examination' means an assessment of all or a portion of the ocular health profile, which must include a complete written or electronic medical history, as well as an assessment of the visual status of a patient.

(4) 'Kiosk' means automated equipment or an automated application, which is designed to be used on a phone, computer, or Internet-based device that can be used in person or remotely to provide refractive data or information.

(5) 'Patient' means a person who submits to an eye examination in this State.

(6) 'Prescription' means a provider's handwritten or electronic order to correct refractive error that is based on an eye examination.

(7) 'Provider' means an individual licensed by the South Carolina Board of Examiners in Optometry or the South Carolina Board of Medical Examiners.

(8) 'Spectacles' means an optical instrument or device worn or used by an individual that has one or more lenses designed to correct or remediate vision deficits or needs of the individual wearer and are commonly known as glasses, including spectacles that may be adjusted by the wearer to achieve different types or levels of visual correction or enhancement, and excluding over-the-counter spectacles not intended to correct or enhance vision or sold without consideration of the visual status of the individual using the spectacles.

(9) 'Visual status' means the assessment of the visual acuity, accommodation amplitudes at the discretion of the provider, and ocular

alignment of the eyes in an uncorrected state and the best corrected visual acuity achievable with the aid of a spectacle or contact lens prescription; however, the assessment must not be based solely on objective refractive data or information generated by an automated testing device, including an auto refractor or other electronic refractive-only testing device, to provide a medical diagnosis or to establish a refractive error for a patient as part of an eye examination.

Section 40-24-20. (A) A person in this State may not dispense spectacles or contact lenses to a patient without a valid prescription from a provider.

(B) To be valid, a prescription must contain an expiration date on spectacles or contact lenses of one year from the date of examination by the provider or a statement of the reasons why a shorter time is appropriate based on the medical needs of the patient. The prescription must take into consideration medical findings made and refractive error discovered during the eye examination. If a provider determines a patient is a suitable candidate for a prescription for contact lenses or spectacles, a provider may not thereafter refuse to issue a prescription for spectacles or contact lenses to a patient.

(C) A prescription for spectacles or contact lenses may not be based solely on the refractive eye error of the human eye or be generated by a kiosk.

(D) Violation of this section constitutes misconduct as provided for in Sections 40-37-110 and 40-47-110. A provider who violates this section is subject to the penalties authorized in Chapter 37, Title 40 or Chapter 47, Title 40, as applicable."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 11th day of May, 2016.

Vetoed by the Governor -- 5/16/2016.
Veto overridden by Senate -- 5/18/2016.
Veto overridden by House -- 5/19/2016.

No. 174

(R182, H4717)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 46-1-160 SO AS TO CREATE THE "SOUTH CAROLINA FARM AID FUND" TO ASSIST FARMERS WHO HAVE SUFFERED AT LEAST A FORTY PERCENT LOSS OF AGRICULTURAL COMMODITIES AS A RESULT OF THE OCTOBER 2015 FLOOD, TO PROVIDE THAT THE FUND MUST BE ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE, TO CREATE A FARM AID ADVISORY BOARD TO MAKE RECOMMENDATIONS, TO SPECIFY ELIGIBILITY AND GRANT AMOUNTS, TO APPROPRIATE FUNDS FROM THE CAPITAL RESERVE FUND TO THE FUND, AND TO PROVIDE FOR THE DISSOLUTION OF THE FUND.

Be it enacted by the General Assembly of the State of South Carolina:

Findings

SECTION 1. The General Assembly finds that:

(1) The historic flood of October 2015 caused unprecedented damage to the State and its people, with particular devastating statewide impacts on South Carolina farmers and the state's agriculture industry.

(2) The State has over twenty-five thousand farms across nearly five million acres, which generate billions of dollars annually and represents a vital component to a healthy state economy.

(3) The total loss of crops as a result of the flooding is estimated at nearly four hundred million dollars and the estimated federal crop insurance payments will only cover about one-third of the total crop loss.

(4) The federal crop insurance program established in 2014 is an inadequate method of indemnification as compared to traditional forms of insurance and is not sufficient to aid farmers with substantial losses due to catastrophic events of nature.

(5) The State of South Carolina has a significant public interest to prevent the economic collapse of many of the state's farms which could cause a severe disruption in the state's economy and food supply chain.

South Carolina Farm Aid Fund

SECTION 2. Chapter 1, Title 46 of the 1976 Code is amended by adding:

"Section 46-1-160. (A)(1) There is created the 'South Carolina Farm Aid Fund'. This fund is separate and distinct from the general fund of the State and all other funds. Earnings on this fund must be credited to it and any balance in this fund at the end of a fiscal year carries forward in the fund in the succeeding fiscal year. Revenues credited to this fund in a fiscal year must be used to operate a grant program that provides financial assistance to farmers.

(2) To be eligible for a grant, the person must have:

(a) experienced a verifiable loss of agricultural commodities of at least forty percent as a result of the catastrophic flooding of October 2015, for which:

(i) the Governor declared a state of emergency in the State; and

(ii) the United States Secretary of Agriculture issued a Secretarial Disaster Declaration for the county in which the farm is located;

(b) a farm number issued by the Farm Service Agency; and

(c) signed an affidavit, under penalty of perjury, certifying that each fact of the loss presented by the person is accurate.

(B)(1) The Department of Agriculture shall administer the grant program authorized by this section. The Department of Revenue shall assist the Department of Agriculture in the administration of the grant program by providing auditing services, accounting services, and review and oversight of all financial aspects of the grant program. There is created the Farm Aid Advisory Board to make recommendations to the department regarding the duties of the department in administering the grant program. The Commissioner of Agriculture, or his designee, shall serve ex officio, as chairman of the board. Also, the Director of the Department of Revenue, or his designee, the Vice President for Public Service and Agriculture of Clemson Public Service Activities, or his designee, and the Vice President for Land Grant Services of South Carolina State Public Service Activities, or his designee, shall serve on the board. Finally, the following additional members shall be appointed to the board:

(a) the Commissioner of Agriculture shall appoint one member representing South Carolina Farm Bureau;

(b) the Commissioner of Agriculture shall appoint one member representing a farm credit association;

(c) the Director of the Department of Revenue shall appoint one member representing the crop insurance industry; and

(d) the Director of the Department of Revenue shall appoint one member who is an agricultural commodities producer.

(2) Within twenty days of the effective date of this section, the board shall hold its initial meeting to recommend an application process by which a person with a loss resulting from the flooding in October 2015, may apply for a grant. Upon adoption of an application process, the Department of Agriculture shall provide the Chairmen of the House Ways and Means Committee and the Senate Finance Committee with a written copy of its application process within ten days after its adoption. A person shall apply not later than forty-five days after the adoption of the application process. The department must ensure every person interested in applying for a grant has access to adequate resources to submit his application in a timely manner, and upon request, the department must assist a person with the preparation of his application.

(3)(a) Each grant awarded by the department may not exceed twenty percent of the person's verifiable loss of agricultural commodities. However, a person, including any grant made to a related person, may not receive grants aggregating more than one hundred thousand dollars. Also, a person, including any grant made to a related person, may not receive grants that when combined with losses covered by insurance, exceed one hundred percent of the actual loss. If a grant is made to a related person, the amount to be included in the limits set by this section must be the amount of the grant multiplied by the person's ownership interest in the related person. However, a person who shares an ownership interest with another person or entity may not be refused a grant solely because the other person or related person has otherwise received the maximum grant amount, but in this case, the person's grant amount is limited by the person's ownership interest.

(b) If the total amount of grants allowed pursuant to subitem (a) exceeds the monies in the fund, then each person's grant must be reduced proportionately.

(4) To determine loss, the department:

(a) must measure the person's cumulative total loss of all affected agricultural commodities for 2015 against the person's expected production of all agricultural commodities affected by the flood in 2015;

(b) shall use the person's applicable actual production history yield, as determined by the Federal Crop Insurance Corporation, to determine loss for insured agricultural commodities. In determining loss

for uninsured agricultural commodities, the department shall use the most recent year's county price and county yield, as applicable, as determined by the National Agriculture Statistics Service, United States Department of Agriculture; and

(c) may require any documentation or proof it considers necessary to efficiently administer the grant program, including the ownership structure of each entity and the social security numbers of each owner. Minimally, in order to verify loss, the department shall require the submission of dated, signed, and continuous records. These records may include, but are not limited to, commercial receipts, settlement sheets, warehouse ledger sheets, pick records, load summaries, contemporaneous measurements, truck scale tickets, contemporaneous diaries, appraisals, ledgers of income, income statements of deposit slips, cash register tape, invoices for custom harvesting, u-pick records, and insurance documents.

(C) Grant awards must be used for agricultural production expenses and losses due to the flood which demonstrate an intent to continue the agricultural operation; however, awards may not be used to purchase new equipment. The department shall develop guidelines and procedures to ensure that funds are expended in the manner outlined in grant applications, and may require any documentation it determines necessary to verify the appropriate use of grant awards including receipts.

(D)(1) If the department determines that a person who received a grant provided inaccurate information, then the person shall refund the entire amount of the grant. If the department determines that a person who received a grant used the funds for ineligible expenses, then the person must refund the amount of the ineligible expenses. If the person does not refund the appropriate amount, the Department of Revenue shall utilize the provisions of the Setoff Debt Collection Act to collect the money from the person.

(2) If the department determines that a person knowingly provided false information to obtain a grant pursuant to this section or knowingly used funds for ineligible expenses, the person shall be subject to prosecution pursuant to Section 16-13-240.

(E)(1) From the 2014-2015 Contingency Reserve Fund, there is appropriated $40,000,000 to the South Carolina Farm Aid Fund.

(2) Within forty-five days of the completion of the awarding of grants, but no later than June 30, 2017, the Farm Aid Advisory Board is dissolved. Any funds remaining in the fund upon dissolution shall lapse to the general fund.

(F) The department may accept private funds, grants, and property to be used to make financial awards from the grant program.

(G) The Department of Agriculture must administer the grant program authorized by this section using existing resources and funds.

(H) For purposes of this section:

(1) 'Agricultural commodities' means wheat, cotton, flax, corn, dry beans, oats, barley, rye, tobacco, rice, peanuts, soybeans, sugar beets, sugar cane, tomatoes, grain sorghum, sunflowers, raisins, oranges, sweet corn, dry peas, freezing and canning peas, forage, apples, grapes, potatoes, timber and forests, nursery crops, citrus, and other fruits and vegetables, nuts, tame hay, native grass, aquacultural species including, but not limited to, any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant propagated or reared in a controlled or selected environment, excluding stored grain.

(2) 'Person' means any individual, trust, estate, partnership, receiver, association, company, limited liability company, corporation, or other entity or group.

(3) 'Related person' means any person, joint venture, or entity that has a direct or indirect ownership interest of a person or legal entity."

Time effective

SECTION 3. This act takes effect upon approval by the Governor and applies to any loss created by a disaster after September 2015.

Ratified the 11th day of May, 2016.

Vetoed by the Governor -- 5/16/2016.
Veto overridden by House -- 5/17/2016.
Veto overridden by Senate -- 5/18/2016.

No. 175

(R184, H3343)

AN ACT TO AMEND SECTION 47-3-420, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO METHODS OF EUTHANASIA THAT MAY BE USED TO KILL ANIMALS IMPOUNDED OR QUARANTINED IN ANIMAL SHELTERS, SO AS TO REVISE THE ALLOWABLE METHODS

OF EUTHANASIA, TO PROVIDE THAT THE USE OF CARBON MONOXIDE GAS AND OTHER DELINEATED SUBSTANCES ARE NOT ALLOWABLE METHODS OF EUTHANASIA, TO PROVIDE THAT THE USE OF SODIUM PENTOBARBITAL AND OTHER SUBSTANCES OR PROCEDURES THAT ARE HUMANE MAY BE USED TO PERFORM EUTHANASIA, AND TO PROVIDE EXCEPTIONS FOR A DANGEROUS DOG OR CAT.

Be it enacted by the General Assembly of the State of South Carolina:

Animal shelters, methods of euthanasia revised

SECTION 1. Section 47-3-420 of the 1976 Code, as last amended by Act 293 of 2000, is further amended to read:

"Section 47-3-420. (A) Only the following methods of euthanasia may be used to kill animals impounded or quarantined in animal shelters, and the procedure applicable to the method selected must be strictly followed:

(1) Sodium pentobarbital or a derivative of it by means of:

(a) intravenous injection by hypodermic needle of a lethal solution;

(b) intraperitoneal injection by hypodermic needle of lethal solution as a last resort only when location of an injection into the vein is difficult or impossible;

(c) intracardial injection by hypodermic needle if the dog or cat is unconscious;

(d) intravenous injection of these solutions must be specifically injected according to the directions of the manufacturers for intravenous injections;

(e) an animal may be sedated with an approved and humane substance before euthanasia is performed;

(f) the solutions may not be administered via intrathoracic, intrapulmonary, subcutaneous, intramuscular, intrarenal, intrasplenic, or intrathecal routes or in any other nonvascular injection route except as provided above;

(g) administration of injections must be done only by a licensed veterinarian or by a euthanasia technician or Department of Natural Resources employee, trained and certified for this purpose in a euthanasia training class taught by a licensed South Carolina veterinarian or an individual or entity approved by the State Board of Veterinary

Examiners, which must include training in tranquilizing animals. A person certified pursuant to this subitem must continue to maintain his proficiency by successfully completing a training course taught by a licensed South Carolina veterinarian or an individual or entity approved by the State Board of Veterinary Examiners every five years;

(h) all injections must be administered using an undamaged hypodermic needle of a size suitable for the size and species of animal;

(i) an animal shelter, governmental animal control agency, or the Department of Natural Resources (department) may obtain sodium pentobarbital or a derivative or tranquilizing agent by direct licensing. The animal shelter, governmental animal control agency, or department must apply for a Controlled Substance Registration Certificate from the federal Drug Enforcement Administration (DEA) and a State Controlled Substances Registration from the Department of Health and Environmental Control (DHEC). If an animal shelter, governmental animal control agency, or the department is issued a certificate by the DEA and a registration by DHEC pursuant to this subitem, the animal shelter, governmental animal control agency director or his designee, and the department's applicant are responsible for maintaining their respective records regarding the inventory, storage, and administration of controlled substances. An animal shelter, governmental animal control agency and its certified euthanasia technician, and the department and its certified employees are subject to inspection and audit by DHEC and the DEA regarding the recordkeeping, inventory, storage, and administration of controlled substances used under authority of this article;

(j) oral administration of sodium pentobarbital is permitted for the purpose of anesthetizing animals, provided a lethal dose of sodium pentobarbital is administered to euthanize the animal; and

(k) carbon monoxide gas, carbon dioxide gas, or other nonanesthetic inhalants may not be used to perform euthanasia.

(2) A substance which is clinically proven to be as humane as sodium pentobarbital and which has been officially recognized as such by the American Veterinary Medical Association may be used in lieu of sodium pentobarbital to perform euthanasia on dogs and cats, but succinylcholine chloride, curate, curariform mixtures, carbon monoxide gas, carbon dioxide gas, or any substance which acts as a neuromuscular blocking agent may not be used on a dog or cat in lieu of sodium pentobarbital for euthanasia purposes.

(3) Shooting may be used in a location other than a shelter as a means of euthanasia only in an emergency situation to prevent extreme suffering or in which the safety of people or other animal life is

threatened or where it is considered necessary by the South Carolina Department of Natural Resources to eliminate or control the population of feral animals.

(4) In cases of extraordinary circumstance where a dog or cat poses an extreme risk or danger to the veterinarian, physician, or lay person performing euthanasia, the person is allowed the use of any other substance or procedure that is necessary to perform euthanasia on a dangerous dog or cat.

(B) In any of the previously listed methods, an animal may not be left unattended between the time euthanasia procedures have commenced and the time death occurs, and the animal's body may not be disposed of until death is confirmed by a certified euthanasia technician.

(C) Under no circumstance shall a chamber using commercially bottled carbon monoxide gas or other lethal gas or a chamber which causes a change in body oxygen by means of altering atmospheric pressure or which is connected to an internal combustion engine and uses the engine exhaust for euthanasia purposes be permitted."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 17th day of May, 2016.

Approved the 23rd day of May, 2016.

No. 176

(R185, H4705)

AN ACT TO AMEND SECTION 7-7-350, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN LANCASTER COUNTY, SO AS TO REDESIGNATE THE MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE.

Be it enacted by the General Assembly of the State of South Carolina:

Lancaster County voting precincts map redesignated

SECTION 1. Section 7-7-350(B) of the 1976 Code, as last amended by Act 40 of 2015, is further amended to read:

"(B) The precinct lines defining the above precincts are as shown on maps filed with the clerk of court of the county and also on file with the State Election Commission as provided and maintained by the Revenue and Fiscal Affairs Office designated as document P-57-16."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 17th day of May, 2016.

Approved the 23rd day of May, 2016.

No. 177

(R186, H4743)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 50-11-935 SO AS TO PROVIDE THAT THE LAND OWNED AND MANAGED BY THE CONESTEE FOUNDATION AND KNOWN AS LAKE CONESTEE NATURE PARK IS DECLARED TO BE A WILDLIFE SANCTUARY.

Be it enacted by the General Assembly of the State of South Carolina:

Lake Conestee Nature Park Wildlife Sanctuary

SECTION 1. Article 5, Chapter 11, Title 50 of the 1976 Code is amended by adding:

"Section 50-11-935. The land owned and managed by the Conestee Foundation, Incorporated, a private nonprofit conservation organization, located in Greenville County, and known as Lake Conestee Nature Park, is declared to be a wildlife sanctuary for the protection and

conservation of game, songbirds, waterfowl, fish, amphibians, other animals, and plant life.

It is unlawful to hunt, trap, take, gather, harvest, or molest any plants, animals, or artifacts on the lands of Lake Conestee Nature Park, except for purposes of habitat management or research. The Conestee Foundation may at its discretion issue permits for research and site management activities related to wildlife and habitat management. It is unlawful to release any nonnative plants or animals, including pets and domesticated animals on the lands of Lake Conestee Nature Park.

The Conestee Foundation shall post signs along the outer boundaries of its lands and at locations where streams and creeks enter into Lake Conestee Nature Park, notifying the public that the area is a wildlife sanctuary and is closed to hunting, trapping, taking and collection of plants, animals, and artifacts, except as permitted by the Foundation.

No animals, flowers, shrubs, trees, plants, or artifacts shall be damaged or removed from the park without a permit from the Conestee Foundation.

Any person convicted of violating the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred dollars, or imprisoned for not more than thirty days.

Designation as a wildlife sanctuary does not alter existing rights held or conveyed under the conservation easement agreement applying to Lake Conestee Nature Park."

Time Effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 17th day of May, 2016.

Approved the 23rd day of May, 2016.

No. 178

(R188, H4940)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 59-18-1575 SO AS TO PROVIDE FOR THE MANNER IN WHICH THE DEPARTMENT OF EDUCATION THROUGH THE OFFICE OF

TRANSFORMATION SHALL PROVIDE TECHNICAL ASSISTANCE TO UNDERPERFORMING SCHOOLS AND SCHOOL DISTRICTS.

Be it enacted by the General Assembly of the State of South Carolina:

Assistance provided

SECTION 1. Article 15, Chapter 18, Title 59 of the 1976 Code is amended by adding:

"Section 59-18-1575. The Department of Education shall implement the provisions of this section through the Office of Transformation. The office shall provide technical assistance to underperforming schools and districts as directed by the Superintendent of Education. Underperforming schools and districts are identified with a rating of below average or at risk on the most recent annual school report card or with the lowest percentages of students meeting state standards on state assessments on the most recent state assessments or with the lowest high school graduation rates. Assistance includes, but is not limited to:

(1) implementation of the external review team process;

(2) a diagnostic review of operations and academics that must include a leadership capacity report;

(3) a review of five systems consisting of mission/vision, governance, teaching and learning, resource allocation, and continuous improvement practices;

(4) an analysis of student achievement data; and

(5) an analysis of culture and climate including stakeholder surveys."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 17th day of May, 2016.

Approved the 23rd day of May, 2016.

No. 179

(R189, H5009)

AN ACT TO AMEND SECTION 12-65-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TEXTILES COMMUNITIES REVITALIZATION INCOME TAX CREDIT, SO AS TO DELETE A PROVISION THAT LIMITS THE CREDIT TO FIFTY PERCENT OF CERTAIN LIABILITY.

Be it enacted by the General Assembly of the State of South Carolina:

Textiles revitalization income tax credit

SECTION 1. Section 12-65-30(C)(5) of the 1976 Code is amended to read:

"(5) Reserved."

Time effective

SECTION 2. This act takes effect upon approval by the Governor and first applies to credits claimed for income tax year 2016, regardless of when the credit was earned.

Ratified the 17th day of May, 2016.

Approved the 23rd day of May, 2016.

No. 180

(R191, H5218)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 53-3-117 SO AS TO PROVIDE THAT THE MONTH OF MAY EVERY YEAR IS DECLARED "WATER SAFETY AWARENESS MONTH" IN THE STATE TO PROMOTE AN UNDERSTANDING OF WATER SAFETY PRACTICES AND THE CRITICAL IMPORTANCE OF WATER SAFETY IN AN EFFORT TO

REDUCE DROWNING DEATHS AMONG CHILDREN IN THIS STATE.

Whereas, drowning ranks as one of the leading causes of death in our nation; and

Whereas, according to the Centers for Disease Control and Prevention, from 2005 to 2009, there was an average of three thousand five hundred fifty-three unintentional drownings (nonboating related) in the United States, an average of ten deaths per day; and

Whereas, children aged five to fourteen most often drown in swimming pools and open water such as rivers, lakes, dams, and canals; and

Whereas, a swimming pool is fourteen times more likely than a motor vehicle to be involved in the death of a child aged four and under; and

Whereas, understanding the precious gift South Carolina children are to the future of this State, the General Assembly seeks to bring awareness of the importance of water safety by designating the month of May as "Water Safety Awareness Month" every year. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

Water Safety Awareness Month designated

SECTION 1. Chapter 3, Title 53 of the 1976 Code is amended by adding:

"Section 53-3-117. The month of May of every year is declared 'Water Safety Awareness Month' in South Carolina to promote an understanding of water safety practices and the critical importance of water safety in an effort to reduce drowning deaths among children in this State."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 17th day of May, 2016.

Approved the 23rd day of May, 2016.

No. 181

(R192, S277)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "STATE TELECOM EQUITY IN FUNDING ACT"; BY ADDING SECTION 58-9-2515 SO AS TO CLARIFY THE JURISDICTION OF THE PUBLIC SERVICE COMMISSION OVER LOCAL EXCHANGE SERVICE CARRIERS, PREPAID WIRELESS SERVICE PROVIDERS, COMMERCIAL MOBILE RADIO SERVICE PROVIDERS, AND VOICE OVER INTERNET PROTOCOL PROVIDERS; BY ADDING SECTION 58-9-2535 SO AS TO PROVIDE LOCAL EXCHANGE PROVIDERS, COMMERCIAL MOBILE RADIO SERVICE PROVIDERS, VOICE OVER INTERNET PROTOCOL SERVICE PROVIDERS, AND PREPAID WIRELESS SERVICE PROVIDERS SHALL COLLECT DUAL PARTY RELAY CHARGES, AND TO PROVIDE FOR RELATED BILLING DETERMINATIONS, FEE RETENTIONS, LIABILITY LIMITS, AND GOVERNMENTAL RESTRICTIONS AND OBLIGATIONS, AMONG OTHER THINGS; TO AMEND SECTION 58-9-10, RELATING TO DEFINITIONS CONCERNING THE REGULATION OF TELEPHONE SERVICES, SO AS TO REVISE CERTAIN DEFINITIONS; TO AMEND SECTION 58-9-280, RELATING TO THE UNIVERSAL SERVICE FUND, SO AS TO REQUIRE THE COLLECTION AND REMITTANCE OF CONTRIBUTIONS TO THE FUND AND THE PROVISION AND MAINTENANCE OF CERTAIN RELATED INFORMATION, TO PERMIT THE RETENTION OF A PORTION OF THESE COLLECTIONS AS ADMINISTRATIVE FEES, TO LIMIT THE SIZE OF THE FUND, TO PROVIDE VARIOUS LIABILITY LIMITATIONS FOR

PREVIOUSLY RENDERED SERVICES, TO PROVIDE FOR CERTAIN RANDOM COMPLIANCE AUDITS AND RELATED INVESTIGATIONS OF FUND RECIPIENTS BY THE OFFICE OF REGULATORY STAFF, TO REQUIRE THE OFFICE OF REGULATORY STAFF TO REPORT CERTAIN INFORMATION TO THE PUBLIC UTILITIES REVIEW COMMITTEE, AND TO PROVIDE THAT ALL REVISIONS MADE BY THIS SECTION ARE VOID IF ANY ARE FINALLY ADJUDICATED TO BE INVALID, AMONG OTHER THINGS; TO AMEND SECTION 58-9-576, RELATING TO CERTAIN ELECTIONS BY LOCAL EXCHANGE CARRIERS, SO AS TO PROVIDE THE PUBLIC SERVICE COMMISSION MAY NOT REGULATE CERTAIN STAND ALONE BASIC RESIDENTIAL LINES OF CARRIERS IN SERVICE BEFORE AN ELECTION DATE, TO PROVIDE AN EXCEPTION ALLOWING THE COMMISSION TO ORDER SUCH LOCAL EXCHANGE CARRIERS TO PROVIDE VOICE SERVICES TO RESIDENTIAL CUSTOMERS IN CERTAIN CIRCUMSTANCES, TO PROVIDE PROCEDURES FOR THE TERMINATION OF THESE SERVICES, AND TO DEFINE NECESSARY TERMINOLOGY; TO AMEND SECTION 58-9-2510, RELATING TO DEFINITIONS CONCERNING TELEPHONE SERVICE FOR HEARING AND SPEECH IMPAIRED PEOPLE, SO AS TO REVISE THESE DEFINITIONS AND PROVIDE ADDITIONAL NECESSARY DEFINITIONS; TO AMEND SECTION 58-9-2530, RELATING TO THE OPERATING FUND FOR A SYSTEM OF DUAL PARTY RELAY DEVICES AND RELATED TELECOMMUNICATIONS DEVICES FOR THE DEAF, SO AS TO INCLUDE COMMERCIAL MOBILE RADIO SERVICE PROVIDERS, VOICE OVER INTERNET PROTOCOL SERVICE PROVIDERS, AND PREPAID WIRELESS SELLERS AMONG THE ENTITIES THAT MUST IMPOSE RELATED FEES, TO REDUCE THE MAXIMUM CHARGE FROM TWENTY-FIVE CENTS TO TEN CENTS, TO REQUIRE UNIFORMITY OF THE FEES AMONG ALL PROVIDERS AND SELLERS REQUIRED TO IMPOSE THE FEES, AND TO PROVIDE FOR THE REMITTAL AND TRANSFERAL OF COLLECTED FEES TO THE FUND; TO AMEND SECTION 58-9-576, RELATING TO THE DEFINITION OF A "SINGLE-LINE BASIC RESIDENTIAL SERVICE", SO AS TO REVISE THE DEFINITION; AND TO REPEAL SECTION 58-9-2540 RELATING TO AN ADVISORY COMMITTEE

CONCERNING STATEWIDE TELECOMMUNICATIONS RELAY ACCESS SERVICE.

Be it enacted by the General Assembly of the State of South Carolina:

Citation

SECTION 1. This act must be known and may be cited as the "State Telecom Equity in Funding Act".

Public Service Commission jurisdiction

SECTION 2. Article 21, Chapter 9, Title 58 of the 1976 Code is amended by adding:

"Section 58-9-2515. Nothing in this article expands, diminishes, or otherwise affects any existing jurisdiction of the commission over any local exchange provider, prepaid wireless provider, CMRS provider, or VoIP provider; or any services provided by any such provider."

Dual relay charge collections, billing determinations, fee retentions, liability limits, governmental restrictions and obligations

SECTION 3. Article 21, Chapter 9, Title 58 of the 1976 Code is amended by adding:

"Section 58-9-2535. (A) A local exchange provider must collect the dual party relay charge established in Section 58-9-2530(A) on each local exchange access facility.

(1) For bills rendered on or after the effective date of this section, for any individual local exchange access facility that is capable of simultaneously carrying multiple voice and data transmissions, a subscriber must be billed a number of dual party relay charges equal to:

(a) the number of outward voice transmission paths activated on such a facility in cases where the number of activated outward voice transmission paths can be modified by the subscriber only with the assistance of the service supplier; or

(b) five, where the number of activated outward voice transmission paths can be modified by the subscriber without the assistance of the service supplier. The total number of dual party relay charges is subject to a maximum of fifty such charges for each account.

(2) A billed subscriber must be liable for any dual party relay charge imposed under this subsection until it has been paid to the local exchange provider. A local exchange provider has no obligation to take any legal action to enforce the collection of the dual party relay charges for which a subscriber is billed.

(3) Local exchange providers that collect dual party relay charges are entitled to retain two percent of the gross dual party relay charges remitted to the Office of Regulatory Staff as an administrative fee. Within forty-five days after the end of the month during which the charges were collected, each local exchange provider shall file with the Office of Regulatory Staff a return showing the total amount of dual party relay charges collected for the month and, at the same time, shall remit to the Office of Regulatory Staff the charges collected for that month less the administrative fee.

(4) Dual party relay charges imposed under this subsection must be added to the billing by the local exchange provider to its subscriber and may be stated separately.

(B) A CMRS provider must collect the dual party relay charge established in Section 58-9-2530(A) for each CMRS connection for which there is a mobile identification number containing an area code assigned to this State by the North American Numbering Plan Administrator; however, trunks or service lines used to supply service to CMRS providers must not be subject to a dual party relay charge. Prepaid wireless telecommunications service is subject to subsection (D) and not to this subsection.

(1) A billed subscriber must be liable for any dual party relay charge imposed under this subsection until it has been paid to the CMRS provider. A CMRS provider has no obligation to take any legal action to enforce the collection of the dual party relay charges for which a subscriber is billed.

(2) CMRS providers that collect dual party relay charges are entitled to retain two percent of the gross dual party relay charges remitted to the department as an administrative fee. On or before the twentieth day of the second month succeeding each monthly collection of the dual party relay charges, every CMRS provider shall file with the department a return under oath, in a form prescribed by the department, showing the total amount of charges collected for the month and, at the same time, shall remit to the department the fees collected for that month. The department shall transfer all charges remitted to the operating fund.

(3) Dual party relay charges imposed under this subsection must be added to the billing by the CMRS provider to its subscriber and may be stated separately.

(C) A VoIP provider must collect the dual party relay charge established in Section 58-9-2530(A) on each VoIP service line. This dual party relay charge must be sourced at the service address in the case of fixed VoIP service, or in the same manner as CMRS is sourced pursuant to the Mobile Telecommunications Sourcing Act, Public Law 106-252, codified at 4 U.S.C. Sections 116 through 126.

(1) A billed subscriber must be liable for any dual party relay charge imposed under this subsection until it has been paid to the VoIP provider. A VoIP provider has no obligation to take any legal action to enforce the collection of the dual party relay charges for which a subscriber is billed. For bills rendered on or after the effective date of this section, for any VoIP service line that is capable of simultaneously carrying multiple voice and data transmissions, a VoIP subscriber must be billed a number of dual party relay charges equal to:

(a) the number of outward voice transmission paths activated on such a VoIP service line in cases where the number of activated outward voice transmission paths can be modified by the subscriber only with the assistance of the VoIP provider; or

(b) five, where the number of activated outward voice transmission paths can be modified by the subscriber without the assistance of the VoIP provider. The total number of dual party relay charges is subject to a maximum of fifty such charges for each account.

(2) VoIP providers that collect dual party relay charges are entitled to retain two percent of the gross dual party relay charges remitted to the department as an administrative fee. On or before the twentieth day of the second month succeeding each monthly collection of the dual party relay charges, each VoIP provider shall file with the department a return under oath, in a form prescribed by the department, showing the total amount of dual party relay charges collected for the month and, at the same time, shall remit to the department the charges collected for that month less the administrative fee. The department shall transfer all charges remitted to the operating fund.

(3) Dual party relay charges imposed under this subsection must be added to the billing by the VoIP provider to its subscriber and may be stated separately.

(D) A prepaid wireless seller must collect the dual party relay charge established in Section 58-9-2530(A) from a prepaid wireless consumer with respect to each prepaid wireless retail transaction occurring in this State. The amount of the dual party relay charge either must be

separately stated on an invoice, receipt, or other similar document that is provided to the prepaid wireless consumer by the prepaid wireless seller; or otherwise disclosed to the prepaid wireless consumer. At the election of the prepaid wireless seller, the dual party relay charge may be combined with the USF contribution charge described in Section 58-9-280(E)(2)(b) into a single dual party relay and USF contribution charge for purposes of being stated on the invoice, receipt or other similar document or otherwise disclosed to the prepaid wireless consumer. The prepaid wireless seller shall notify the department as to how much of the amount remitted is for dual party relay and how much of the amount remitted is for USF.

(1) For the purposes of this subsection, a prepaid wireless retail transaction must be sourced as provided in Section 12-36-910(B)(5)(b).

(2) The dual party relay charge is the liability of the prepaid wireless consumer and not the prepaid wireless seller or of any prepaid wireless provider. However, the prepaid wireless seller is liable for remitting all dual party relay charges that the prepaid wireless seller collects from prepaid wireless consumers as provided in this subsection to the department.

(3) A prepaid wireless seller is entitled to retain three percent of the gross dual party relay charges remitted to the department as an administrative fee. A prepaid wireless seller must remit the remainder of the dual party relay charges collected to the department on or before the twentieth day of the second month succeeding each monthly collection of the dual party relay charges. The department shall transfer all charges remitted to the operating fund.

(4) The department shall establish procedures by which a prepaid wireless seller may document that a sale is not a prepaid wireless retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions pursuant to Section 12-36-950.

(E) If a billed subscriber purchases a service that is both a CMRS service and a VoIP service, and there is a single active mobile telephone number or successor dialing protocol associated with the service, then only the CMRS dual party relay charges that are subject to subsection (B) apply to the service. Similarly, if an exchange access facility is also a VoIP service line, then only the dual party relay charges that are subject to subsection (A) shall apply to the service.

(F) For services for which a bill is rendered prior to the effective date of this subsection, no subscriber or consumer is liable to any person or entity for a different dual party relay charge than the consumer or subscriber has been billed, and no local exchange provider, CMRS

provider, VoIP provider, prepaid wireless provider, or prepaid wireless seller is liable to any person or entity for billing, collecting, or remitting a different dual party relay charge than is required by this article, or both.

(G) Neither the State, any political subdivision of the State, nor an intergovernmental agency may require any service provider to impose, collect, or remit a tax, fee, surcharge, or other charge for dual party relay funding purposes other than the dual party relay charges set forth in this article.

(H) The dual party relay charge required to be remitted to the department must be administered and collected by the department in the same manner as taxes as defined in Section 12-60-30(27) are administered and collected by the department under the provisions of Title 12."

Telephone companies, general definitions revised

SECTION 4. Section 58-9-10(9) and (10) of the 1976 Code is amended to read:

"(9) The term 'basic local exchange telephone service' means for residential and single-line business customers, access to basic voice grade local service, access to available emergency services and directory assistance, the capability to access interconnecting carriers, relay services, access to operator services, and one annual local directory listing (white pages or equivalent).

(10) The term 'carrier of last resort' means a facilities-based local exchange carrier, as determined by the commission, not inconsistent with the federal Telecommunications Act of 1996, which has the obligation to provide basic local exchange telephone service, upon reasonable request, to all residential and single-line business customers within a defined service or geographic area. A carrier of last resort may meet its obligation by using any available technology of equal or greater service quality than is required by applicable commission regulations as of the effective date of this item, including, but not limited to, the provision of a broadband connection that allows the customer to access basic voice grade local service from the carrier of last resort or other available voice provider of the customer's choice. Notwithstanding any other provision of law, and regardless of the technology used, the basic voice grade local service provided to meet this obligation is subject to the commission's jurisdiction with respect to service quality and rates, and is entitled to USF support. Initially, the incumbent LEC must be a carrier of last resort within its existing service area."

Universal Service Fund, sum determination, contribution remittances and collections, fee retentions, distributions

SECTION 5. A. Section 58-9-280(E) of the 1976 Code is amended to read:

"(E) In continuing South Carolina's commitment to universally available basic local exchange telephone service at affordable rates and to assist with the alignment of prices and cost recovery with costs, and consistent with applicable federal policies, the commission shall establish a universal service fund (USF) for distribution to a carrier of last resort. The commission shall issue its final order adopting such guidelines as necessary for the funding and management of the USF within twelve months of the effective date of this section except that the commission, upon notice, may extend that period up to an additional ninety days. These guidelines must not be inconsistent with applicable federal law and shall address, without limitation, the following:

(1) The USF must be administered by the Office of Regulatory Staff or a third party designated by the Office of Regulatory Staff under guidelines to be adopted by the commission.

(2) The commission shall require all telecommunications companies providing telecommunications services within South Carolina to contribute to the USF as determined by the commission.

(a) Entities that provide service pursuant to a certificate issued by the commission must remit these contributions to the Office of Regulatory Staff. All other entities must remit these contributions to the Department of Revenue. The Department of Revenue monthly shall assess each provider that does not have such a certificate, the provider's contribution to the USF. The Office of Regulatory Staff shall certify to the Department of Revenue the USF factor and the amounts to be assessed. The USF assessments, less the Department of Revenue actual incremental increase in the cost of administration, must be transferred to the USF administered by the Office of Regulatory Staff or third party administrator designated by the Office of Regulatory Staff.

(b) USF contributions for service defined in Section 58-9-2510(17) must be collected pursuant to Section 58-9-280(E) from consumers, as defined in Section 58-9-2510(13), by persons or entities defined in Section 58-9-2510(16). The amount of the charge to be collected with respect to each retail transaction, as defined in Section 58-9-2510(15) must be a fixed per-transaction fee established annually by the Office of Regulatory Staff. Persons or entities defined in Section

58-9-2510(16) shall submit all necessary forms to the department to demonstrate that the charges have been collected and remitted. An entity that remits funds in support of the USF may file a petition with the commission seeking a review of the fixed per-transaction fee as determined by the Office of Regulatory Staff. A decision by the commission in response to the petition only may be applied prospectively and must be implemented the next time that the Office of Regulatory Staff makes its annual determination of the fixed per-transaction fee.

(c) Entities that are required to contribute shall provide information sufficient to permit the requirements of this subsection to be implemented, monitored, and enforced to the Office of Regulatory Staff. All information, records, documents, and their contents provided to the Office of Regulatory Staff pursuant to this subsection must be maintained as confidential and are exempt from public disclosure under the South Carolina Freedom of Information Act. All information, records, documents, and their contents that are exchanged between the Office of Regulatory Staff and other state or federal agencies related to implementing, monitoring, and enforcing the requirements of this subsection must be maintained as confidential and are exempt from public disclosure under the South Carolina Freedom of Information Act. Except to the extent necessary to implement, monitor, and enforce contributions to the USF, the provisions of this section do not expand, diminish, or otherwise affect any existing jurisdiction of the commission over any telecommunications company, VoIP provider, CMRS provider, prepaid wireless provider, or any services provided by these providers.

(d) A person or entity defined in Section 58-9-2510(16) must collect the USF contribution from a consumer defined in Section 58-9-2510(13) with respect to each retail transaction defined in Section 58-9-2510(15) occurring in this State. The amount of the charge either must be separately stated on an invoice, receipt, or other similar document that is provided to the consumer defined in Section 58-9-2510(13) by the person or entity defined in Section 58-9-2510(16); or otherwise disclosed to the consumer defined in Section 58-9-2510(13). At the election of the person or entity defined in Section 58-9-2510(16), the dual party relay charge, the USF contribution charge, and the 911 charge described in Title 23, Chapter 47, may be combined into a single charge for purposes of being stated on the invoice, receipt, or other similar document or otherwise disclosed to the consumer defined in Section 58-9-2510(13). The person or entity defined in Section 58-9-2510(16) shall notify the department as to how much of the

amount remitted is for dual party relay and how much of the amount remitted is for USF.

(i) For the purposes of this subsection, a retail transaction defined in Section 58-9-2510(15) must be sourced as provided in Section 12-36-910(B)(5)(b).

(ii) A person or entity defined in Section 58-9-2510(16) is entitled to retain three percent of the gross USF contribution remitted to the department as an administrative fee. A person or entity defined in Section 58-9-2510(16) must remit the remainder of the USF contribution to the department on or before the twentieth day of the second month succeeding each monthly collection of the USF charges. The department shall transfer the USF contributions to the USF administered by the Office of Regulatory Staff or third party designated by the Office of Regulatory Staff. The amount of the USF contribution collected by a person or entity defined in Section 58-9-2510(16), whether or not such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer defined in Section 58-9-2510(13), may not be included in the base for measuring any tax, fee, USF contribution, or other charge that is imposed by this State, any political subdivision of this State, or any intergovernmental agency. This amount may not be considered revenue of the person or entity defined in Section 58-9-2510(16).

(iii) The department shall establish procedures by which a person or entity defined in Section 58-9-2510(16) may document that a sale is not a retail transaction defined in Section 58-9-2510(15), which procedures shall substantially coincide with the procedures for documenting sale for resale transactions pursuant to Section 12-36-950.

(e) The USF contribution required to be remitted to the department must be administered and collected by the department in the same manner as taxes as defined in Section 12-60-30(27) are administered and collected by the department under the provisions of Title 12.

(3) The commission also shall require any company providing telecommunications service to contribute to the USF if, after notice and opportunity for hearing, the commission determines that the company is providing private local exchange services or radio-based local exchange services in this State that compete with a local telecommunications service provided in this State.

(4)(a) The size of the USF must be the sum of:

(i) the amount of USF support received by each carrier of last resort in 2015;

(ii) the amount of Interim LEC Fund support received by each local exchange carrier in 2015;

(iii) all amounts approved by the commission to provide state funding for the Lifeline program for low income subscribers; and

(iv) all amounts approved by the commission for administration of the USF.

(b) The size of the USF may be adjusted to reflect changes in USF support for those LECs that have made the election set out in Section 58-9-576(C).

(5) For local exchange carriers that have previously reduced rates and charges to be eligible to receive USF support and that have not made the election set out in Section 58-9-576(C), money in the USF must be distributed to a local exchange carrier in the same amount distributed to the carrier from the Interim LEC fund in 2015 and to a carrier of last resort in the same amount distributed to the carrier of last resort in 2015 for so long as it continues to serve as a carrier of last resort. For any carrier that makes, or has made, an election under Section 58-9-576(C), its right to recover from the USF must be governed by the provisions of Section 58-9-576(C), and the amount it is entitled to recover must be adjusted in accordance with Section 58-9-576(C); provided, however, that nothing in this subsection restricts the ability of any carrier to withdraw from the State USF all amounts approved by the commission to provide state funding for the Lifeline program for low income subscribers.

(6) For services for which a bill is rendered or a charge is applied before the effective date of this subsection, no subscriber or consumer is liable to any person or entity for a different universal service charge than the consumer or subscriber has been billed or charged, and no telecommunications company, VoIP provider, CMRS provider, or prepaid wireless provider is liable to any person or entity for billing, collecting, or remitting a different universal contribution amount than is required by this article.

(7) Subject to the provisions of items (2), (3), (4), and (5) the commission may make administrative adjustments to the contribution or distribution levels based on yearly reconciliations.

(8) A carrier of last resort authorized to receive funds from the USF is subject to random compliance audits and other investigations by the Office of Regulatory Staff, in accordance with Section 58-4-55.

(9) Nothing in subsection (G) of this section shall preclude the commission from assessing broadband service revenues for purposes of contributions to the USF, pursuant to this subsection.

(10) All carriers of last resort shall retain all records of operations within the jurisdiction of the Office of Regulatory Staff required to demonstrate that the support received was used to support the programs for which it was intended. This documentation must be maintained for at least ten years from the receipt of the funding. All such documents must be made available upon request to the Office of Regulatory Staff.

(11) In order to create an environment that ensures financial stability necessary to encourage long-term investment by carriers of last resort while providing for appropriate oversight:

(a) within two years after the effective date of this subitem, the Office of Regulatory Staff shall provide a report to the Public Utilities Review Committee (PURC) as to the State Universal Service Fund, the need for funding, and the appropriate level of distributions; and

(b) every four years thereafter, the Office of Regulatory Staff shall provide a report to PURC as to the status of the State Universal Service Fund, provide recommendations, and provide such other information as the PURC deems appropriate."

Severability

B. This entire section is void if any portion of this section is finally adjudicated invalid.

Existing local exchange carrier stand alone basic residential lines, PSC regulatory functions, definitions

SECTION 6. Section 58-9-576(C)(2) of the 1976 Code is amended to read:

"(2)(a) Beginning on the date that the LEC's election, pursuant to this subsection, becomes effective, the LEC may increase its rates for its stand alone basic residential lines that were in service on the preelection date on an annual basis by a percentage that does not exceed the percentage increase over the prior year in the Gross Domestic Product Price Index, as reported by the United States Department of Labor, Bureau of Labor Statistics. If the customer of record for a stand alone basic residential line that was in service on the preelection date dies or moves from the residence, the provisions of this subitem will continue to apply to the stand alone basic residential line at the residence if a spouse, family member, or cotenant of that customer of record provides documentation showing that he resided at the location and requests to have the stand alone basic residential line continued in his name. With

the sole exception of ensuring the LEC's compliance with the preceding sentences, the commission must not:

(i) impose any requirements related to the terms, conditions, rates, or availability of any of the LEC's stand alone basic residential lines that were in service on the preelection date; or

(ii) otherwise regulate any of the LEC's stand alone basic residential lines that were in service on the preelection date.

(b) Except as provided in subsection (C)(2)(c), for any LEC that elected to operate under Section 58-9-576(C) prior to January 1, 2016, the commission must not:

(i) impose any requirements related to the terms, conditions, rates, or availability of any of the LEC's stand alone basic residential lines that were in service on the preelection date; or

(ii) otherwise regulate any of the LEC's stand alone basic residential lines that were in service on the preelection date.

(c)(i) As used in this subsection, 'voice service' means retail service provided through any technology or service arrangement that includes the applicable functionalities described in 47 C.F.R. Section 54.101(a). Notwithstanding anything in subsection (C)(2)(b), the following provisions apply to each customer receiving a stand alone basic residential line from any LEC described in subsection (C)(2)(b), both on the preelection date and on the effective date of this subsubitem. For a period ending four years after the effective date of this subsubitem, if the customer cannot receive voice service from any provider through any technology at the customer's residence where the customer received a stand alone basic residential line, the customer may file a request for service with the commission. Following an investigation by the commission, if the commission determines a reasonable request for service has been made and that no voice service is available to the customer, the commission may:

(1) make a determination that the LEC is best able to provide voice service to the customer's residence and it may order the LEC to provide the voice service to the customer's residence. If ordered by the commission to provide voice service, the LEC shall do so directly or through an affiliate; or

(2) conduct a competitive procurement process to identify a willing provider of voice service to provide voice service to the customer's residence. The willing provider of voice service selected shall provide the voice service directly or through an affiliate.

(ii) The LEC or willing provider of voice service may provide the voice service through any voice technology.

(iii) Other than ordering the provision of voice service pursuant to this subsection, the commission may not regulate any aspect of the voice service. The commission shall issue a final order disposing of any request filed pursuant to this subsection within ninety days of the filing of the request, and all aspects of the commission's order shall expire four years after the effective date of the order and may not be renewed.

(iv) Before terminating service to a customer described in subsection (C)(2)(c) whose residence uses a stand alone basic residential line, the LEC described shall provide written notice to the customer informing him of his rights under this subsection. This written notice shall direct the customer where to file the request and include the commission's contact information. The LEC shall provide this written notice at least ninety days prior to terminating service at the customer's residence."

Telephone service for hearing and speech impaired persons, definitions revised

SECTION 7. Section 58-9-2510 of the 1976 Code, as last amended by Act 318 of 2006, is further amended to read:

"Section 58-9-2510. As used in this article:

(1) 'CMRS connection' means each mobile number assigned to a CMRS customer.

(2) 'Commercial Mobile Radio Service' (CMRS) means commercial mobile radio service under Sections 3(27) and 332(d), Federal Telecommunications Act of 1996, 47 U.S.C. Section 151, et seq., Federal Communications Commission Rules, and the Omnibus Budget Reconciliation Act of 1993. The term includes any wireless two-way communication device, including radio-telephone communications used in cellular telephone service, personal communication service, or the functional and/or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communication service, or a network radio access line. The term does not include services that do not provide access to 911 service, a communication channel suitable only for data transmission, a wireless roaming service or other nonlocal radio access line service, or a private telecommunications system.

(3) 'Commission' means the Public Service Commission.

(4) 'Deaf person' means an individual who is unable to hear and understand oral communication, with or without the assistance of amplification devices.

(5) 'Department' means the Department of Revenue.

(6) 'Dual party relay system' or 'DPR' means a procedure in which a deaf, hearing, or speech impaired TDD user can communicate with an intermediary party, who then orally relays the first party's message or request to a third party, or a procedure in which a party who is not deaf or hearing or speech impaired can communicate with an intermediary party who then relays the message or request to a TDD user.

(7) 'Dual sensory impaired person' means an individual who is deaf/blind or has both a permanent hearing impairment and a permanent visual impairment.

(8) 'Exchange access facility' means the access from a particular telephone subscriber's premises to the telephone system of a service supplier. Exchange access facilities include service supplier provided access lines, PBX trunks, and Centrex network access registers, all as defined by the South Carolina Public Service Commission. Exchange access facilities do not include service supplier owned and operated telephone pay station lines, or wide area telecommunications service (wats), foreign exchange (fx), or incoming lines.

(9) 'Hard of hearing person' means an individual who has suffered a permanent hearing loss which is severe enough to necessitate the use of amplification devices to hear oral communication.

(10) 'Hearing impaired person' means a person who is deaf or hard of hearing.

(11) 'Local exchange provider' means a local exchange telephone company operating in this State.

(12) 'Operating fund' means the Dual Party Relay Service Operating Fund which is a specific fund to be created by the commission and established, invested, managed, and maintained for the exclusive purpose of implementing the provisions of this chapter according to commission regulations.

(13) 'Prepaid wireless consumer' means a person or entity that purchases prepaid wireless telecommunications service in a prepaid wireless retail transaction.

(14) 'Prepaid wireless provider' means a person or entity that provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

(15) 'Prepaid wireless retail transaction' means the purchase of prepaid wireless telecommunications service from a prepaid wireless seller for any purpose other than resale.

(16) 'Prepaid wireless seller' means a person or entity that sells prepaid wireless telecommunications service to another person or entity for any purpose other than resale.

(17) 'Prepaid wireless telecommunications service' means any commercial mobile radio service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in units or dollars which decline with use in a known amount.

(18) 'Speech impaired person' means an individual who has suffered a loss of oral communication ability which prohibits normal use of a standard telephone handset.

(19) 'Subscriber' means any person, company, corporation, business, association, or party who is provided telephone (local exchange access facility) service or CMRS service or VoIP service.

(20) 'Telecommunications device' or 'telecommunications device for the deaf, hearing, or speech impaired' or 'TDD' or 'TTY' means a keyboard mechanism attached to or in place of a standard telephone by some coupling device used to transmit or receive signals through telephone lines.

(21) 'Voice over Internet Protocol (VoIP) service' means interconnected VoIP service as that term is defined in 47 C.F.R. Section 9.3 as may be amended.

(22) 'Voice over Internet Protocol (VoIP) provider' means a person or entity that provides VoIP service.

(23) 'Voice over Internet Protocol (VoIP) subscriber' means a person or entity that purchases VoIP service from a VoIP provider.

(24) 'Voice over Internet Protocol (VoIP) service line' means a VoIP service that offers an active telephone number or successor dialing protocol assigned by a VoIP service provider to a customer that has outbound calling capability."

Dual party relay charge imposed

SECTION 8. Section 58-9-2530(A) of the 1976 Code is amended to read:

"(A) The commission may require each local exchange provider, CMRS provider, and VoIP provider operating in this State to impose a monthly dual party relay charge not to exceed ten cents, and each prepaid wireless seller to impose a dual party relay charge of the same amount on each wireless retail transaction, as necessary to fund the establishment and operation of a dual party relay system and a distribution system of TTY's and other related telecommunications devices in this State. The amount of the dual party charge must be determined by the commission based upon the amount of funding necessary to accomplish the purposes of this article and provide dual party telephone relay services on a

continuous basis, and the amount of the charge must be uniform among all local exchange providers, CMRS providers, VoIP providers, and prepaid wireless sellers. All dual party relay charge monies collected and remitted to the department in accordance with Section 58-9-2535 must be transferred to the operating fund, which must be administered by the Office of Regulatory Staff. The dual party relay charge collected and remitted in accordance with this article is not subject to any tax, fee, or assessment, nor may it be considered revenue of a local exchange provider, CMRS provider, VoIP provider, prepaid wireless provider, or prepaid wireless seller. The commission may provide for the funding of the dual party relay system through contributions from other sources. The fund must be established, invested, and managed for the exclusive purpose of implementing the provisions of this article according to regulations promulgated by the commission."

Existing local exchange carrier stand alone basic residential lines, definition revised

SECTION 9. Section 58-9-576(C)(1)(a) of the 1976 Code is amended to read:

"(a) 'Single-line basic residential service' means single-line residential flat rate basic voice grade local service within a traditional local calling area that provides access to available emergency services and directory assistance, the capability to access interconnecting carriers, relay services, access to operator services, and one annual local directory listing (white pages or equivalent)."

Implementation directives

SECTION 10. Beginning on the effective date of this act, the Office of Regulatory Staff and the Department of Revenue may take necessary action to accommodate full implementation of SECTIONS 3, 5.A., and 8 of this act, as soon as practicable, provided, however, that full implementation shall not occur earlier than January 1, 2017. The Office of Regulatory Staff and the Department of Revenue shall provide at least thirty days' public notice of the full implementation date before the full implementation of these SECTIONS occurs, and no person or entity is required to bill, collect, remit, or pay any charges pursuant to SECTION 3, 5.A., or 8 of this act prior to the full implementation date.

Repeal

SECTION 11. Section 58-9-2540 of the 1976 Code is repealed.

Time effective

SECTION 12. This act takes effect upon approval by the Governor.

Ratified the 24th day of May, 2016.

Approved the 25th day of May, 2016.

No. 182

(R195, S1233)

AN ACT TO AMEND SECTION 4-10-470, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO COUNTIES IN WHICH THE EDUCATION CAPITAL IMPROVEMENTS SALES AND USE TAX MAY BE IMPOSED, SO AS TO REVISE THE CRITERIA APPLICABLE TO CERTAIN COUNTIES IN ORDER FOR THEM TO PLACE THE QUESTION OF IMPOSING THIS SALES AND USE TAX ON A REFERENDUM BALLOT.

Be it enacted by the General Assembly of the State of South Carolina:

Criteria for placement on referendum ballot revised

SECTION 1. Section 4-10-470(F) of the 1976 Code, as added by Act 290 of 2014, is amended to read:

"(F) The Education Capital Improvements Sales and Use Tax authorized by this article also may be imposed in a county which does not meet the collection requirements of subsection (A) so long as:

(1) immediately prior to the imposition date, if approved, the county is imposing the local option sales tax imposed pursuant to Article 1, and the county had not imposed that tax for twenty years or more as of the date the imposition of the education capital improvements sales tax authorized in this article was first proposed in that county in a 2014

referendum, in which any portion of a calendar year counts as a year, and no other local sales and use tax that is administered by the Department of Revenue is imposed in the county; and

(2) the county collected at least one hundred thousand dollars in state accommodations taxes as imposed pursuant to Section 12-36-920(A) in the most recent fiscal year for which full collection figures are available.

Once a county meets the provisions of item (1) and the threshold in item (2), it thereafter remains eligible to impose this tax pursuant to this subsection."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 24th day of May, 2016.

Approved the 25th day of May, 2016.

No. 183

(R196, H3114)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 5 TO CHAPTER 41, TITLE 44 SO AS TO ENACT THE "SOUTH CAROLINA PAIN-CAPABLE UNBORN CHILD PROTECTION ACT", TO PROVIDE FINDINGS OF THE GENERAL ASSEMBLY, TO DEFINE NECESSARY TERMS, TO REQUIRE A PHYSICIAN TO CALCULATE THE PROBABLE POST-FERTILIZATION AGE OF AN UNBORN CHILD BEFORE PERFORMING OR INDUCING AN ABORTION, TO PROVIDE THAT AN ABORTION MAY NOT BE PERFORMED IF THE PROBABLE POST-FERTILIZATION AGE OF THE UNBORN CHILD IS TWENTY OR MORE WEEKS, TO PROVIDE FOR EXCEPTIONS, TO REQUIRE CERTAIN REPORTING TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BY FACILITIES IN WHICH ABORTIONS ARE PERFORMED, TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO PREPARE

PUBLIC REPORTS THAT PROVIDE DATA ON ABORTIONS PERFORMED IN THE STATE AND TO PROMULGATE REGULATIONS, TO CREATE CRIMINAL PENALTIES, AND TO PROVIDE THE ACT DOES NOT IMPLICITLY OR OTHERWISE REPEAL ANOTHER PROVISION OF LAW.

Be it enacted by the General Assembly of the State of South Carolina:

Certain abortions prohibited, reporting requirements, penalties

SECTION 1. Chapter 41, Title 44 of the 1976 Code is amended by adding:

"Article 5

South Carolina Pain-Capable Unborn Child Protection Act

Section 44-41-410. This article may be cited as the 'South Carolina Pain-Capable Unborn Child Protection Act'.

Section 44-41-420. The General Assembly makes the following findings:

(1) Pain receptors (nociceptors) are present throughout the unborn child's entire body and nerves link these receptors to the brain's thalamus and subcortical plate by no later than twenty weeks.

(2) By eight weeks after fertilization, the unborn child reacts to touch. After twenty weeks, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling.

(3) In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response.

(4) Subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life.

(5) For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their levels when painful stimuli are applied without such anesthesia.

(6) The position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than twenty weeks after fertilization predominately rests on the

assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain.

(7) Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain.

(8) In adults, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does.

(9) Substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing.

(10) The position, asserted by some medical experts, that the unborn child remains in a coma-like sleep state that precludes the unborn child experiencing pain is inconsistent with the documented reaction of unborn children to painful stimuli and with the experience of fetal surgeons who have found it necessary to sedate the unborn child with anesthesia to prevent the unborn child from thrashing about in reaction to invasive surgery.

(11) Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by twenty weeks after fertilization.

(12) It is the purpose of the State to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.

(13) South Carolina's compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain is intended to be separate from and independent of South Carolina's compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other.

(14) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion, the United States Supreme Court noted that an explicit statement of legislative intent specifically made applicable to a particular statute is of greater weight than a general savings or severability clause, it is the intent of the State that if any one or more provisions, sections, subsections, sentences, clauses, phrases or words of this article or the application thereof to any person or circumstance is found to be

unconstitutional, the same is hereby declared to be severable and the balance of this article shall remain effective notwithstanding such unconstitutionality. Moreover, the State declares that it would have passed this article, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases or words, or any of their applications, were to be declared unconstitutional.

Section 44-41-430. For the purposes of this article:

(1) 'Abortion' means the use or prescription of any instrument, medicine, drug, or any other substance or device:

(a) to intentionally kill the unborn child of a woman known to be pregnant; or

(b) to intentionally prematurely terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth or of preserving the life or health of the child after live birth.

(2) 'Attempt to perform or induce an abortion' means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this State in violation of this article.

(3) 'Department' means the South Carolina Department of Health and Environmental Control.

(4) 'Fertilization' means the fusion of a human spermatozoon with a human ovum.

(5) 'Fetal anomaly' means that, in reasonable medical judgment, the unborn child has a profound and irremediable congenital or chromosomal anomaly that, with or without the provision of life-preserving treatment, would be incompatible with sustaining life after birth.

(6) 'Medical emergency' means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates the immediate abortion of her pregnancy without first determining post-fertilization age to avert her death or for which the delay necessary to determine post-fertilization age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition must be considered a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(7) 'Physician' means any person licensed to practice medicine and surgery or osteopathic medicine and surgery in this State.

(8) 'Post-fertilization age' means the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum.

(9) 'Probable post-fertilization age of the unborn child' means what, in reasonable medical judgment, will with reasonable probability be the post-fertilization age of the unborn child at the time the abortion is planned to be performed or induced.

(10) 'Reasonable medical judgment' means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(11) 'Unborn child' or 'fetus' each means an individual organism of the species homo sapiens from fertilization until live birth.

(12) 'Woman' means a female human being whether or not she has reached the age of majority.

Section 44-41-440. Except in the case of a medical emergency or fetal anomaly, no abortion must be performed or induced or be attempted to be performed or induced unless the physician performing or inducing it has first made a determination of the probable post-fertilization age of the unborn child or relied upon such a determination made by another physician. In making such a determination, the physician shall make such inquiries of the woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to post-fertilization age.

Section 44-41-450. (A) No person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing or attempting to perform or induce the abortion or by another physician upon whose determination that physician relies, that the probable post-fertilization age of the woman's unborn child is twenty or more weeks, except in the case of fetal anomaly, or in reasonable medical judgment, she has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such greater risk must be considered to exist if it is based on a claim or

diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(B) When an abortion upon a woman whose unborn child has been determined to have a probable post-fertilization age of twenty or more weeks is not prohibited by subsection (A), the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods. No such greater risk must be considered to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

Section 44-41-460. (A) Any abortion performed in this State pursuant to Section 44-41-450 must be reported by the licensed facility on the standard form for reporting abortions to the state registrar, Department of Health and Environmental Control, within seven days after the abortion is performed. The names of the patient and physician may not be reported on the form or otherwise disclosed to the state registrar. The form must indicate from whom consent was obtained or circumstances waiving consent and must include:

(1) Post-fertilization age:

(a) if a determination of probable post-fertilization age was made, whether ultrasound was employed in making the determination, and the week of probable post-fertilization age determined; or

(b) if a determination of probable post-fertilization age was not made, the basis of the determination that a medical emergency existed.

(2) Method of abortion, of which the following was employed:

(a) medication abortion such as, but not limited to, mifepristone/misoprostol or methotrexate/misoprostol;

(b) manual vacuum aspiration;

(c) electrical vacuum aspiration;

(d) dilation and evacuation;

(e) combined induction abortion and dilation and evacuation;

(f) induction abortion with prostaglandins;

(g) induction abortion with intra-amniotic instillation such as, but not limited to, saline or urea;

(h) induction abortion; and

(i) intact dilation and extraction (partial-birth).

(3) Whether an intrafetal injection was used in an attempt to induce fetal demise such as, but not limited to, intrafetal potassium chloride or digoxin.

(4) Age of the patient.

(5) If the probable post-fertilization age was determined to be twenty or more weeks, whether the reason for the abortion was a medical emergency or fetal anomaly, and if the reason was a medical emergency, the basis of the determination that the pregnant woman had a condition which so complicated her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.

(6) If the probable post-fertilization age was determined to be twenty or more weeks, whether or not the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive and, if such a method was not used, the basis of the determination that termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods.

(B) Reports required by subsection (A) shall not contain the name or the address of the patient whose pregnancy was terminated, nor shall the report contain any other information identifying the patient, except that each report shall contain a unique medical record identifying number, to enable matching the report to the patient's medical records. Such reports must be maintained in strict confidence by the department, must not be available for public inspection, and must not be made available except:

(1) to the Attorney General or solicitor with appropriate jurisdiction pursuant to a criminal investigation;

(2) to the Attorney General or solicitor pursuant to a civil investigation of the grounds for an action under Section 44-41-480(B); or

(3) pursuant to court order in an action under Section 44-41-480.

(C) By June thirtieth of each year, the department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection (A). Each such report also shall provide the statistics for all previous calendar years during which this section was in effect, adjusted to reflect any additional

information from late or corrected reports. The department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed, induced, or attempted.

(D) Any facility that fails to submit a report by the end of thirty days following the due date must be subject to a late fee of one thousand dollars for each additional thirty-day period or portion of a thirty-day period the report is overdue. Any facility required to report in accordance with this article that has not submitted a report, or has submitted only an incomplete report, more than six months following the due date, may, in an action brought by the department, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to civil contempt. Intentional or reckless falsification of any report required under this section is a misdemeanor punishable by not more than one year in prison.

(E) Within ninety days of the effective date of this article, the Department of Health and Environmental Control shall adopt and promulgate forms and regulations to assist in compliance with this section. Subsection (A) shall take effect so as to require reports regarding all abortions performed or induced on and after the first day of the first calendar month following the effective date of such rules.

Section 44-41-470. Any physician who intentionally or knowingly fails to conform to any requirement in Section 44-41-440 and Section 44-41-450 is guilty of a misdemeanor and, upon conviction, must be fined not less than two thousand dollars nor more than ten thousand dollars or imprisoned for not more than three years, or both. No part of the minimum fine may be suspended. For conviction of a third or subsequent offense, the sentence must be imprisonment for not less than sixty days nor more than three years, no part of which may be suspended.

Section 44-41-480. This article must not be construed to repeal, by implication or otherwise, Section 44-41-20 or any otherwise applicable provision of South Carolina law regulating or restricting abortion. An abortion that complies with this article but violates the provisions of Section 44-41-20 or any otherwise applicable provision of South Carolina law must be considered unlawful as provided in such provision. An abortion that complies with the provisions of Section 44-41-20 or any otherwise applicable provision of South Carolina law regulating or restricting abortion but violates this article must be considered unlawful as provided in this article. If some or all of the provisions of this article are ever temporarily or permanently restrained or enjoined by judicial

order, all other provisions of South Carolina law regulating or restricting abortion must be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order of injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect."

Time effective

SECTION 2. This act takes effect upon approval of the Governor.

Ratified the 24th day of May, 2016.

Approved the 25th day of May, 2016.

No. 184

(R197, H3193)

AN ACT TO AMEND SECTION 8-13-1320, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ATTRIBUTION OF CAMPAIGN CONTRIBUTIONS TO SPECIFIC TYPES OF ELECTIONS, SO AS TO REVISE THE MANNER IN WHICH CAMPAIGN CONTRIBUTIONS ARE ATTRIBUTED TO A PRIMARY ELECTION AND TO A PRIMARY ELECTION RUNOFF.

Be it enacted by the General Assembly of the State of South Carolina:

Attribution of campaign contributions

SECTION 1. Section 8-13-1320 of the 1976 Code, as added by Act 248 of 1991, is amended to read:

"Section 8-13-1320. For purposes of this article:

(1) A contribution made on or before the seventh day after a primary is attributed to the primary. However, in the event of a primary runoff, all contributions made after the day of the primary and continuing through the seventh day after the primary runoff are attributed to the primary runoff for the purposes of applying contribution limits.

(2) A contribution made on or before the end of the quarter immediately following a general election or special election is attributed to the general election or special election, respectively."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 24th day of May, 2016.

Approved the 25th day of May, 2016.

No. 185

(R198, H3685)

AN ACT TO AMEND SECTION 56-7-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE UNIFORM TRAFFIC TICKETS AND ELECTRONIC TICKETS, SO AS TO PROVIDE THAT TICKETS MAY BE COLLECTED ELECTRONICALLY, BUT MUST BE TRANSMITTED TO THE DEPARTMENT OF MOTOR VEHICLES ELECTRONICALLY; TO AMEND SECTION 56-7-30, AS AMENDED, RELATING TO THE PRINTING AND ORDERING OF TRAFFIC TICKETS, THE FORWARDING OF THE DRIVING RECORD AND AUDIT COPY OF THE TICKET BY A LAW ENFORCEMENT AGENCY TO THE DEPARTMENT OF MOTOR VEHICLES, AND THE PROCESSING OF AN ELECTRONIC TICKET, SO AS TO PROVIDE THAT THE COURT'S COPY OF THE TICKET MUST BE FORWARDED TO THE APPROPRIATE COURT AND ELECTRONICALLY TO THE DEPARTMENT OF MOTOR VEHICLES WITHIN THREE BUSINESS DAYS OF THE ISSUANCE OF THE TICKET AND THAT INFORMATION REGARDING THE DISPOSITION OF THE OFFENSE MUST BE FORWARDED ELECTRONICALLY TO THE DEPARTMENT OF MOTOR VEHICLES BY THE APPROPRIATE COURT WITHIN FIVE DAYS OF THE TRIAL DATE, TO DELETE THE PROVISION THAT REQUIRES A LAW ENFORCEMENT AGENCY TO CONDUCT AN ANNUAL INVENTORY OF ALL TICKETS RECEIVED BUT NOT DISPOSED OF BY FINAL

COURT ACTION OR BY NOLLE PROSEQUI, AND TO DELETE THE PROVISION THAT GIVES A LAW ENFORCEMENT AGENCY THE OPTION OF TRANSMITTING A TICKET ELECTRONICALLY TO THE DEPARTMENT OF MOTOR VEHICLES; TO AMEND SECTION 56-7-40, RELATING TO THE PENALTY IMPOSED UPON A PERSON WHO VIOLATES A PROVISION RELATING TO THE USE, PRINTING, AND TRANSMITTING OF A UNIFORM TRAFFIC TICKET, SO AS TO PROVIDE THAT A TICKET MUST BE ELECTRONICALLY FORWARDED TO THE DEPARTMENT OF MOTOR VEHICLES, TO DELETE REFERENCES TO THE RECORDS COPY AND AUDIT COPY OF THE TICKET, AND TO DELETE THE PROVISION THAT CREATES AN OFFENSE AND IMPOSES A PENALTY UPON A PERSON CHARGED WITH FAILING TO TIMELY FORWARD THE RESULTS OF THE ANNUAL INVENTORY TO THE DEPARTMENT OF MOTOR VEHICLES; TO AMEND SECTION 56-1-365, AS AMENDED, RELATING TO A PERSON SURRENDERING HIS DRIVER'S LICENSE WHEN IT HAS BEEN REVOKED OR SUSPENDED, SO AS TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES SHALL ELECTRONICALLY RECEIVE DISPOSITION AND LICENSE SURRENDER INFORMATION FROM THE COURT IMMEDIATELY AFTER RECEIPT OR WITHIN FIVE BUSINESS DAYS AFTER RECEIPT, TO DELETE THE TERM "TICKET" AND REPLACE IT WITH THE TERM "DISPOSITION" WHEN THE TERMS REFER TO THE DOCUMENT THAT MUST BE ELECTRONICALLY FORWARDED TO THE DEPARTMENT OF MOTOR VEHICLES, AND TO REVISE THE PROCEDURE TO CALCULATE WHEN A REVOCATION OR SUSPENSION BEGINS UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 56-1-370, AS AMENDED, RELATING TO A LICENSEE'S REQUEST FOR AN ADMINISTRATIVE HEARING TO REVIEW A NOTICE OF SUSPENSION, CANCELLATION, OR REVOCATION OF A DRIVER'S LICENSE, SO AS TO PROVIDE THE DATE WHEN A SUSPENSION, CANCELLATION, OR REVOCATION OF A DRIVER'S LICENSE COMMENCES WHEN THE HEARING RESULTS IN THE CONTINUED SUSPENSION, CANCELLATION, OR REVOCATION OF THE DRIVER'S LICENSE; AND TO REPEAL SECTION 56-3-1972 RELATING

TO THE DESIGN OF THE UNIFORM PARKING VIOLATION TICKET.

Be it enacted by the General Assembly of the State of South Carolina:

Uniform traffic ticket

SECTION 1. Section 56-7-20 of the 1976 Code, as last amended by Act 1 of 2009, is further amended to read:

"Section 56-7-20. Each ticket shall have a unique identifying number. Each printed copy must be labeled at the bottom with the purpose of the copy. A handwritten traffic ticket must consist of four copies, one of which must be blue and must be given to the vehicle operator who is the alleged traffic violator; one of which must be yellow and must be dispatched to the Department of Motor Vehicles for its records and for audit purposes; one of which must be white and must be dispatched to the police agency of which the arresting officer is a part; and one of which must be green and must be retained by the trial officer for his records. An electronic traffic ticket must consist of at least one printed copy that must be given to the vehicle operator who is the alleged traffic violator and as many as three additional printed copies if needed to communicate with the Department of Motor Vehicles, the police agency, and the trial officer. Tickets may be collected electronically, but must be transmitted to the Department of Motor Vehicles electronically. Data transmissions to the Department of Motor Vehicles must be made pursuant to the Department of Motor Vehicles' electronic specifications."

Uniform traffic ticket

SECTION 2. Section 56-7-30 of the 1976 Code, as last amended by Act 68 of 2005, is further amended to read:

"Section 56-7-30. (A) The Department of Public Safety shall have the traffic tickets printed. Law enforcement agencies shall order tickets from the Department of Public Safety and shall record the identifying numbers of the tickets received by them. The cost of the tickets must be paid by the law enforcement agency. The court's copy must be forwarded by the law enforcement agency to the appropriate court and electronically to the Department of Motor Vehicles within three business days of issuance to the offender. After final trial court action or nolle

prosequi, disposition information must be forwarded electronically to the Department of Motor Vehicles by the appropriate court within five business days of the trial date.

(B) A law enforcement agency that issues uniform traffic tickets in an electronic format as provided in Section 56-7-10 may generate a printed copy of this ticket by using an in-car data terminal or hand held device. A copy of the ticket must be given to the offender. The court's copy must be forwarded by the law enforcement agency to the appropriate court, in a format as prescribed by the South Carolina Judicial Department, and electronically to the Department of Motor Vehicles within three business days of issuance to the offender. Data transmissions to the Department of Motor Vehicles must be made pursuant to the Department of Motor Vehicles' and the South Carolina Judicial Department's electronic systems specifications."

Penalty

SECTION 3. Section 56-7-40 of the 1976 Code is amended to read:

"Section 56-7-40. Any person intentionally violating the provisions of Section 56-7-10 or 56-7-30 shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than two hundred fifty dollars nor more than fifteen hundred dollars or imprisoned for not more than six months, or both, for each ticket unaccounted for, or each use of a nonuniform ticket, or each failure to timely electronically forward the Department of Motor Vehicles a copy of the ticket. If the failure to account for a ticket, or the use of a nonuniform ticket, or the failure to timely forward the Department of Motor Vehicles a copy of the ticket is inadvertent or unintentional, such misuse shall be triable in magistrates court and, upon conviction, shall be punishable by a fine of not more than one hundred dollars."

Revocation or suspension of a driver's license

SECTION 4. Section 56-1-365 of the 1976 Code, as last amended by Act 201 of 2008, is further amended to read:

"Section 56-1-365. (A) A person who forfeits bail posted for, is convicted of, or pleads guilty or nolo contendere in general sessions, municipal, or magistrates court to an offense which requires that his driver's license be revoked or suspended shall surrender immediately or cause to be surrendered his driver's license to the clerk of court or

magistrate upon the verdict or plea. The defendant must be notified at the time of arrest of his obligation to bring, and surrender his license, if convicted, to the court or magistrate at the time of his trial, and if he fails to produce his license after conviction, he may be fined in an amount not to exceed two hundred dollars. If the defendant fails subsequently to surrender his license to the clerk or magistrate immediately after conviction, he must be fined not less than fifty dollars nor more than two hundred dollars.

(B) The Department of Motor Vehicles shall electronically receive disposition and license surrender information from the clerk of court or magistrate immediately after receipt. Along with the driver's license, the clerks and magistrates must give the department's agents tickets, arrest warrants, and other documents or copies of them, including any reinstatement fee paid at the time of the verdict, guilty plea, or plea of nolo contendere, as necessary for the department to process the revocation or suspension of the licenses. If the department does not collect the license surrender information and disposition immediately, the magistrate or clerk must forward the license surrender information, disposition, and other documentation to the department within five business days after receipt. A clerk or magistrate who wilfully fails or neglects to forward the driver's license and disposition as required in this section is liable to indictment and, upon conviction, must be fined not exceeding five hundred dollars.

(C) The department shall notify the defendant of the suspension or revocation. Except as provided in Section 56-5-2990, if the defendant surrendered his license to the magistrate or clerk immediately after conviction, the effective date of the revocation or suspension is the date of surrender. If the magistrate or clerk wilfully fails to electronically forward the disposition and license surrender information to the department within five business days, the suspension or revocation does not begin until the department receives and processes the license and ticket, provided that the end date of the term of suspension or revocation shall be calculated from the date of surrender and not the date the department receives and processes the ticket.

(D) If the defendant is already under suspension for a previous offense at the time of his conviction or plea, the court shall use its judicial discretion in determining if the period of suspension for the subsequent offense runs consecutively and commences upon the expiration of the suspension or revocation for the prior offense, or if the period of suspension for the subsequent offense runs concurrently with the suspension or revocation of the prior offense.

(E) If the defendant fails to surrender his license, the suspension or revocation operates as otherwise provided by law.

(F) If the defendant surrenders his license, upon conviction, and subsequently files a notice of appeal, the appeal acts as a supersedeas as provided in Section 56-1-430. Upon payment of a ten-dollar fee and presentment by the defendant of a certified or clocked-in copy of the notice of appeal, the department shall issue him a certificate which entitles him to operate a motor vehicle for a period of six months after the verdict or plea. The certificate must be kept in the defendant's possession while operating a motor vehicle during the six-month period, and failure to have it in his possession is punishable in the same manner as failure to have a driver's license in possession while operating a motor vehicle."

Administrative review

SECTION 5. Section 56-1-370 of the 1976 Code, as last amended by Act 381 of 2006, is further amended to read:

"Section 56-1-370. The licensee may, within ten days after notice of suspension, cancellation, or revocation, except in cases where the suspension, cancellation, or revocation is made mandatory upon the Department of Motor Vehicles, request in writing an administrative hearing with the Division of Motor Vehicle Hearings in accordance with the rules of procedure of the Administrative Law Court and the State Administrative Procedures Act, in the judicial circuit where the licensee was arrested unless the Division of Motor Vehicle Hearings and the licensee agree that the hearing may be held in another jurisdiction. The hearing must be heard by a hearing officer of the Division of Motor Vehicle Hearings. Upon the review, the hearing officer shall either rescind the department's order of suspension, cancellation, or revocation or, good cause appearing therefor, may continue, modify, or extend the suspension, cancellation, or revocation of the license. If the administrative hearing results in the continued suspension, cancellation, or revocation of the license, the term of the suspension, cancellation, or revocation of the license is deemed to commence upon the date of the administrative hearing, as long as information is transmitted electronically to the Department of Motor Vehicles on the date of the hearing, and not on the date of the notice provided by the Department of Motor Vehicles."

Repeal

SECTION 6. Section 56-3-1972 of the 1976 Code is repealed.

Savings clause

SECTION 7. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 8. This act takes effect January 1, 2017.

Ratified the 24th day of May, 2016.

Approved the 25th day of May, 2016.

No. 186

(R201, H3927)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 139 TO CHAPTER 3, TITLE 56 SO AS TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES MAY ISSUE SPECIAL PERSONALIZED MOTOR VEHICLE LICENSE PLATES; TO AMEND SECTION 56-3-2250, RELATING TO THE ISSUANCE OF SAMPLE LICENSE PLATES BY THE DEPARTMENT OF MOTOR VEHICLES, SO AS TO DELETE THE PROVISION THAT PROVIDES THAT IT IS UNLAWFUL TO DISPLAY A SAMPLE

LICENSE PLATE ON A MOTOR VEHICLE AND THE PENALTY ASSOCIATED WITH THIS CRIME, TO PROVIDE THAT THE DEPARTMENT MAY RETAIN THE FEE THAT IS CHARGED FOR THE ISSUANCE OF THIS LICENSE PLATE, TO PROVIDE THAT THE DEPARTMENT MAY ISSUE SOUVENIR LICENSE PLATES FOR ANY SPECIAL ORGANIZATIONAL LICENSE PLATE THAT IT PRODUCES AND PERSONALIZED SPECIAL ORGANIZATIONAL SOUVENIR LICENSE PLATES FOR A FEE, TO PROVIDE FOR THE DISBURSEMENT OF THE FEES, TO PROVIDE THAT THESE LICENSE PLATES MAY BE DISPLAYED ONLY ON THE FRONT OF A MOTOR VEHICLE, AND TO PROVIDE A PENALTY FOR A VIOLATION OF THIS PROVISION; TO AMEND SECTION 56-3-7360, AS AMENDED, RELATING TO THE DEPARTMENT OF MOTOR VEHICLES' ISSUANCE OF "KOREAN WAR VETERANS" SPECIAL LICENSE PLATES, SO AS TO DELETE THE PROVISIONS THAT RELATE TO THE REQUIREMENTS FOR PRODUCTION AND DISTRIBUTION OF THIS LICENSE PLATE AND THE FEE FOR THIS LICENSE PLATE, AND TO PROVIDE THAT THERE IS NO FEE FOR THIS LICENSE PLATE; TO AMEND SECTIONS 56-3-10610 AND 56-3-10710, RELATING TO THE DEPARTMENT OF MOTOR VEHICLES' ISSUANCE OF "SILVER STAR" AND "BRONZE STAR" SPECIAL LICENSE PLATES, SO AS TO DEFINE THE TYPE OF MOTOR VEHICLES AND MOTORCYCLES WHOSE OWNERS MAY BE ISSUED THESE LICENSE PLATES; AND BY ADDING ARTICLE 138 TO CHAPTER 3, TITLE 56 SO AS TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES MAY ISSUE "CHASE AWAY CHILDHOOD CANCER" SPECIAL LICENSE PLATES.

Be it enacted by the General Assembly of the State of South Carolina:

Special personalized motor vehicle license plates

SECTION 1. Chapter 3, Title 56 of the 1976 Code is amended by adding:

"Article 139

Special Personalized Motor Vehicle License Plates

Section 56-3-13910. (A) The department may issue special personalized motor vehicle license plates to owners of private passenger motor vehicles as defined in Section 56-3-630, and motorcycles as defined in Section 56-3-20, registered in their names for any special organizational plate authorized pursuant to Section 56-3-8000, Section 56-3-8100, or any other organizational plate authorized by law. In order for a specialized license plate to be personalized, the sponsoring organization, if there is one, must agree to make the license plate available for personalization. The person requesting the special personalized license plate must meet all of the requirements to obtain the specialty license plate.

(B) The fee for all special personalized organizational license plates created pursuant to this section is the regular biennial registration fee set forth in Article 5, Chapter 3 of this title plus an additional biennial personalization fee of thirty dollars, in addition to any special fee associated with the selected plate design. The Comptroller General shall place twenty dollars of the special personalized organizational license plate fee in a special restricted account to be used by the department to defray the expenses of the department. The remaining ten dollars of the personalization fee must be distributed to the sponsoring organization. The department may not refund the fee once the personalized license plate has been manufactured.

(C) The license plate design must be identical to the design approved by the department for the organizational license plate, but the license plate will bear the requested number or letter combination subject to approval by the department. There may be no duplication of registration license plate letter or number combinations. The department, in its discretion, may refuse the issue of letter or number combinations which may carry connotations offensive to good taste and decency."

Sample and souvenir license plates

SECTION 2. Section 56-3-2250 of the 1976 Code is amended to read:

"Section 56-3-2250. (A) The Department of Motor Vehicles may provide, upon request, a sample motor vehicle license plate. The license plate shall be of the same size and general design of regular motor vehicle license plates. The fee for issuance of such license plate shall be ten dollars. The department may retain the ten dollar fee to recoup its cost for producing the license plate.

(B)(1) The department is authorized to produce, upon request, souvenir license plates for any special organizational license plate

produced pursuant to Section 56-3-8000 or Section 56-3-8100 or any other special organizational license plate authorized by law. In order for a special organizational license plate to be available as a souvenir license plate, the sponsoring organization, if there is one, must agree to make the license plate available as a souvenir license plate.

(2) The fee for the special organizational souvenir license plate is twenty dollars. Ten dollars of this fee shall be retained by the department as specified in subsection (A), and the additional ten dollars shall be distributed to the sponsoring organization.

(C) The department shall determine the method to designate the sample and souvenir license plates described in this section.

(D)(1) An individual may apply for a personalized special organizational souvenir license plate with a license plate text to be selected by the applicant in a letter and numeral plate text format the department prescribes. The department, in its discretion, may refuse the issuance of letter or number combinations which may carry connotations offensive to good taste and decency.

(2) In order for a special organizational license plate to be available as a personalized souvenir license plate, the sponsoring organization, if there is one, must agree to make the license plate available as a souvenir license plate.

(3) The fee for the license plate contained in this subsection is thirty dollars. Twenty dollars of this fee shall be retained by the department to defray the expenses of the department. Ten dollars of this fee shall be distributed to the organization described in subsection (B).

(E) These sample or souvenir license plates may be displayed only on the front of private passenger motor vehicles as defined in Section 56-3-630 or as otherwise allowed by law in the owner's home state and shall not be displayed on the back of any vehicle registered or required to be registered in this State or as otherwise allowed by law in the owner's home state.

(F) Any person displaying a license plate in violation of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days for each violation."

Korean War Veterans special license plates

SECTION 3. Section 56-3-7360 of the 1976 Code, as last amended by Act 253 of 2012, is further amended to read:

"Section 56-3-7360. The Department of Motor Vehicles may issue 'Korean War Veterans' special license plates to owners of private passenger motor vehicles and motorcycles registered in their names who are Korean War Veterans who served on active duty at anytime during the Korean War. The applicant must present the department with a DD214 or other official documentation that states that he served on active duty upon initial application for this special license plate. There is no fee for this special license plate."

Silver Star special license plates

SECTION 4. Section 56-3-10610(A) of the 1976 Code, as added by Act 297 of 2008, is amended to read:

"(A) The Department of Motor Vehicles may issue 'Silver Star' special license plates to owners of private passenger carrying motor vehicles, as defined in Section 56-3-630, or motorcycles as defined in Section 56-3-20, registered in their names who have been awarded the Silver Star. The motor vehicle owner must present the department with a DD214, or other official documentation that states that the owner received the Silver Star, along with the owner's application for this special license plate. The fee for this special license plate is the regular motor vehicle license fee contained in Article 5, Chapter 3 of this title. The license plates issued pursuant to this section must contain the words 'combat veteran' and an illustration of the Silver Star."

Bronze Star special license plates

SECTION 5. Section 56-3-10710(A) of the 1976 Code, as added by Act 297 of 2008, is amended to read:

"(A) The Department of Motor Vehicles may issue 'Bronze Star' special license plates to owners of private passenger carrying motor vehicles, as defined in Section 56-3-630, or motorcycles as defined in Section 56-3-20, registered in their names who have been awarded the Bronze Star. The motor vehicle owner must present the department with a DD214, or other official documentation that states that the owner received the Bronze Star, along with the owner's application for this special license plate. The fee for this special license plate is the regular motor vehicle license fee contained in Article 5, Chapter 3 of this title. The license plates issued pursuant to this section must contain the words 'combat veteran' and an illustration of the Bronze Star."

Chase Away Childhood Cancer special license plates

SECTION 6. Chapter 3, Title 56 of the 1976 Code is amended by adding:

"Article 138

Chase Away Childhood Cancer Special License Plates

Section 56-3-13810. (A) The Department of Motor Vehicles may issue 'Chase Away Childhood Cancer' motor vehicle license plates to owners of private passenger carrying motor vehicles, as defined in Section 56-3-630 and motorcycles as defined in Section 56-3-20 registered in their names. The fee for this special license plate is fifty dollars every two years in addition to the regular motor vehicle registration fee contained in Article 5, Chapter 3, Title 56. This special license plate must be of the same size and shape of regular motor vehicle license plates. This special license plate must be issued or revalidated for a biennial period which expires twenty-four months from the month it is issued.

(B) The fees collected pursuant to this section above the cost of producing the license plates must be distributed to Chase After a Cure.

(C) The requirements for production, collection, and distribution of fees for this license plate are those set forth in Section 56-3-8100."

Savings clause

SECTION 7. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 8. This act takes effect twelve months after approval by the Governor.

Ratified the 24th day of May, 2016.

Approved the 25th day of May, 2016.

No. 187

(R203, H4510)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 63-7-2400 SO AS TO ESTABLISH LIMITATIONS ON THE NUMBER OF FOSTER CHILDREN WHO MAY BE PLACED IN A FOSTER HOME.

Be it enacted by the General Assembly of the State of South Carolina:

Foster child placements

SECTION 1. Article 5, Chapter 7, Title 63 of the 1976 Code is amended by adding:

"Section 63-7-2400. (A) A foster home may not provide full-time care for more than five foster children, with the total number of children residing in the household not to exceed eight, including the foster parent's own children, children of other household members, and other children residing in the household, except:

(1) to keep a sibling group together;

(2) to keep a child in the child's home community;

(3) to return a child to a home in which the child was previously placed;

(4) to comply with an order of the court; or

(5) if it is in the best interest of the children as determined by the court.

(B) No more than two of the five foster children referenced in subsection (A) may be classified as therapeutic foster care placements unless one of the exceptions in subsection (A) applies. If one of the

exceptions applies, no more than three of the five foster children may be classified as therapeutic foster care placements."

Time effective

SECTION 2. This act takes effect upon approval by the Governor. Section 63-7-2400(B) does not apply to foster children placed before the effective date of this act.

Ratified the 24th day of May, 2016.

Approved the 25th day of May, 2016.

No. 188

(R205, H4932)

AN ACT TO AMEND SECTION 56-5-4070, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MAXIMUM LENGTHS OF VEHICLES THAT MAY BE OPERATED ALONG THE STATE'S HIGHWAYS, SO AS TO PROVIDE A MAXIMUM LENGTH FOR TRAILERS OR SEMITRAILERS USED TO TRANSPORT VEHICLES USED IN CONNECTION WITH MOTORSPORTS COMPETITION EVENTS; TO AMEND SECTION 56-5-4130, RELATING TO THE MAXIMUM GROSS WEIGHT UPON ANY WHEEL OF CERTAIN VEHICLES ALLOWED TO OPERATE ALONG THE STATE'S HIGHWAYS, SO AS TO PROVIDE THAT AN OVER-THE-ROAD BUS, MOTORHOME, OR CERTAIN VEHICLES USED AS INTRASTATE PUBLIC AGENCY TRANSIT PASSENGER BUSES ARE EXCLUDED FROM CERTAIN AXLE WEIGHT REQUIREMENTS BUT ARE LIMITED TO A MAXIMUM AXLE WEIGHT LIMIT; TO AMEND SECTION 56-5-4140, AS AMENDED, RELATING TO THE MAXIMUM GROSS WEIGHT OF VEHICLES ALLOWED TO OPERATE ALONG THE STATE'S HIGHWAYS, SO AS TO MAKE TECHNICAL CHANGES, TO REVISE THE MAXIMUM GROSS WEIGHTS OF CERTAIN VEHICLES THAT MAY BE OPERATED ALONG THE STATE'S HIGHWAYS, AND TO PROVIDE THAT AN OVER-THE-ROAD BUS, MOTORHOME, OR CERTAIN

VEHICLES USED AS INTRASTATE PUBLIC AGENCY TRANSIT PASSENGER BUSES ARE EXCLUDED FROM CERTAIN AXLE SPACING REQUIREMENTS BUT ARE LIMITED TO A MAXIMUM SINGLE AXLE WEIGHT LIMIT; TO AMEND SECTION 56-5-4160, AS AMENDED, RELATING TO THE ENFORCEMENT OF PROVISIONS THAT ESTABLISH WEIGHT LIMITS FOR VEHICLES THAT OPERATE ALONG THE STATE'S HIGHWAYS, SO AS TO REVISE THE MAXIMUM WEIGHT LIMIT ALLOWED FOR A VEHICLE OR COMBINATION OF VEHICLES EQUIPPED WITH AN IDLE REDUCTION SYSTEM AND TO ALLOW CERTAIN VEHICLES FUELED PRIMARILY BY NATURAL GAS TO EXCEED THE GROSS, SINGLE AXLE, TANDEM AXLE, OR BRIDGE FORMULA WEIGHT LIMITS UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 56-35-30, RELATING TO VEHICLES EQUIPPED WITH AUXILIARY POWER UNITS, SO AS TO REVISE THE ALLOWABLE GROSS WEIGHT OF THE VEHICLE USED TO DETERMINE WHETHER THE VEHICLE HAS VIOLATED PROVISIONS RELATING TO VEHICLE WEIGHT RESTRICTIONS; AND TO AMEND SECTION 48-20-280, RELATING TO THE APPLICABILITY OF THE SOUTH CAROLINA MINING ACT TO THE DEPARTMENT OF TRANSPORTATION, SO AS TO PROVIDE THAT THIS ACT DOES NOT APPLY TO CERTAIN ACTIVITIES OF THE SOUTH CAROLINA PORTS AUTHORITY.

Be it enacted by the General Assembly of the State of South Carolina:

Maximum lengths of vehicles

SECTION 1. Section 56-5-4070(A)(1) of the 1976 Code is amended to read:

"(1) No trailer or semitrailer may be operated in a two unit truck tractor-trailer or truck tractor-semitrailer combination in excess of fifty-three feet, inclusive of the load carried on it. A fifty-three foot long trailer must be equipped with a rear underride guard, and the distance between the kingpin of the vehicle and the center of the rear axle assembly or to the center of the tandem axle assembly if equipped with two axles may be no greater than forty-one feet. However, trailers or semitrailers used exclusively or primarily to transport vehicles used in

connection with motorsports competition events may not exceed forty-six feet on the distance measured from the kingpin to the center of the rear axle."

Maximum weight of vehicles

SECTION 2. Section 56-5-4130 of the 1976 Code is amended to read:

"Section 56-5-4130. (A)(1) The gross weight upon any wheel of a vehicle shall not exceed eight thousand pounds when equipped with high-pressure pneumatic, solid rubber or cushion tires, nor ten thousand pounds when equipped with low-pressure pneumatic tires. The gross weight upon any one axle of a vehicle shall not exceed sixteen thousand pounds when equipped with high-pressure pneumatic, solid rubber or cushion tires, nor twenty thousand pounds when equipped with low-pressure pneumatic tires.

(2) On the interstate and noninterstate highways of this State, any over-the-road bus as defined by Title 49 of the United States Code, motorhome, or any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus as defined by Title 49 of the United States Code, is excluded from the axle weight limits in item (1). However, these vehicles are limited to a maximum single axle weight limit of twenty-four thousand pounds, including all enforcement tolerances.

(B) For the purpose of this section an 'axle load' shall be defined as the total load transmitted to the road by all wheels whose centers may be included between two parallel transverse vertical planes forty inches apart, extending across the full width of the vehicle, every pneumatic tire designed for use and used when inflated with air to less than one hundred pounds pressure shall be deemed a 'low-pressure tire' and every pneumatic tire inflated to one hundred pounds pressure or more shall be deemed a 'high-pressure tire'."

Maximum weight of vehicles

SECTION 3. Section 56-5-4140 of the 1976 Code, as last amended by Act 60 of 2009, is further amended to read:

"Section 56-5-4140. (A)(1) The gross weight of a vehicle or combination of vehicles, operated or moved upon any section of highway, including the interstate highway system, except where the formula in item (4) allows for a higher weight, shall not exceed:

(The following weight limits do not include applicable tolerances)

(a) Single-unit vehicle with two axles……...….35,000 lbs.

(b) Single-unit vehicle with three axles….....46,000 lbs.

(c) Single-unit vehicle with four axles.....63,500 lbs.

except, on the interstate, vehicles must meet axle spacing requirements and corresponding maximum overall gross weights, not to exceed 63,500 lbs., in accordance with the table in item (4).

(d) Single-unit vehicle with five or more axles……..65,000 lbs.

except, on the interstate, vehicles must meet axle spacing requirements and corresponding maximum overall gross weights, not to exceed 65,000 lbs., in accordance with the table in item (4).

(e) Combination of vehicles with three axle……...50,000 lbs.

(f) Combination of vehicles with four axles…….....65,000 lbs.

(g) Combination of vehicles with five or more axles..73,280 lbs.

The gross weight imposed upon any highway or section of highway other than the interstate by two or more consecutive axles in tandem articulated from a common attachment to the vehicle and spaced not less than forty inches nor more than ninety-six inches apart shall not exceed thirty-six thousand pounds, and no one axle of any such group of two or more consecutive axles shall exceed the load permitted for a single axle. The load imposed on the highway by two consecutive axles, individually attached to the vehicle and spaced not less than forty inches nor more than ninety-six inches apart, shall not exceed thirty-six thousand pounds and no one axle of any such group of two consecutive axles shall exceed the load permitted for a single axle.

The ten percent enforcement tolerance specified in Section 56-5-4160 applies to the vehicle weight limits specified in item (1), and subsections (B) and (C). However, the gross weight on a single axle operated on the interstate may not exceed 20,000 pounds, including all enforcement tolerances; the gross weight on a tandem axle operated on the interstate may not exceed 35,200 pounds, including all enforcement tolerances; the overall gross weight for vehicles operated on the interstate may not exceed 75,185 pounds, including all enforcement tolerances except as provided in item (4).

(2) Enforcement tolerance is fifteen percent for a vehicle or trailer transporting unprocessed forest products only on noninterstate routes.

(3) Enforcement tolerance is fifteen percent for a vehicle or trailer transporting sod only on noninterstate routes.

(4) Vehicles with an overall maximum gross weight in excess of 75,185 pounds may operate upon any section of highway in the Interstate System up to an overall maximum of 80,000 pounds in accordance with the following:

The weight imposed upon the highway by any group of two or more consecutive axles may not, unless specially permitted by the Department of Public Safety, exceed an overall gross weight produced by the application of the following formula:

$$W = 500 (LN/N-1 + 12N + 36)$$

In the formula W equals overall gross weight on any group of two or more consecutive axles to the nearest 500 pounds, L equals distance in feet between the extreme of any group of two or more consecutive axles, and N equals number of axles in the group under consideration.

As an exception, two consecutive sets of tandem axles may carry a gross load of 68,000 pounds if the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more. The formula is expressed by the following table:

Distance in feet between the extremes of any group of 2 or more consecutive axles	Maximum load in pounds carried on any group of 2 of 2 or more consecutive axles					
	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles
4	35,200					
5	35,200					
6	35,200					
7	35,200					
8 and less	35,200	35,200				
more than 8	38,000	42,000				
9	39,000	42,500				
10	40,000	43,500				
11		44,000				
12		45,000	50,000			
13		45,500	50,500			
14		46,500	51,500			
15		47,500	52,000			
16		48,000	52,500	58,000		
17		48,500	53,500	58,500		
18		49,500	54,000	59,000		
19		50,500	54,500	60,000		
20		51,000	55,500	60,500	66,000	
21		51,500	56,000	61,000	66,500	
22		52,500	56,500	61,500	67,000	
23		53,000	57,500	62,500	68,000	
24		54,000	58,000	63,000	68,500	74,000
25		54,500	58,500	63,500	69,000	74,500
26		55,500	59,500	64,000	69,500	75,000
27		56,000	60,000	65,000	70,000	75,500
28		57,000	60,500	65,500	71,000	76,500
29		57,500	61,500	66,000	71,500	77,000
30		58,500	62,000	66,500	72,000	77,500

31	59,000	62,500	67,500	72,500	78,000
32	60,000	63,500	68,000	73,000	78,500
33		64,000	68,500	74,000	79,000
34		64,500	69,000	74,500	80,000
35		65,500	70,000	75,000	
36		68,000	70,500	75,500	
37		68,000	71,000	76,000	
38		68,000	71,500	77,000	
39		68,000	72,500	77,500	
40		68,500	73,000	78,000	
41		69,500	73,500	78,500	
42		70,000	74,000	79,000	
43		70,500	75,000	80,000	
44		71,500	75,500		
45		72,000	76,000		
46		72,500	76,500		
47		73,500	77,500		
48		74,000	78,000		
49		74,500	78,500		
50		75,500	79,000		
51		76,000	80,000		
52		76,500			
53		77,500			
54		78,000			
55		78,500			
56		79,500			
57		80,000			

(B) On the interstate and noninterstate highways of this State, any over-the-road bus as defined in Title 49 of the United States Code, motorhome, or any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus as defined in Title 49 of the United States Code, is excluded from the axle spacing requirements in subsection (A). However, these vehicles are limited to a maximum single axle weight limit of twenty-four thousand pounds, including all enforcement tolerances.

(C) Except on the interstate highway system:

(1) Dump trucks, dump trailers, trucks carrying agricultural products, concrete mixing trucks, fuel oil trucks, line trucks, and trucks designated and constructed for special type work or use are not required to conform to the axle spacing requirements of this section. However, the vehicle is limited to a weight of twenty thousand pounds for each axle plus scale tolerances and the maximum gross weight of these vehicles may not exceed the maximum weight allowed by subsection (A)(1) for the appropriate number of axles, plus allowable scale tolerances.

(2) Concrete mixing trucks which operate within a fifteen-mile radius of their home base are not required to conform to the requirements of this section. However, these vehicles are limited to a maximum load

of the rated capacity of the concrete mixer, the true gross load not to exceed sixty-six thousand pounds. All of these vehicles shall have at least three axles each with brake-equipped wheels.

(3) Well-drilling, boring rigs, and tender trucks are not required to conform to the axle spacing requirements of this section. However, the vehicle is limited to seventy thousand pounds gross vehicle weight and twenty-five thousand pounds for each axle plus scale tolerances."

Maximum weight of vehicles with an idle reduction system

SECTION 4. Section 56-5-4160(L) of the 1976 Code, as added by Act 234 of 2008, is amended to read:

"(L) Notwithstanding any other provision of law, the maximum gross vehicle weight and axle weight limit for a vehicle or combination of vehicles equipped with an idle reduction system, as provided for in 23 U.S.C. 127, may be increased by an amount equal to the weight of the system, not to exceed five hundred fifty pounds. Upon request by a law enforcement officer, the vehicle operator must provide proof that the system is fully functional and that the vehicle's gross weight increase allowed pursuant to this section is attributable only to the system."

Maximum weight of vehicles fueled by natural gas

SECTION 5. Section 56-5-4160 of the 1976 Code, as last amended by Act 234 of 2008, is further amended by adding an appropriately lettered subsection to read:

"( ) Any motor vehicle that is fueled primarily by natural gas shall be allowed to exceed the gross, single axle, tandem axle, or bridge formula weight limits, including tolerances, by no more than two thousand pounds each individually weighed, up to a maximum gross vehicle weight of eighty-two thousand pounds on the interstate, by an amount that is equal to the difference between: the weight of the vehicle attributable to the natural gas tank and fueling system carried by that vehicle; and the weight of a comparable diesel tank and fueling system. To be eligible for this exception, the operator of the vehicle must be able to demonstrate that the vehicle is a natural gas vehicle, a biofuel vehicle using natural gas, or a vehicle that has been converted to a natural gas vehicle. The operator shall provide documentation which certifies the difference between: the weight of the vehicle attributable to the natural

gas tank and fueling system carried by that vehicle; and the weight of a comparable diesel tank and fueling system."

Maximum weight of vehicles equipped with an auxiliary power unit

SECTION 6. Section 56-35-30(B) of the 1976 Code, as added by Act 234 of 2008, is amended to read:

"(B) For a vehicle equipped with an auxiliary power unit designed for idling reduction, the gross vehicle weight or axle weight used to determine the fine for a violation of commercial vehicle weight restrictions is the actual gross vehicle weight or axle weight reduced by five hundred fifty pounds."

South Carolina Mining Act

SECTION 7. Section 48-20-280 of the 1976 Code is amended to read:

"Section 48-20-280. The provisions of this chapter do not apply to those activities of the:

(1) South Carolina State Ports Authority, nor of a person acting under contract with the authority; undertaken solely in connection with the construction, repair, and maintenance of the authority's shipping container terminals; or

(2) Department of Transportation, nor of a person acting under contract with the department, on highway rights-of-way or borrow pits maintained solely in connection with the construction, repair, and maintenance of the public road systems of the State. This exemption does not become effective until the department has adopted reclamation standards applying to those activities and the standards have been approved by the council. At the discretion of the department, the provisions of this chapter may apply to mining on federal lands."

Savings Clause

SECTION 8. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining

in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 9. This act takes effect upon approval by the Governor.

Ratified the 24th day of May, 2016.

Approved the 25th day of May, 2016.

No. 189

(R207, H4999)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 30, TITLE 44 SO AS TO BE ENTITLED "IMMUNITY FROM LIABILITY FOR PROVIDING FREE HEALTH CARE SERVICES" AND TO PROVIDE IMMUNITY FROM LIABILITY FOR PROVIDING FREE HEALTH CARE SERVICES, WITH EXCEPTIONS; TO REENTITLE CHAPTER 30, TITLE 44 AS "HEALTH CARE PROFESSIONALS"; TO DESIGNATE SECTIONS 44-30-10 THROUGH 44-30-90 AS ARTICLE 1, CHAPTER 30, TITLE 44, ENTITLED "HEALTH CARE PROFESSIONAL COMPLIANCE ACT"; TO AMEND SECTION 38-79-30, RELATING TO LIABILITY OF HEALTH CARE PROVIDERS WHEN PROVIDING FREE MEDICAL CARE, SO AS TO REQUIRE A WRITTEN AGREEMENT OF PROVISION OF THE VOLUNTARY, UNCOMPENSATED CARE AND TO ALLOW THE WRITTEN AGREEMENT TO BE AN ELECTRONIC RECORD; AND TO ENABLE HEALTH CARE PROVIDERS TO FULFILL CERTAIN CONTINUING EDUCATION REQUIREMENTS BY PROVIDING FREE HEALTH CARE SERVICES.

Be it enacted by the General Assembly of the State of South Carolina:

Free health care services, immunity from liability

SECTION 1. Chapter 30, Title 44 of the 1976 Code is amended by adding:

"Article 3

Immunity from Liability
for Providing Free Health Care Services

Section 44-30-310. If a health care provider, licensed pursuant to the laws of this State, informs his or her patient in writing, which may include use of an electronic medical record device, before treatment that the treatment to be rendered by the health care provider will be provided free of charge, the health care provider is not liable for any civil damages for any personal injury as a result of any act or omission by the health care provider rendering treatment free of charge or failure to act to provide or arrange for further treatment, except acts or omission amounting to gross negligence or wilful or wanton misconduct. For purposes of this section, a health care provider includes a dentist maintaining a restricted volunteer license pursuant to Section 40-15-177, a practitioner maintaining a special volunteer license pursuant to Section 40-47-34, and a chiropractor maintaining a special volunteer license pursuant to Section 40-9-85."

Chapter name and article designation

SECTION 2. A. Chapter 30, Title 44 of the 1976 Code is reentitled "Health Care Professionals".

B. Sections 44-30-10 through 44-30-90 are designated as Article 1, Chapter 30, Title 44 and entitled "Health Care Professional Compliance Act".

Code Commissioner directive concerning conforming changes

SECTION 3. When, at the time of printing the Code of Laws, it is practically and economically feasible, the Code Commissioner shall change references to "chapter" in Sections 44-30-10 through 44-30-90 of the 1976 Code to "article".

Agreements for free medical services

SECTION 4. Section 38-79-30 of the 1976 Code is amended to read:

"Section 38-79-30. (A) No licensed health care provider, as defined in Section 38-79-410, who renders medical services voluntarily and without compensation or the expectation or promise of compensation and seeks no reimbursement from charitable and governmental sources is liable for any civil damages for any act or omission resulting from the rendering of the services unless the act or omission was the result of the licensed health care provider's gross negligence or wilful misconduct. The agreement to provide a voluntary, noncompensated service must be made in writing, which may include use of an electronic medical record device, before rendering service in the case of a nonemergency and may be evidenced by the provider's giving notice in writing, which may include use of an electronic medical record device, to the patient or to the person responsible for the patient's care and acting for the patient that the service being rendered is voluntary and without compensation.

(B) For purposes of this section, a health care provider includes a dentist maintaining a restricted volunteer license pursuant to Section 40-15-177, a practitioner maintaining a special volunteer license pursuant to Section 40-47-34, and a chiropractor maintaining a special volunteer license pursuant to Section 40-9-85."

Health care professionals, continuing education

SECTION 5. Any licensed health care provider who renders medical services voluntarily and without compensation or the expectation or promise of compensation and seeks no reimbursement from charitable and governmental sources may fulfill one hour of continuing education for each hour of volunteer medical services rendered, up to a maximum of twenty-five percent of the provider's required continuing education credits for the licensure period.

Time effective

SECTION 6. This act takes effect upon approval by the Governor.

Ratified the 24th day of May, 2016.

Approved the 25th day of May, 2016.

No. 190

(R193, S693)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38-27-475 SO AS TO REVISE THE INSURERS' REHABILITATION AND LIQUIDATION ACT BY ADDING PROVISIONS SPECIFIC TO FEDERAL HOME LOAN BANKS AND INSURER-MEMBERS OF THOSE BANKS IN DELINQUENCY PROCEEDINGS BROUGHT PURSUANT TO THE ACT; TO AMEND SECTION 38-27-50, RELATING TO DEFINITIONS CONCERNING THE ACT, SO AS TO DEFINE ADDITIONAL TERMS; AND TO AMEND SECTION 38-27-70, RELATING TO INJUNCTIONS AND OTHER EQUITABLE REMEDIES AVAILABLE TO RECEIVERS APPOINTED IN DELINQUENCY PROCEEDINGS UNDER THE ACT, SO AS TO PROVIDE CIRCUMSTANCES IN WHICH FEDERAL HOME LOAN BANKS MAY EXERCISE THEIR RIGHTS REGARDING COLLATERAL PLEDGED BY ITS INSURER-MEMBERS INVOLVED IN DELINQUENCY PROCEEDINGS BROUGHT PURSUANT TO THE ACT.

Be it enacted by the General Assembly of the State of South Carolina:

Federal home loan banks and insurer-members, pledge collateral, delinquency proceedings

SECTION 1. Article 5, Chapter 27, Title 38 of the 1976 Code is amended by adding:

"Section 38-27-475. (A) Notwithstanding any other provision of this chapter to the contrary, the receiver for an insurer-member shall not void any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any federal home loan bank security agreement, or any pledge, security, collateral, or guarantee agreement, or any other similar arrangement or credit enhancement relating to a federal home loan bank security agreement made in the ordinary course of business and in compliance with the applicable federal home loan bank agreement. The receiver also may not void a redemption or repurchase of any stock or equity securities made by the

federal home loan bank within four months of the commencement of the delinquency proceedings or which received prior approval of the receiver. However, a transfer is voidable if the transfer is made with the actual intent to hinder, delay, or defraud the insurer-member, existing creditors, or future creditors.

(B) If a federal home loan bank exercises its rights regarding collateral pledged by an insurer-member who is subject to a delinquency proceeding, the federal home loan bank shall repurchase any outstanding capital stock that is in excess of that amount of federal home loan bank stock that the insurer-member is required to hold as a minimum investment, to the extent the federal home loan bank in good faith determines the repurchase to be permissible under applicable laws, regulations, regulatory obligations, and the federal home loan bank's capital plan, and consistent with the federal home loan bank's current capital stock practices applicable to its entire membership.

(C) Following the appointment of a receiver for an insurer-member, the federal home loan bank shall, within ten business days after a request from the receiver is made, provide a process and establish timelines for the:

(1) release of collateral that exceeds the lendable collateral value, as determined pursuant to the advance agreement with the federal home loan bank, required to support secured obligations remaining after any repayment of advances;

(2) release of any of the insurer-member's collateral remaining in the federal home loan bank's possession following full repayment of all outstanding secured obligations of the insurer-member in full;

(3) payment of fees owed by the insurer-member and the operation of deposits and other accounts of the insurer-member with the federal home loan bank; and

(4) possible redemption or repurchase of federal home loan bank stock or excess stock of any class that an insurer-member is required to own.

(D) Upon request from the receiver for an insurer-member, the federal home loan bank shall provide any available options that an insurer-member may exercise to renew or restructure an advance to defer associated prepayment fees, subject to:

(1) market conditions;

(2) the terms of the advances outstanding to the insurer-member;

(3) the applicable policies of the federal home loan bank; and

(4) the compliance of the federal home loan bank with the Federal Home Loan Bank Act, 12 U.S.C. Section 1421, et seq., and corresponding regulations.

(E) Nothing in this section affects the rights of a receiver regarding advances to an insurer-member in delinquency proceedings pursuant to 12 C.F.R. Section 1266.4.

(F) The provisions of this section apply notwithstanding another provision of this chapter."

Definitions

SECTION 2. Section 38-27-50 of the 1976 Code is amended to read:

"Section 38-27-50. For the purposes of this chapter:

(1) 'Ancillary state' means any state other than a domiciliary state.

(2) 'Creditor' is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

(3)(a) 'Delinquency proceeding' means a proceeding instituted against an insurer to liquidate, rehabilitate, reorganize, or conserve the insurer and a summary proceeding under Section 38-27-220.

(b) 'Formal delinquency proceeding' means a liquidation or rehabilitation proceeding.

(4) 'Doing business' includes any of the following acts, whether effected by mail or otherwise:

(a) the issuance or delivery of contracts of insurance to persons resident in this State;

(b) the solicitation of applications for such contracts or other negotiations preliminary to the execution of such contracts;

(c) the collection of premiums, membership fees, assessments, or other consideration for such contracts;

(d) the transaction of matters subsequent to execution of such contracts and arising out of them; or

(e) operating under a license or certificate of authority, as an insurer, issued by the director or his designee.

(5) 'Domiciliary state' means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.

(6) 'Fair consideration' is given for property or obligation:

(a) when in exchange for the property or obligation, as a fair equivalent therefor and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or

(b) when the property or obligation is received in good faith to secure a present advance or antecedent debt in amount not

disproportionately small as compared to the value of the property or obligation obtained.

(7) 'Federal home loan bank' or 'FHLB' means a federal home loan bank established pursuant to the Federal Home Loan Bank Act, 12 U.S.C. Section 1421, et seq.

(8) 'Foreign country' means any other jurisdiction not in any state.

(9) 'General assets' means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, 'general assets' includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, are treated as general assets.

(10) 'Guaranty association' means the South Carolina Property and Casualty Insurance Guaranty Association, the South Carolina Life and Accident and Health Insurance Guaranty Association, and any other similar entity created by the legislature of this State for the payment of claims of insolvent insurers. 'Foreign guaranty association' means any similar entity created by the legislature of any other state.

(11) 'Insolvency' or 'insolvent' means:

(a) For an insurer issuing only assessable fire insurance policies:

(i) the inability to pay any obligation within thirty days after it becomes payable; or

(ii) if an assessment is made within thirty days after that date, the inability to pay the obligation thirty days following the date specified in the first assessment notice issued after the date of loss.

(b) For any other insurer, that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of:

(i) any capital and surplus required by law for its organization; or

(ii) the total par or stated value of its authorized and issued capital stock.

(c) For purposes of this item, 'liabilities' includes, but is not limited to, reserves required by statute, regulations, or specific requirements imposed by the director or his designee upon a subject company at the time of admission or subsequent thereto.

(12) 'Insurer' means any person who has done, purports to do, is doing, or is licensed to do an insurance business and is or has been subject to the authority of, or to liquidation, rehabilitation,

reorganization, supervision, or conservation by, the commissioner of insurance, or similar entity, of any state. For purposes of this chapter, any other persons included under Section 38-27-40 are considered insurers.

(13) 'Insurer-member' means an insurer who is a member of a federal home loan bank.

(14) 'Person' means natural persons, corporations, partnerships, trusts, associations, societies, orders, special purpose reinsurance vehicles, or any other organizations or entities.

(15) 'Preferred claim' means any claim with respect to which the terms of this chapter accord priority of payment from the general assets of the insurer.

(16) 'Receiver' means receiver, liquidator, rehabilitator, or conservator as the context requires.

(17) 'Reciprocal state' means any state other than this State in which in substance and effect subsection (a) of Section 38-27-370, Section 38-27-930, Section 38-27-940, and Sections 38-27-960 through 38-27-980 are in force, and in which provisions are in force requiring that the director, his designee, or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

(18) 'Secured claim' means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.

(19) 'Special deposit claim' means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any claim secured by general assets.

(20) 'State' means any state, district, or territory of the United States and the Panama Canal Zone.

(21) 'Transfer' includes the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest therein or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor is considered a transfer suffered by the debtor."

Equitable remedies

SECTION 3. Section 38-27-70 of the 1976 Code is amended to read:

"Section 38-27-70. (A)(1) A receiver appointed in a proceeding under this chapter may at any time apply for, and a court of general jurisdiction may grant, restraining orders, preliminary and permanent injunctions, and other orders considered necessary and proper to prevent:

(a) the transaction of further business;

(b) the transfer of property;

(c) interference with the receiver or with a proceeding under this chapter;

(d) waste of the insurer's assets;

(e) dissipation and transfer of bank accounts;

(f) the institution or further prosecution of any actions or proceedings;

(g) the obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its policyholders;

(h) the levying of execution against the insurer, its assets, or its policyholders;

(i) the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;

(j) the withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or

(k) any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under this chapter.

(2) The receiver may apply to any court outside of the State for the relief described in this subsection.

(B) After the seventh day following the commencement of a delinquency proceeding involving an insurer-member domiciled in this State, the insurer-member's FHLB must not be stayed or prohibited from exercising its rights regarding collateral pledged by that insurer-member. The provisions of this subsection apply notwithstanding another provision of this chapter."

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 24th day of May, 2016.

Approved the 26th day of May, 2016.

No. 191

(R194, S978)

AN ACT TO AMEND SECTION 38-9-330, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO RISK-BASED CAPITAL PLANS, SO AS TO INCREASE THE MULTIPLIER FOR A COMPANY ACTION LEVEL EVENT FOR A LIFE AND HEALTH INSURER FROM 2.5 TO 3.0; TO AMEND SECTION 38-87-30, RELATING TO THE CHARTERING OF A RISK RETENTION GROUP, SO AS TO DEFINE TERMS, TO PROVIDE THAT A MAJORITY OF A RISK RETENTION GROUPS' DIRECTORS MUST BE INDEPENDENT DIRECTORS, TO ESTABLISH THE MAXIMUM TERM OF ANY MATERIAL SERVICE PROVIDER CONTRACT, TO REQUIRE THE BOARD OF DIRECTORS TO ADOPT A WRITTEN POLICY, TO REQUIRE THE BOARD OF DIRECTORS TO ADOPT AND DISCLOSE ITS GOVERNANCE STANDARDS, TO REQUIRE THE BOARD TO ADOPT AND DISCLOSE A CODE OF BUSINESS CONDUCT AND ETHICS, TO REQUIRE A RISK RETENTION GROUP TO COMPLY WITH APPLICABLE REGULATIONS, TO ESTABLISH PROCEDURES FOR NONCOMPLIANCE, AND TO SET ESTABLISHED DATES FOR COMPLIANCE; TO AMEND SECTION 38-87-40, RELATING TO OUT-OF-STATE RISK RETENTION GROUPS, SO AS TO ALLOW AN OUT-OF-STATE RISK RETENTION GROUP TO SUBMIT REVISIONS TO ITS PLAN OF OPERATION WITHIN THIRTY DAYS OF APPROVAL BY THE STATE INSURANCE COMMISSION OR WITHIN THIRTY DAYS IF NO APPROVAL IS REQUIRED; AND TO AMEND SECTION 38-90-160, AS AMENDED, RELATING TO CAPTIVE INSURANCE COMPANIES, SO AS TO EXTEND THE PROVISIONS OF SECTION 38-87-30 TO A RISK RETENTION GROUP LICENSED AS A CAPTIVE INSURANCE COMPANY.

Be it enacted by the General Assembly of the State of South Carolina:

Company Action Level multiplier increased to 3.0

SECTION 1. Section 38-9-330(A)(2) of the 1976 Code is amended to read:

"(2) filing of an RBC Report which indicates that a life and health insurer has Total Adjusted Capital which is greater than, or equal to, its Company Action Level RBC, but is less than the product of its Authorized Control Level RBC and 3.0 and has a negative trend;"

Requirements for chartering of a risk retention group

SECTION 2. Section 38-87-30 of the 1976 Code is amended to read:

"Section 38-87-30. (A) A risk retention group, pursuant to the provisions of this title, must be chartered and licensed to write only liability insurance under this chapter and, except as provided elsewhere in this chapter, or Chapter 90 for a risk retention group licensed as a captive insurance company, shall comply with all of the laws, regulations, and requirements applicable to these insurers chartered and licensed in this State and with Section 38-87-40 to the extent these requirements are not a limitation on laws, regulations, or requirements of this State.

(B) Before it may offer insurance in any state, each risk retention group chartered in this State shall submit for approval to the director or his designee of this State a plan of operation or feasibility study. The risk retention group shall submit an appropriate revision in the event of any subsequent material change in any item of the plan of operation or feasibility study, within ten days of any such change. The group may not offer any additional kinds of liability insurance, in this State or in any other state, until a revision of such plan or study is approved by the director or his designee.

(C) At the time of filing its application for charter, the risk retention group shall provide to the director or his designee in summary form the following information: the identity of the initial members of the group, the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group, the amount and nature of initial capitalization, the coverages to be afforded, and the states in which the group intends to operate. Upon receipt of this information, the director or his designee may forward such information to the National Association of Insurance Commissioners. Providing notification to the National Association of

Insurance Commissioners is in addition to, and is not sufficient to satisfy, the requirements of Section 38-87-40 or any other provision of this chapter.

(D)(1) As used in this section:

(a) 'Board' means the governing body of the risk retention group elected by the shareholders or members to establish policy, elect or appoint officers and committees, and make other governing decisions.

(b) 'Director' means a natural person designated in the articles of the risk retention group or designated, elected, or appointed by any other manner, name, or title to act as a director.

(c) 'Disclose' means to make information available through electronic or other means and to provide the information to members and insureds upon request.

(d) 'Domestic regulator' means the Director of the South Carolina Department of Insurance or the director's designee.

(e) 'Material relationship' means a relationship between a person with the risk retention group including, but not limited to:

(i) the receipt in any one twelve-month period of compensation or payment of any other item of value by the person, a member of his immediate family or a business with which he is affiliated from the risk retention group or a consultant or service provider to the risk retention group that is greater than or equal to five percent of the risk retention group's gross written premium for this twelve-month period or two percent of its surplus, whichever is greater, as measured at the end of any fiscal quarter falling in this twelve-month period. The person or his immediate family member is not independent until one year after the compensation from the risk retention group falls below the threshold;

(ii) a relationship with an auditor in which a director or an immediate family member of a director who is affiliated with or employed in a professional capacity by a present or former internal or external auditor of the risk retention group is not independent until one year after the end of the affiliation, employment or auditing relationship; or

(iii) a relationship with a related entity in which a director or immediate family member of a director who is employed as an executive officer of another company where any of the risk retention group's present executives serve on that other company's board of directors is not independent until one year after the end of the service or the employment relationship.

(f) 'Service providers' means captive managers, auditors, accountants, actuaries, investment advisors, lawyers, managing general

underwriters, or other parties responsible for underwriting, determination of rates, collection of premium, adjusting and settling claims, or the preparation of financial statements. This term does not include lawyers who serve as defense counsel retained by the risk retention group to defend claims unless the amount of fees paid to these lawyers are greater than or equal to five percent of the risk retention group's gross written premium for the previous twelve-month period or two percent of its surplus, whichever is greater as measured at the end of any fiscal quarter falling in this twelve-month period.

(2)(a) The board of the risk retention group shall have a majority of independent directors. If the risk retention group is reciprocal, then the attorney-in-fact would be required to adhere to the same standards regarding independence of operation and governance as imposed on the risk retention group's board and subscribers advisory committee under these standards. To the extent permissible under state law, service providers of a reciprocal risk retention group shall contract with the risk retention group and not the attorney-in-fact.

(b) A director does not qualify as independent unless the board affirmatively determines that he has no material relationship with the risk retention group. Each risk retention group annually shall disclose these determinations to its domestic regulator. For this purpose, a person who is a direct or indirect owner or a subscriber in the risk retention group, or is an officer, director, or employee of an owner and insured, unless some other position of the officer, director, or employee constitutes a material relationship, as contemplated by Section 3901(a)(4)(E)(ii) of the Liability Risk Retention Act, is considered to be independent.

(3)(a) The term of a material service provider contract with the risk retention group must not exceed five years. The contract, or its renewal, must require the approval of the majority of the risk retention group's independent directors. The risk retention group's board may terminate a service provider, contract, audit contract, or actuarial contract at any time for cause after providing adequate notice as defined in the contract. The service provider contract is considered material if the amount to be paid for the contract is greater than or equal to five percent of the risk retention group's annual gross written premium or two percent of its surplus, whichever is greater.

(b) A service provider contract meeting the definition of material relationship contained in this section may not be entered unless the risk retention group has notified the domestic regulator in writing of its intention to enter into the transaction at least thirty days prior and the domestic regulator has not disapproved it within the period.

(4) The risk retention group's board shall adopt and approve a written policy in the plan of operation that requires the board to:

(a) assure all owners and insureds of the risk retention group receive evidence of ownership interest;

(b) develop a set of governance standards applicable to the risk retention group;

(c) oversee the evaluation of the risk retention group's management including, but not limited to, the performance of the captive manager, managing general underwriter, or other party responsible for underwriting, determination of rates, collection of premiums, adjusting or settling claims, or the preparation of financial statements;

(d) review and approve the amount to be paid for all material service providers; and

(e) review and approve, at least annually, the:

(i) risk retention group's goals and objectives relevant to the compensation of officers and service providers;

(ii) officers and service providers, performance in light of those goals and objectives; and

(iii) continued engagement of the officers and material service providers.

(5) The board shall adopt and disclose governance standards by making the following information available through electronic or other means and providing this information to members and insureds upon request:

(a) the process by which the directors are elected by the owner and insureds;

(b) director qualification standards;

(c) director responsibilities;

(d) director access to management and, as necessary and appropriate, independent advisors;

(e) director compensation;

(f) director orientation and continuing education;

(g) the policies and procedures for management succession; and

(h) the policies and procedures for annual performance evaluation of the board.

(6) The board shall adopt and disclose a code of business conduct and ethics for directors, officers, and employees and promptly disclose to the board of directors any waivers of the code for directors or executive officers, including:

(a) conflicts of interest;

(b) matters covered under the corporate opportunities doctrine under the state of domicile;

(c) confidentiality;

(d) fair dealing;

(e) protection and proper use of risk retention group assets;

(f) compliance with all applicable laws, rules, and regulations; and

(g) requiring the reporting of any illegal or unethical behavior which affects the operation of the risk retention group.

(7) The audit provisions of S.C. Code of Regulations 69-70 related to audit committees apply to risk retention groups.

(8) The captive manager, president, or chief executive officer of the risk retention group promptly shall notify the domestic regulator in writing if he becomes aware of any material noncompliance with any of these governance standards.

(9) All existing risk retention groups must be in compliance with the governance standards contained in this section by January 1, 2018. New risk retention groups licensed after January 1, 2017, must be in compliance with the standards at the time of licensure."

Out-of-state risk retention group has thirty days to submit material revisions to the director

SECTION 3. Section 38-87-40(1)(b) of the 1976 Code is amended to read:

"(b) The risk retention group shall submit a copy of any material revision to its plan of operation or feasibility study required by Section 38-87-30(B) within thirty days of the date of approval of the revision by the commissioner of its chartering state, or within thirty days of filing if no approval is required."

Risk retention group licensing requirements apply to risk retention groups licensed as captive insurers

SECTION 4. Section 38-90-160(D) of the 1976 Code is amended to read:

"(D) Except as provided elsewhere in this chapter, the provisions of Chapter 87, Title 38 apply to a risk retention group licensed as a captive insurance company. The provisions of Section 38-87-30(D) apply in full to a risk retention group licensed as a captive insurance company and control if a conflict occurs between that code section and this chapter."

Severability Clause

SECTION 5. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 6. This act takes effect on January 1, 2017.

Ratified the 24th day of May, 2016.

Approved the 26th day of May, 2016.

No. 192

(R199, H3848)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "SOUTH CAROLINA FOUNDING PRINCIPLES ACT" BY ADDING SECTION 59-29-155 SO AS TO PROVIDE THE STATE BOARD OF EDUCATION AND EDUCATION OVERSIGHT COMMITTEE SHALL INCORPORATE INSTRUCTION ON CERTAIN FOUNDING PRINCIPLES OF THE UNITED STATES INTO REQUIRED STUDIES OF THE UNITED STATES CONSTITUTION AND THE SOUTH CAROLINA SOCIAL STUDIES STANDARDS, TO SPECIFY CERTAIN MINIMUM CONTENT REQUIREMENTS, TO PROVIDE THE STATE DEPARTMENT OF EDUCATION BIENNIALLY SHALL REPORT ON THE IMPLEMENTATION OF THIS ACT TO THE GENERAL ASSEMBLY, AND TO PROVIDE THE DEPARTMENT SHALL OFFER PROFESSIONAL

DEVELOPMENT OPPORTUNITIES REGARDING FOUNDING PRINCIPLES INSTRUCTION TO TEACHERS.

Whereas, the United States of America is currently celebrating the 239th year of its independence and the 228th year of its people living free under the United States Constitution, the greatest governing principles ever written; and

Whereas, it is the obligation and responsibility of every United States citizen to understand the importance of the Declaration of Independence, the Constitution, the Federalist Papers, and other documents that set forth and explain the principles of federalism, a governing system whereby the states and the federal government share responsibility for governing, and understand the rights of the people to private property, due process, and other inalienable rights; and

Whereas, the Tenth Amendment to the United States Constitution provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the State respectively, or to the people"; and

Whereas, the preservation of our great nation depends on strict adherence to the Tenth Amendment and other principles that protect the states and the people from overzealous acts of all branches of the federal government; and

Whereas, many preeminent legal scholars and jurists, including Justice Sandra Day O'Connor, have observed that "Congress will nibble away at state sovereignty, bit by bit, until someday essentially nothing is left but a gutted shell"; and

Whereas, understanding the proper role and the limitations of government have been a recurring issue for our courts throughout the history of our nation; and

Whereas, every state has constitutional requirements for the education of the children of the state; and

Whereas, many states recognize the importance of complying with its constitutional mandate of education by enacting laws that require graduating students to have a working knowledge of this country's Founding Principles; and

Whereas, as stated by Patrick Henry, "No free government, or the blessings of liberty, can be preserved to any people [but] by a frequent recurrence to fundamental principles"; and

Whereas, educating our children on the Founding Principles of our nation is crucial to the continuance of our free Republic. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

Citation

SECTION 1. This act is known and may be cited as the "South Carolina Founding Principles Act".

Founding principles instruction required, reporting requirements, professional development

SECTION 2. Article 1, Chapter 29, Title 59 of the 1976 Code is amended by adding:

"Section 59-29-155. (A) The State Board of Education and Education Oversight Committee shall incorporate instruction on the founding principles that shaped the United States into the required study of the United States Constitution as provided in Section 59-29-120, and the South Carolina Social Studies Standards upon the next cyclical review. The board and committee shall include, at a minimum, the Federalist Papers and instruction on the structure of government and the role of the separation of powers and the freedoms guaranteed by the Bill of Rights to the United States Constitution.

(B) The State Department of Education biennially shall submit a report by October fifteenth of each odd-numbered year, commencing in 2017, to the Senate Education Committee and the House Education and Public Works Committee documenting the implementation of this section.

(C) The State Department of Education shall make available professional development opportunities to teachers regarding subsection (A) by physical or electronic means."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 24th day of May, 2016.

Approved the 26th day of May, 2016.

No. 193

(R202, H4138)

AN ACT TO AMEND SECTION 40-11-270, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CONTRACTOR'S LICENSES AND LICENSE CLASSIFICATIONS AND SUBCLASSIFICATIONS, SO AS TO PROVIDE THAT EACH PERSON HOLDING A LICENSE IN THE MECHANICAL CONTRACTOR SUBCLASSIFICATION OF AIR CONDITIONING, HEATING, OR PACKAGED EQUIPMENT SHALL DISPLAY THE MECHANICAL CONTRACTOR LICENSE IN A CONSPICUOUS MANNER AT HIS PRINCIPAL PLACE OF BUSINESS, TO PROVIDE THAT ALL COMMERCIAL VEHICLES USED BY MECHANICAL CONTRACTORS LICENSED IN THE SUBCLASSIFICATION OF AIR CONDITIONING, HEATING, OR PACKAGED EQUIPMENT EXCLUSIVELY IN THE DAILY OPERATION OF THEIR BUSINESS SHALL HAVE PROMINENTLY DISPLAYED ON THEM THE MECHANICAL CONTRACTOR LICENSE NUMBER, AND TO PROVIDE THAT EACH INVOICE AND PROPOSAL FORM ALSO SHALL CONTAIN THE MECHANICAL CONTRACTOR LICENSE NUMBER.

Be it enacted by the General Assembly of the State of South Carolina:

Display of license and license number

SECTION 1. Section 40-11-270 of the 1976 Code is amended to read:

"Section 40-11-270. (A) A licensee is confined to the limitations of the licensee's license group and license classifications or subclassifications as provided in this chapter.

(B) Each person holding a license in the mechanical contractor subclassification of air conditioning, heating, or packaged equipment shall display the mechanical contractor license in a conspicuous manner at his principal place of business.

(C) All commercial vehicles, used by mechanical contractors licensed in the subclassification of air conditioning, heating, or packaged equipment exclusively in the daily operation of their business, shall have prominently displayed on them the mechanical contractor license number issued by the Department of Labor, Licensing and Regulation. Each invoice and proposal form also shall contain the mechanical contractor license number.

(D) An entity may apply for and be licensed in more than one classification or subclassification if all qualifications for licensure prescribed by this chapter have been met. An applicant may apply for a license in more than one classification or subclassification on the same application form.

(E) Licensees may utilize the services of unlicensed subcontractors to perform work within the limitations of the licensee's license group and license classification or subclassification; provided, the licensee provides supervision. The licensee is fully responsible for any violations of this chapter resulting from the actions of unlicensed subcontractors performing work for the licensee."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 24th day of May, 2016.

Approved the 26th day of May, 2016.

No. 194

(R204, H4817)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38-53-95 SO AS TO

REQUIRE AN INDIVIDUAL WHO APPLIES FOR A BONDSMAN OR RUNNER LICENSE TO PROVIDE HIS BUSINESS, EMAIL, MAILING, AND RESIDENTIAL STREET ADDRESSES TO THE DEPARTMENT; TO AMEND SECTION 38-43-107, RELATING TO THE ADDRESS REQUIREMENT FOR AN INSURANCE PRODUCER'S LICENSE, SO AS TO REQUIRE AN APPLICANT TO PROVIDE AN EMAIL ADDRESS TO THE DEPARTMENT; TO AMEND SECTION 38-45-30, RELATING TO REQUIREMENTS FOR A NONRESIDENT TO BE LICENSED AS AN INSURANCE BROKER, SO AS TO DELETE THE AFFIDAVIT REQUIREMENTS; TO AMEND SECTION 38-45-110, RELATING TO WARNING STAMPS ON POLICIES OF ELIGIBLE SURPLUS LINES INSURANCE, SO AS TO NO LONGER REQUIRE A BROKER TO WRITE OR STAMP A WARNING ON THE FACE OF AN APPLICATION FOR ELIGIBLE SURPLUS LINES INSURANCE; TO AMEND SECTION 38-47-15, RELATING TO THE ADDRESS REQUIREMENT FOR AN INSURANCE ADJUSTER'S LICENSE, SO AS TO REQUIRE AN APPLICANT TO PROVIDE AN EMAIL ADDRESS TO THE DEPARTMENT; TO AMEND SECTION 38-48-30, RELATING TO THE ADDRESS REQUIREMENT FOR A PUBLIC INSURANCE ADJUSTER'S LICENSE, SO AS TO REQUIRE AN APPLICANT TO PROVIDE AN EMAIL ADDRESS TO THE DEPARTMENT; TO AMEND SECTION 38-49-25, RELATING TO THE ADDRESS REQUIREMENT FOR A MOTOR VEHICLE PHYSICAL DAMAGE APPRAISER'S LICENSE, SO AS TO REQUIRE AN APPLICANT TO PROVIDE AN EMAIL ADDRESS TO THE DEPARTMENT; AND TO AMEND SECTION 38-43-100, RELATING TO INSURANCE PRODUCER LICENSING, SO AS TO REQUIRE AN APPLICANT TO COMPLY WITH ALL LICENSING AND RENEWAL REQUIREMENTS AND TO FURNISH A COMPLETE SET OF FINGERPRINTS TO THE DIRECTOR AND UNDERGO A STATE CRIMINAL RECORDS CHECK.

Be it enacted by the General Assembly of the State of South Carolina:

Address requirements for bondsman or runner license

SECTION 1. Chapter 53, Title 38 of the 1976 Code is amended by adding:

"Section 38-53-95. (A) If an individual applies for a professional or surety bondsman or runner license, he shall supply the department his business, email, mailing, and residential street addresses. The bondsman or runner also shall notify the department within thirty days of any change in legal name or any of these addresses.

(B) Failure to inform the director or his designee of a change in legal name or addresses within thirty days is a violation of this title and the bondsman or runner is subject to the penalties provided in Section 38-2-10."

Insurance producer's license, email address required

SECTION 2. Section 38-43-107(A) of the 1976 Code is amended to read:

"(A) If an individual applies for an insurance producer's license, he shall supply the department his business, email, mailing, and residential street addresses. The producer also shall notify the department within thirty days of any change in legal name or in these addresses."

Nonresident insurance broker license, affidavit requirement removed

SECTION 3. Section 38-45-30 of the 1976 Code is amended to read:

"Section 38-45-30. A nonresident may be licensed as an insurance broker by the director or his designee if the following requirements are met:

(1) filing an application on a form prescribed by the director or his designee;

(2) paying a biennial license fee of two hundred dollars fully earned when received, not refundable;

(3) an aggrieved person may institute an action in the county of his residence against the broker to recover damages. A copy of the summons and complaint in the action must be served on the director, who is not required to be made a party to the action;

(4) paying the department, within thirty days after March thirty-first, June thirtieth, September thirtieth, and December thirty-first each year, the broker's premium tax rate upon premiums for policies of insurers not licensed in this State. In computing total premiums, return premiums on risks and dividends paid or credited to policyholders are excluded. The credit must be refunded to the policyholder."

Broker stamp no longer required on surplus lines application

SECTION 4. Section 38-45-110 of the 1976 Code is amended to read:

"Section 38-45-110. The broker shall write or stamp upon the face of each policy of an eligible surplus lines insurer the words, 'This company has been approved by the director or his designee of the South Carolina Department of Insurance to write business in this State as an eligible surplus lines insurer, but it is not afforded guaranty fund protection'."

Adjustor's license, email address required

SECTION 5. Section 38-47-15 of the 1976 Code is amended to read:

"Section 38-47-15. When an individual applies for an adjuster's license he shall supply the department his business, email, and residential addresses. The adjuster shall notify the department within thirty days of any change in these addresses."

Public adjustor's license, email address required

SECTION 6. Section 38-48-30 of the 1976 Code is amended to read:

"Section 38-48-30. When an individual applies for a public adjuster's license, he shall supply the department his business, email, and residential addresses and telephone numbers. The public adjuster shall notify the department within thirty days of any change in these addresses."

Motor vehicle physical damage appraiser's license, email address required

SECTION 7. Section 38-49-25 of the 1976 Code is amended to read:

"Section 38-49-25. When an individual applies for a motor vehicle physical damage appraiser's license he shall supply the department his business, email, and residential addresses. The appraiser shall notify the department within thirty days of any change in these addresses."

Resident insurance producer license, background check requirements

SECTION 8. Section 38-43-100(F) of the 1976 Code is amended to read:

"(F) A person applying for a resident insurance producer license or a person applying on behalf of the applicant shall make application to the director or his designee on the Uniform Application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the applicant's knowledge and belief. Before approving the application, the director or his designee shall find that the applicant:

(1) is at least eighteen years of age;

(2) is a person of good moral character and has not been convicted of a felony or any crime involving moral turpitude within the last ten years that is a ground for denial, suspension, or revocation as provided for in Section 38-43-130;

(3) has paid the fees provided for in Section 38-43-80; and

(4) has successfully passed the examination or examinations for the line or lines of insurance for which the person has applied.

(5) Effective January 1, 2017, before a license is issued to an applicant or is renewed permitting him to act as a resident producer, the applicant shall comply with the licensing and renewal requirements set for in this section and by regulation. In addition to those licensing requirements, the applicant shall:

(a) furnish a complete set of his fingerprints to the director or his designee; and

(b) undergo a state criminal records check, supported by his fingerprints, by the South Carolina Law Enforcement Division (SLED) and a national criminal records check, supported by his fingerprints, by the Federal Bureau of Investigation (FBI). The results of these criminal records checks must be reported to the department. The cost associated with the criminal history records checks must be borne by the applicant. The applicant's fingerprints must be certified by a law enforcement officer authorized by SLED."

Time effective

SECTION 9. This act takes effect upon approval by the Governor.

Ratified the 24th day of May, 2016.

Approved the 26th day of May, 2016.

No. 195

(R206, H4936)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 59-1-50 SO AS TO PROVIDE FOR EDUCATIONAL ACHIEVEMENT GOALS FOR SOUTH CAROLINA HIGH SCHOOL GRADUATES AND STUDENTS, AND THE STANDARDS AND AREAS OF LEARNING BY WHICH THESE GOALS ARE MEASURED.

Be it enacted by the General Assembly of the State of South Carolina:

Educational achievement goals for high school graduates and students

SECTION 1. Article 1, Chapter 1, Title 59 of the 1976 Code is amended by adding:

"Section 59-1-50. (A) The General Assembly declares that the principles outlined in the Profile of the South Carolina Graduate, published by the South Carolina Association of School Administrators and approved by the South Carolina Chamber of Commerce, the South Carolina Council on Competitiveness, the Education Oversight Committee, the State Board of Education and Transform SC schools and districts, are the standards by which our state's high school graduates should be measured and are this state's achievement goals for all high school students. The State shall make a reasonable and concerted effort to ensure that graduates have world class knowledge based on rigorous standards in language arts and math for college and career readiness. Students should have the opportunity to learn one of a number of foreign languages, and have offerings in science, technology, engineering,

mathematics, arts, and social sciences that afford them the knowledge needed to be successful.

(B) Students also must be offered the ability to obtain world class skills such as:

(1) creativity and innovation;
(2) critical thinking and problem solving;
(3) collaboration and teamwork;
(4) communication, information, media, and technology; and
(5) knowing how to learn.

(C) Students finally also must be offered reasonable exposure, examples, and information on the state's vision of life and career characteristics such as:

(1) integrity;
(2) self-direction;
(3) global perspective;
(4) perseverance;
(5) work ethic; and
(6) interpersonal skills."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 24th day of May, 2016.

Approved the 26th day of May, 2016.

No. 196

(R210, S21)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 56-1-222 SO AS TO PROVIDE THAT A PERSON DIAGNOSED WITH LOW VISION ACUITY WHO USES BIOPTIC TELESCOPIC LENSES FOR VISION ASSISTANCE MAY BE ISSUED A DRIVER'S LICENSE UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE FOR THE RENEWAL OF THE DRIVER'S LICENSE, TO PROVIDE FOR THE REVOCATION OF THE DRIVER'S LICENSE, TO PROVIDE THAT THE PERSON MAY NOT BE ISSUED A

LICENSE TO OPERATE A MOTORCYCLE OR A COMMERCIAL DRIVER'S LICENSE, AND TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES MAY PROMULGATE REGULATIONS TO IMPLEMENT THE PROVISIONS CONTAINED IN THIS SECTION.

Be it enacted by the General Assembly of the State of South Carolina:

Driver's licenses issued to wearers of bioptic telescopic lenses

SECTION 1. Article 1, Chapter 1, Title 56 of the 1976 Code is amended by adding:

"Section 56-1-222. (A) Notwithstanding the provisions contained in Section 56-1-220, a person diagnosed with low vision acuity who uses bioptic telescopic lenses for vision assistance may be issued a driver's license by the Department of Motor Vehicles if he:

(1) submits a vision report form that complies with subsection (B);

(2) submits proof that he has been trained to operate a motor vehicle while wearing bioptic telescopic lenses as evidenced by having completed successfully a driver-training course or program that meets the criteria listed in subsection (C) for these programs; and

(3) meets all other qualifications for obtaining a driver's license, including passing the department-administered road test while wearing bioptic telescopic lenses. A person applying for a driver's license pursuant to this section who fails to pass the road test after three attempts must present certification of repeat completion of a driver-training course or program that meets the criteria listed in subsection (C).

(B) An applicant for a driver's license who will use bioptic telescopic lenses for vision assistance while driving must submit a vision report form supplied by the department. The report must be completed by an optometrist or ophthalmologist. The report must include:

(1) the applicant's vital data;

(2) the bioptic telescopic system vendor's name and type, strength (in X-power), and the date the bioptic telescopic system was dispensed to the applicant;

(3) a statement regarding whether the applicant has a potentially progressive condition; and

(4) certification by an optometrist or ophthalmologist that the applicant:

(a) is not impaired in the movement of his eyes, head, or neck;

(b) possesses sound cognitive and perceptual skills, reaction time, range of motion, and coordination of upper and lower extremities needed to operate a motor vehicle;

(c) is able to detect and recognize the colors of traffic signals and devices showing standard red, green, and amber colors or passes the large disc D-15 color test, or both;

(d) has visual acuity of at least 20/120 in the better functioning eye when looking through the carrier lens of a bioptic telescopic aid;

(e) has improved visual acuity of at least 20/40 using the bioptic telescopic aid in the better functioning eye;

(f) has a binocular horizontal visual field diameter of not less than one hundred twenty degrees and a vertical field of not less than eighty degrees without the use of visual field expanders. If the applicant is monocular, the horizontal visual field may not be less than seventy degrees temporally and thirty-five degrees nasally;

(g) has the signed approval of an optometrist or ophthalmologist to apply for driving privileges using a bioptic telescope;

(h) has successfully completed an In-Clinic Pre-Driver Bioptic Evaluation and Training Program as contained in subsection (C) that was provided by a doctorate level Eye Care Professional (ECP), Certified Driving Rehabilitation Specialist (CDRS), Certified Low Vision Therapist (CLVT), or Certified Orientation and Mobility Specialist (COMS), or such other designations of qualification as may be recognized by the department who are certified in Bioptic Driving Training; and

(i) has successfully completed a recognized Bioptic Driving Behind-the-Wheel Training Program provided by an ECP, CDRS, CLVT, COMS, or such other designations of qualification as recognized by the department who has certification in Bioptic Driving Training recognized by the department.

(C) A person applying for a driver's license pursuant to this section must complete successfully a bioptic driver training course or program certified to train individuals to use bioptic telescopic glasses while operating a motor vehicle. The applicant must pass this training before he is eligible to take the behind-the-wheel driver's test administered by the department. This program shall consist of the following two parts:

(1) Part 1 is the In-Clinic Pre-Driver Bioptic Evaluation and Training Program and is supervised or reviewed by the optometrist or ophthalmologist that prescribed the bioptic telescope. This portion of the program is conducted by an ECP, CDRS, CLVT, COMS, or such other designations of qualification as recognized by the department who has certification in Bioptic Driving Training recognized by the department.

An applicant must satisfactorily complete all components of Part 1 prior to advancing to the behind-the-wheel aspect of the Bioptic Training Program.

(a) The evaluation portion of Part 1 includes a preliminary interview, an assessment of cognitive and perceptual skills, a commentary drive screening, a reaction time screening, and a preliminary in-car driver's evaluation (including an upper and lower extremities and range of motion skills screening) by an ECP, CDRS, CLVT, COMS, or such other designations of qualification as recognized by the department.

(b) The training portion of Part 1 requires a minimum of ten hours of commentary driving skills training as a front seat passenger. Commentary driver training must include, but is not limited to, instruction and reinforcement in the following areas:

(i) space cushion driving skills;

(ii) critical object awareness skills;

(iii) basic bioptic utilization skills;

(iv) joining and leaving traffic formations; and

(v) lane changing skills (including mirror and blind spot awareness skills).

(2) Part 2 is the Behind-the-Wheel Bioptic Driving Program. This program is conducted on-road by an ECP, CDRS, CLVT, COMS, or such other designations of qualification as recognized by the department who has certification in Bioptic Driving Training. The course or program must consist of the following minimum training requirements:

(a) for a person with no previous driving experience, the course shall consist of at least thirty hours of behind-the-wheel driving skills with a bioptic telescopic lens system in place and under the supervision of an ECP, CDRS, CLVT, COMS, or such other designations of qualification as recognized by the department who has certification in Bioptic Driving Training. For a person with previous driving experience, the course shall consist of at least twenty hours behind-the-wheel driving skills under the supervision of an ECP, CDRS, CLVT, COMS, or such other designations of qualification as recognized by the department who has certification in Bioptic Driving Training;

(b) review and integrated reinforcement of the proper and appropriate use of the bioptic telescopic lens system while driving a motor vehicle, including cleaning and focusing procedures and vertical spotting exercises; and

(c) the award of a Certificate of Completion of Training to a trainee when he successfully completes the Behind-the-Wheel Bioptic Driver's Training Program. He must present this certificate to the

department in order to take the on-the-road portion of the driver's license test with his bioptic telescope system in place. He also shall provide a copy of the certificate to the supervising optometrist or ophthalmologist.

The applicant must apply for a driver's license and take the department road test within twelve months of having completed the Behind-the-Wheel Bioptic Driving Program. The road test is the same standard road test taken by all other persons applying for a regular driver's license.

(D) A person who is licensed to drive using bioptic telescopic aid is subject to restrictions placed on his license. Restrictions may include, but are not limited to:

(1) driving only during daylight hours;

(2) the vehicle being operated by the bioptic driver must be equipped with both left and right side mirrors;

(3) the bioptic driver shall not be permitted to operate a motorcycle, moped, or motor scooter;

(4) the bioptic driver may not drive during adverse weather conditions that significantly reduce the visibility of the roadway or other traffic and traffic control devices;

(5) a maximum speed of fifty miles per hour;

(6) no other mental or physical handicaps; and

(7) no driving on an interstate highway.

Any restrictions must be confirmed and finalized by the department's certified driver licensing examining officer. Any restrictions must be eligible for review and reconsideration after one year, as determined and recommended by the examining optometrist or ophthalmologist and approved by the department.

(E) An applicant who is issued a driver's license pursuant to this section must have the low vision report updated annually within sixty days of the annual anniversary date of driver's licensure by an optometrist or ophthalmologist and submit it to the department for review. The eye care professional that examines the applicant and completes the report shall indicate at the top of the report whether the applicant's vision condition has deteriorated so that the applicant no longer meets the requirements of subsection (B)(4). The department shall review the report.

(F) If the report indicates a progressive loss of vision but the applicant still meets the vision requirements of subsection (B)(4), the applicant may be required to take additional driver training and additional on-road testing before his license may be renewed.

(G) If the report indicates that the applicant no longer meets the requirements of subsection (B)(4), the department immediately shall

revoke the license held by the applicant. To be issued a new valid license, the applicant must retake the department-administered road test and meet the requirements of subsection (B)(4).

(H) Nothing in this section permits an applicant who uses bioptic telescopic lenses for vision assistance to apply for a license to operate a motorcycle or a commercial driver's license."

Promulgation of regulations

SECTION 2. The department shall promulgate any regulations as may be necessary to implement the provisions of Section 1.

Time effective

SECTION 3. This act takes effect one year after approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 197

(R211, S139)

AN ACT TO AMEND SECTION 48-39-130, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PERMITS REQUIRED FOR COASTAL ZONE CRITICAL AREAS, SO AS TO ALLOW CERTAIN TECHNIQUES TO BE USED TO PROTECT BEACH AND DUNE CRITICAL AREAS WITHOUT APPLYING FOR A PERMIT WHILE ACTING UNDER AN EMERGENCY ORDER; TO AMEND SECTION 48-39-290, AS AMENDED, RELATING TO RESTRICTIONS ON CONSTRUCTION OR RECONSTRUCTION SEAWARD OF THE BASELINE, SO AS TO ALLOW FOR THE USE OF WOOD-LIKE MATERIAL FOR WALKWAYS AND SMALL WOODEN DECKS, TO NARROW THE EXCEPTION OF GOLF COURSES FROM PERMITTING REQUIREMENTS, TO EXPAND PERMITTING EXCEPTIONS TO SANDFENCING, REVEGETATION OF DUNES, MINOR BEACH

RENOURISHMENT, AND DUNE CONSTRUCTION, TO ALLOW FOR THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO ISSUE GENERAL PERMITS IN CERTAIN CIRCUMSTANCES, AND TO ESTABLISH THAT THE DEPARTMENT'S PERMITTING COMMITTEE COASTAL DIVISION SHALL CONSIDER APPLICATIONS FOR SPECIAL PERMITS; AND TO AMEND SECTION 48-39-280, RELATING TO THE FORTY-YEAR RETREAT POLICY, SO AS TO PROHIBIT THE BASELINE FROM MOVING SEAWARD FROM THE POSITION DETERMINED ON DECEMBER 31, 2017, AND TO ELIMINATE THE RIGHT OF LOCAL GOVERNMENTS AND LANDOWNERS TO PETITION THE ADMINISTRATIVE LAW COURT TO MOVE THE BASELINE SEAWARD UPON COMPLETION OF A BEACH RENOURISHMENT PROJECT.

Be it enacted by the General Assembly of the State of South Carolina:

Techniques allowed to protect beach and dune critical areas under an emergency order

SECTION 1. Section 48-39-130(D)(1) of the 1976 Code is amended to read:

"(1) The accomplishment of emergency orders of an appointed official of a county or municipality or of the State, acting to protect the public health and safety, upon notification to the department. However, with regard to the beach and dune critical area, the following techniques or a combination thereof, shall be used in accordance with guidelines provided by the department are allowed pursuant to this item:

(a) sandbags, provided that a bond is supplied to reasonably estimate and cover the cost of removal;

(b) sandscraping;

(c) renourishment;

(d) any other technology, methodology, or structure pursuant to Section 48-39-320(C), provided that:

(i) the emergency order for use is only issued by the department; and

(ii) a bond is supplied to reasonably estimate and cover the cost of removal; or

(e) a combination of these techniques."

Exceptions on construction or reconstruction expanded

SECTION 2. Section 48-39-290(A) of the 1976 Code, as last amended by Act 25 of 2011, is further amended to read:

"(A) No new construction or reconstruction is allowed seaward of the baseline except:

(1) walkways no larger in width than six feet and constructed of wood or other department-approved wood-like material;

(2) small wooden decks no larger than one hundred forty-four square feet and constructed of wood or other department-approved wood-like material;

(3) fishing piers and associated amenity structures which are open to the public. Those fishing piers with their associated amenity structures including, but not limited to, baitshops, restrooms, restaurants, and arcades which existed September 21, 1989, may be rebuilt if they are constructed to the same dimensions and utilized for the same purposes and remain open to the public. In addition, those fishing piers with their associated amenity structures that existed on September 21, 1989, and that were privately owned, privately maintained, and not open to the public on that date also may be rebuilt and used for the same purposes if they are constructed to the same dimensions;

(4) golf courses for repair and maintenance, and any action taken pursuant to Section 48-39-135;

(5) normal landscaping, sandfencing, revegetation of dunes, minor beach renourishment, and dune construction;

(6) structures specifically permitted by special permit as provided in subsection (D);

(7) existing pools if they are landward of an existing, functional erosion control structure, or device;

(8) existing groins, which may be reconstructed, repaired, and maintained. New groins may be allowed only on beaches that have high erosion rates with erosion threatening existing development or public parks. In addition to these requirements, new groins may be constructed, and existing groins may be reconstructed, only in furtherance of an ongoing beach renourishment effort which meets the criteria set forth in regulations promulgated by the department and in accordance with the following:

(a) The applicant shall institute a monitoring program for the life of the project to measure beach profiles along the groin area and adjacent and downdrift beach areas sufficient to determine

erosion/accretion rates. For the first five years of the project, the monitoring program must include, but is not necessarily limited to:

(i) establishment of new monuments;

(ii) determination of the annual volume and transport of sand; and

(iii) annual aerial photographs.

Subsequent monitoring requirements must be based on results from the first five-year report.

(b) Groins may be permitted only after thorough analysis demonstrates that the groin will not cause a detrimental effect on adjacent or downdrift areas. The applicant shall provide a financially binding commitment, such as a performance bond or letter of credit that is reasonably estimated to cover the cost of reconstructing or removing the groin and/or restoring the affected beach through renourishment pursuant to subitem (c).

(c) If the monitoring program established pursuant to subitem (a) shows an increased erosion rate along adjacent or downdrift beaches that is attributable to a groin, the department shall require either that the groin be reconfigured so that the erosion rate on the affected beach does not exceed the preconstruction rate, that the groin be removed, and/or that the beach adversely affected by the groin be restored through renourishment.

(d) Adjacent and downdrift communities and municipalities must be notified by the department of all applications for a groin project.

(e) Nothing in this section shall be construed to create a private cause of action, but nothing in this section shall be construed to limit a cause of action under recognized common law or other statutory theories. The sole remedies, pursuant to this section, are:

(i) the reconstruction or removal of a groin; and/or

(ii) restoration of the adversely affected beach and adjacent real estate through renourishment pursuant to subitem (c), or both.

An adjacent or downdrift property owner who claims a groin has caused or is causing an adverse impact shall notify the department of the impact. The department shall render an initial determination within sixty days of such notification. Final agency action must be rendered within twelve months of notification. An aggrieved party may appeal the decision pursuant to the Administrative Procedures Act.

A permit must be obtained from the department for items (2) through (8). However, no permit is required pursuant to this chapter for associated amenity structures constructed on fishing piers if local governmental bodies having responsibility for the planning and zoning authorize construction of those amenity structures. Associated amenity

structures do not include those employed as overnight accommodations or those consisting of more than two stories above the pier decking. Associated amenity structures, excluding restrooms, handicapped access features, and observation decks, may occupy no more than thirty-five percent of the total surface area of the fishing pier or be constructed at a location further seaward than one-half of the length of the fishing pier as measured from the baseline. The department, in its discretion, may issue general permits for items (2) and (5) where issuance of the general permit would advance the implementation and accomplishment of the goals and purposes contained in Sections 48-39-250 through 48-39-360."

Baseline may not be moved seaward after December 31, 2017

SECTION 3. Section 48-39-280 of the 1976 Code is amended to read:

"Section 48-39-280. (A) A forty-year policy of retreat from the shoreline is established. The department must implement this policy and utilize the best available scientific and historical data in the implementation. The department must establish a baseline that parallels the shoreline for each standard erosion zone and each inlet erosion zone. Subject to Section 48-39-290(D), the baseline established pursuant to this section must not move seaward from its position on December 31, 2017.

(1) The baseline for each standard erosion zone is established at the location of the crest of the primary oceanfront sand dune in that zone. In standard erosion zones in which the shoreline has been altered naturally or artificially by the construction of erosion control devices, groins, or other manmade alterations, the baseline must be established by the department using the best scientific and historical data, as where the crest of the primary oceanfront sand dunes for that zone would be located if the shoreline had not been altered.

(2) The baseline for inlet erosion zones that are not stabilized by jetties, terminal groins, or other structures must be determined by the department as the most landward point of erosion at any time during the past forty years, unless the best available scientific and historical data of the inlet and adjacent beaches indicate that the shoreline is unlikely to return to its former position. In collecting and utilizing the best scientific and historical data available for the implementation of the retreat policy, the department, as part of the State Comprehensive Beach Management Plan provided for in this chapter, among other factors, must consider historical inlet migration, inlet stability, channel and ebb tidal delta

changes, the effects of sediment bypassing on shorelines adjacent to the inlets, and the effects of nearby beach restoration projects on inlet sediment budgets.

(3) The baseline within inlet erosion zones that are stabilized by jetties, terminal groins, or other structures must be determined in the same manner as provided for in item (1). However, the actual location of the crest of the primary oceanfront sand dunes of that erosion zone is the baseline of that zone, not the location if the inlet had remained unstabilized.

(B) To implement the retreat policy provided for in subsection (A), a setback line must be established landward of the baseline a distance which is forty times the average annual erosion rate or not less than twenty feet from the baseline for each erosion zone based upon the best historical and scientific data adopted by the department as a part of the State Comprehensive Beach Management Plan.

(C) The department, before July 3, 1991, must establish a final baseline and setback line for each erosion zone based on the best available scientific and historical data as provided in subsection (B) and with consideration of public input. The baseline and setback line must not be revised before July 1, 1998, nor later than July 1, 2000. After that revision, the baseline and setback line must be revised not less than every seven years but not more than every ten years after each preceding revision. The department shall establish the baseline and setback line for all locations where the baseline and setback line were established on or before January 31, 2012. Nothing in this section allows the seaward movement of the baseline after December 31, 2017. In the establishment and revision of the baseline and setback line, the department must transmit and otherwise make readily available to the public all information upon which its decisions are based for the establishment of the final baseline and setback line. The department must hold one public hearing before establishing the final baseline and setback lines. Until the department establishes new baselines and setback lines, the existing baselines and setback lines must be used. The department may stagger the revision of the baselines and setback lines of the erosion zones so long as every zone is revised in accordance with the time guidelines established in this section.

(D) In order to locate the baseline and the setback line, the department must establish monumented and controlled survey points in each county fronting the Atlantic Ocean. The department must acquire sufficient surveyed topographical information on which to locate the baseline. Surveyed topographical data typically must be gathered at two thousand foot intervals. However, in areas subject to significant

near-term development and in areas currently developed, the interval, at the discretion of the department, may be more frequent. The resulting surveys must locate the crest of the primary oceanfront sand dunes to be used as the baseline for computing the forty-year erosion rate. In cases where no primary oceanfront sand dunes exist, a study conducted by the department is required to determine where the upland location of the crest of the primary oceanfront sand dune would be located if the shoreline had not been altered. The department, by regulation, may exempt specifically described portions of the coastline from the survey requirements of this section when, in its judgment, the portions of coastline are not subject to erosion or are not likely to be developed by virtue of local, state, or federal programs in effect on the coastline which would preclude significant development, or both.

(E) A landowner claiming ownership of property affected who feels that the final or revised setback line, baseline, or erosion rate as adopted is in error, upon submittal of substantiating evidence, must be granted a review of the setback line, baseline, or erosion rate, or a review of all three. The requests must be forwarded to the department board in accordance with Section 44-1-60, and the final decision of the board may be appealed to the Administrative Law Court, as provided in Chapter 23 of Title 1."

Permitting Committee Coastal Division, special permit applications

SECTION 4. Section 48-39-290(D)(2) of the 1976 Code is amended to read:

"(2) The department's Permitting Committee Coastal Division shall consider applications for special permits."

Time effective

SECTION 5. This act takes effect upon approval by the Governor; however, Section 48-39-130, as amended, remains subject to the repeal provision pursuant to Section 5, Act 41 of 2011.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 198

(R213, S233)

AN ACT TO AMEND SECTION 6-1-160, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO INVOCATIONS TO OPEN MEETINGS OF DELIBERATIVE BODIES, SO AS TO PROVIDE THAT PUBLIC PRAYER MEANS A PRAYER OR INVOCATION; TO PROVIDE THAT DELIBERATIVE PUBLIC BODY INCLUDES A SCHOOL DISTRICT BOARD; TO PROVIDE THAT PUBLIC INVOCATIONS MAY NOT PROSELYTIZE OR ADVANCE ANY ONE FAITH OR BELIEF, OR COERCE PARTICIPATION BY OBSERVERS; AND TO BROADEN THE ITEMS THAT MAY BE INCLUDED IN A POLICY TO PERMIT PUBLIC INVOCATIONS ADOPTED BY THE PUBLIC BODY.

Whereas, state and local governing bodies across the nation have long maintained a tradition of solemnizing their proceedings by allowing for an opening invocation before each meeting for the benefit and blessing of those public bodies; and

Whereas, such invocations before deliberative public bodies have been consistently upheld as constitutional by American courts, including the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit; and

Whereas, in *Marsh v. Chambers*, 463 U.S. 783, 786 (1983), the United States Supreme Court rejected a challenge to the Nebraska Legislature's practice of opening each day of its sessions with a prayer by a chaplain paid with taxpayer dollars, and specifically concluded, "The opening of sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country. From colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom"; and

Whereas, the United States Supreme Court clarified in *Marsh*, 463 U.S. at 794-795, "The content of [such] prayer is not of concern to judges where . . . there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief"; and

Whereas, in *Simpson v. Chesterfield County Board of Supervisors*, 404 F.3d 276 (4th Cir. 2004), cert. denied, the United States Court of Appeals for the Fourth Circuit reviewed and specifically approved the policy of a county board in which various clergy in the county's religious community were invited to present invocations before meetings of the board; and

Whereas, the Fourth Circuit's ruling in *Simpson* can be distinguished from its earlier decision in *Wynne v. Town of Great Falls*, 376 F.3d 292, 298 (4th Cir. 2004, cert. denied) (citing *Marsh*, 463 U.S. at 794), where the court found a town council "improperly 'exploited' a 'prayer opportunity' to 'advance' one religion over others"; and

Whereas, in *Town of Greece v. Galloway*¸ 134 S.Ct. 1811 (2014), the United States Supreme Court subsequently held a town's practice of opening its town board meetings with sectarian prayers by guest religious leaders expressing the beliefs of one faith did not violate the Establishment Clause; and

Whereas, the *Galloway* Court rejected an argument that the Establishment Clause requires nonsectarian or ecumenical prayer, holding the explicitly sectarian nature of the prayers was not outside the tradition recognized in *Marsh* and reasoning a rule that requires prayers to be nonsectarian would force the legislatures and courts to act impermissibly as "supervisors and censors of religious speech"; and

Whereas, the *Galloway* Court held that prayer practice is permissible so long as it is consistent with the tradition of lending "gravity to public business"; "there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief"; the town does not discriminate against minority faiths in determining who may offer a prayer; and the prayer does not coerce participation by nonadherents; and

Whereas, the *Galloway* Court explained that "[a]bsent a pattern of prayers that over time denigrate, proselytize, or betray an impermissible government purpose, a challenge based solely on the content of a prayer will not likely establish a constitutional violation"; and

Whereas, the General Assembly passed Act 241 of 2008 before the United States Supreme Court issued *Galloway* and now wishes to amend the act to incorporate *Galloway*'s holding; and

Whereas, this act signifies the General Assembly's belief that deliberate public bodies in this State may adopt policies that will permit public invocations in a constitutionally permissible fashion. This act does not signify the General Assembly's belief in the limits of constitutional law, nor preempt the deliberative public body from exercising a constitutional right to permit public invocations pursuant to a policy other than that set forth in this act. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

South Carolina Public Prayer and Invocation Act

SECTION 1. This act may be cited as the "South Carolina Public Prayer and Invocation Act".

Public invocations

SECTION 2. Section 6-1-160 of the 1976 Code, as added by Act 241 of 2008, is amended to read:

"Section 6-1-160. (A) For purposes of this section:

(1) 'Public invocation' means a prayer or invocation delivered in a method provided pursuant to subsection (B) to open the public meeting of a deliberative public body. In order to comply with applicable constitutional law, a public invocation must not:

(a) be exploited to proselytize or advance any one, or to disparage any other faith or belief; or

(b) coerce participation by observers of the invocation.

(2) 'Deliberative public body' includes, but is not limited to, a state board or commission; the governing body of a county or municipal government; a school district board; a branch or division of a county or municipal government; and a special purpose or public service district.

(B) A deliberative public body may adopt a policy to permit a public invocation as defined in subsection (A)(1) before each meeting of the public body, for the benefit of the public body. The policy may allow for a public invocation to be offered on a voluntary basis, at the beginning of the meeting, by:

(1) one of the public officials, elected or appointed to the deliberative public body;

(2) a chaplain elected by the public officials of the deliberative public body; or

(3) an invocation speaker selected on an objective basis from among a wide pool of religious leaders serving established religious congregations in the local community in which the deliberative public body meets. To ensure objectivity in the selection, the deliberative public body may, but is not required to, compile a list of known, established religious congregations and assemblies, and invite a 'religious leader' from each congregation and assembly to give a public invocation on a first-come, first-served basis. The invitation may contain, in addition to scheduling and other general information, the following statement: 'A religious leader is free to offer a public invocation according to the dictates of his own conscience, but, in order to comply with applicable constitutional law, the [name of deliberative public body issuing the invitation] requests that the public invocation opportunity not be exploited to proselytize or advance any one, or to disparage any other faith or belief; or coerce participation by observers of the invocation'.

(C) In order that deliberative public bodies may have access to advice on the current status of the law concerning public invocations, the Attorney General's office shall prepare a statement of the applicable constitutional law and, upon request, make that statement available to a member of the General Assembly or a deliberative public body. As necessary, the Attorney General's office shall update this statement to reflect any changes made in the law. The Attorney General's office may make the statement available through the most economical and convenient method including, but not limited to, posting the statement on a website.

(D) The Attorney General shall defend any deliberative public body against a facial challenge to the constitutionality of this act.

(E) Nothing in this section prohibits a deliberative public body from developing its own policy on public invocations based upon advice from legal counsel."

Severability

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act,

and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 199

(R214, S267)

AN ACT TO AMEND SECTION 2-1-180, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ADJOURNMENT OF THE GENERAL ASSEMBLY, TO CHANGE THE DATE FOR THE MANDATORY ADJOURNMENT OF THE GENERAL ASSEMBLY FROM THE FIRST THURSDAY IN JUNE TO THE SECOND THURSDAY IN MAY, AND TO PROVIDE THAT THE ADJOURNMENT DATE MAY BE EXTENDED UP TO TWO WEEKS IN THE DISCRETION OF THE SPEAKER OF THE HOUSE AND THE PRESIDENT PRO TEMPORE OF THE SENATE IF A FORECAST REDUCTION IS SUBMITTED BY THE BOARD OF ECONOMIC ADVISORS AFTER APRIL TENTH; AND TO AMEND SECTION 11-9-880, RELATING TO THE BOARD OF ECONOMIC ADVISORS' FORECAST OF ECONOMIC CONDITIONS, SO AS TO REVISE THE DATES OF THE FORECASTS.

Be it enacted by the General Assembly of the State of South Carolina:

Adjournment of legislative session, second Thursday in May

SECTION 1. Section 2-1-180 of the 1976 Code is amended to read:

"Section 2-1-180. The regular annual session of the General Assembly shall adjourn sine die each year not later than five o'clock p.m. on the second Thursday in May. The regular annual session of the General Assembly can be extended:

(a) if the House of Representatives fails to give a third reading to the annual general appropriations bill by March thirty-first, the date of sine die adjournment is extended by one statewide day for each statewide day after March thirty-first that the House of Representatives fails to give the bill third reading; or

(b) if a forecast reduction is submitted by the Board of Economic Advisors pursuant to Section 11-9-880 after April tenth for the next fiscal year, the adjournment date for the General Assembly may be extended up to two weeks with the agreement of the Speaker of the House and the President Pro Tempore of the Senate; or

(c) if a concurrent resolution is adopted by a two-thirds vote of both the Senate and House of Representatives not later than five o'clock p.m. on the second Thursday in May. During the time between five o'clock p.m. on the second Thursday in May and the extended sine die adjournment date, as set forth herein, no legislation or other business may be considered except the general appropriations bill and any matters approved for consideration by a concurrent resolution adopted by two-thirds vote in both houses."

Board of Economic Advisors, forecasts of economic conditions, deadlines amended

SECTION 2. Section 11-9-880(A) of the 1976 Code is amended to read:

"(A) The Board of Economic Advisors shall make an initial forecast of economic conditions in the State and state revenues for the next fiscal year no later than November tenth of each year. Adjustments to the forecast must be considered on December tenth and February fifteenth. A final forecast for the next fiscal year must be made on April tenth. However, prior to June thirtieth, the board may reduce forecasts for the next fiscal year as it considers necessary. Before making or adjusting any forecast, the board must consult with outside economic experts with respect to national and South Carolina economic business conditions. All forecasts and adjusted forecasts must contain:

(1) a brief description of the economic model and all assumptions and basic decisions underlying the forecasts;

(2) a projection of state revenues on a quarterly basis;

(3) separate discussions of any industry which employs more than twenty percent of the state's total nonagricultural employment and separate projections for these industries."

Time effective

SECTION 3. This act takes effect upon the approval by the Governor and first applies for the next annual regular session of the General Assembly.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 200

(R215, S280)

AN ACT TO AMEND SECTION 40-11-260, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FINANCIAL STATEMENTS AND NET WORTH REQUIREMENTS FOR GENERAL CONTRACTORS AND MECHANICAL CONTRACTORS, SO AS TO REVISE THE NET WORTH REQUIREMENTS FOR LICENSURE AND LICENSE RENEWAL, AND TO DELETE OBSOLETE LANGUAGE; AND TO AMEND SECTION 40-11-360, RELATING TO EXEMPTIONS FROM CONTRACTOR LICENSURE REQUIREMENTS, SO AS TO INCLUDE CONTRACTOR SERVICES CONCERNING THE INSTALLATION, REPAIR, AND MAINTENANCE OF BILLBOARD SIGNS EXCEPT TO REQUIRE LICENSED ELECTRICAL CONTRACTORS MUST PERFORM FINAL CONNECTIONS TO BRANCH CIRCUIT CONDUCTORS.

Be it enacted by the General Assembly of the State of South Carolina:

General and mechanical contractor financial requirements revised

SECTION 1. Section 40-11-260 of the 1976 Code is amended to read:

"Section 40-11-260. (A) An applicant for a general contractor's license or a general contractor's license renewal who performs or offers to perform contracting work for which the total cost of construction is greater than five thousand dollars, and an applicant for license group revisions must provide an acceptable financial statement with a balance sheet date no more than twelve months before the date of the relevant application showing a minimum net worth for each license group as follows:

(1) Group One

(a) bids and jobs not to exceed $50,000.00 per job;

(b) required net worth of $10,000.00;

(c) on initial application, an owner-prepared financial statement with an affidavit of accuracy;

(d) on renewal, an owner-prepared financial statement with an affidavit of accuracy;

(2) Group Two

(a) bids and jobs not to exceed $200,000.00 per job;

(b) required net worth of $40,000.00;

(c) on initial application, an owner-prepared financial statement with an affidavit of accuracy;

(d) on renewal, an owner-prepared financial statement with an affidavit of accuracy;

(3) Group Three

(a) bids and jobs not to exceed $500,000.00 per job;

(b) required net worth of $100,000.00;

(c) on initial application, a financial statement compiled by a licensed certified public accountant or a licensed public accountant in accordance with Generally Accepted Accounting Principles (GAAP), including all disclosures required by GAAP indicating a required net worth of one hundred thousand dollars;

(d) on renewal, an owner-prepared financial statement with an affidavit of accuracy indicating a required net worth of one hundred thousand dollars, or a financial statement compiled by a licensed certified public accountant or a licensed public accountant in accordance with GAAP, including all disclosures required by GAAP, and indicating a required net worth of one hundred thousand dollars;

(4) Group Four

(a) bids and jobs not to exceed $1,500,000.00 per job;

(b) required net worth of $175,000.00;

(c) on initial application, a financial statement compiled by a licensed certified public accountant or a licensed public accountant in accordance with GAAP, including all disclosures required by GAAP

indicating a required net worth of one hundred seventy-five thousand dollars;

(d) on renewal, an owner-prepared financial statement with an affidavit of accuracy indicating a required net worth of one hundred seventy-five thousand dollars, or a financial statement compiled by a licensed certified public accountant or a licensed public accountant in accordance with GAAP, including all disclosures required by GAAP, and indicating a required net worth of one hundred seventy-five thousand dollars;

(5) Group Five

(a) bids and jobs unlimited;

(b) required net worth of $250,000.00;

(c) on initial application, a financial statement audited by a licensed certified public accountant or a licensed public accountant in accordance with GAAP, including all disclosures required by GAAP;

(d) on renewal, a financial statement reviewed by a licensed certified public accountant or a licensed public accountant in accordance with GAAP, including all disclosures required by GAAP.

(B) An applicant for a mechanical contractor's license or a mechanical contractor's license renewal who performs or offers to perform contracting work for which the total cost of construction is greater than five thousand dollars, and an applicant for license group revisions must provide an acceptable financial statement with a balance sheet date no more than twelve months before the date of the relevant application showing a minimum net worth for each license group as follows:

(1) Group One

(a) bids and jobs not to exceed $17,500.00 per job;

(b) required net worth of $3,500.00;

(c) on initial application, an owner-prepared financial statement with an affidavit of accuracy;

(d) on renewal, an owner-prepared financial statement with an affidavit of accuracy;

(2) Group Two

(a) bids and jobs not to exceed $50,000.00 per job;

(b) required net worth of $10,000.00;

(c) on initial application, an owner-prepared financial statement with an affidavit of accuracy;

(d) on renewal, an owner-prepared financial statement with an affidavit of accuracy;

(3) Group Three

(a) bids and jobs not to exceed $100,000.00 per job;

(b) required net worth of $20,000.00;

(c) on initial application, a financial statement compiled by a licensed certified public accountant or a licensed public accountant in accordance with Generally Accepted Accounting Principles (GAAP), including all disclosures required by GAAP indicating a net worth of twenty thousand dollars;

(d) on renewal, an owner-prepared financial statement with an affidavit of accuracy indicating a required net worth of twenty thousand dollars, or a financial statement compiled by a licensed certified public accountant or a licensed public accountant in accordance with GAAP, including all disclosures required by GAAP, and indicating a required net worth of twenty thousand dollars;

(4) Group Four

(a) bids and jobs not to exceed $200,000.00 per job;

(b) required net worth of $40,000.00;

(c) on initial application, a financial statement compiled by a licensed certified public accountant or a licensed public accountant in accordance with GAAP, including all disclosures required by GAAP indicating a net worth of forty thousand dollars;

(d) on renewal, an owner-prepared financial statement with an affidavit of accuracy indicating a required net worth of forty thousand dollars, or a financial statement compiled by a licensed certified public accountant or a licensed public accountant in accordance with GAAP, including all disclosures required by GAAP, and indicating a required net worth of forty thousand dollars;

(5) Group Five

(a) bids and jobs unlimited;

(b) required net worth of $200,000.00;

(c) on initial application, a financial statement audited by a licensed certified public accountant or a licensed public accountant in accordance with GAAP, including all disclosures required by GAAP;

(d) on renewal, a financial statement reviewed by a licensed certified public accountant or a licensed public accountant in accordance with GAAP, including all disclosures required by GAAP.

(C) In reviewing an entity's balance sheet to determine the net worth of the applicant or licensee, the board may consider:

(1) deviations from the standard accountant's report;

(2) notes to the financial statement;

(3) additional financial information submitted by the applicant or licensee for renewals;

(4) personal financial statements of an entity's principals for an entity with less than two year's operating experience.

(D) If a licensee desires to change to a higher license group as established in this section, the licensee must meet the financial statement and net worth requirements in the higher license group number as required in initial application.

(E) If the board has reasonable cause to believe that an entity has not maintained the minimum net worth for its group, the board may order the entity to submit additional financial information, and, if appropriate, may modify the entity's license to reflect the appropriate limitation group."

Contractor licensure exemptions, billboard sign installations and repairs

SECTION 2. Section 40-11-360(A) of the 1976 Code is amended to read:

"(A) This chapter does not apply to:

(1) An entity which installs fire sprinkler systems if the entity is licensed under Chapter 45 of Title 23, or burglar and fire alarm systems if the entity is licensed under Chapter 79 of Title 40.

(2) The installation of finished products, materials, or articles of merchandise that are not fabricated into and do not become a permanent fixed part of the structure. Work requiring licensure must be installed by a licensed contractor.

(3) Construction, alteration, improvement, or repair carried on within the limits of a site, the title to which is in the name United States of America or with respect to which federal law supersedes this chapter.

(4) Contractors performing construction work for the South Carolina Department of Transportation pursuant to that department's prequalification requirements with the exception of public/private partnerships performing work pursuant to Section 57-3-200.

(5) An owner of residential property who improves the property or who builds or improves structures or appurtenances on the property if he does the work himself, with his own employees, or with licensed contractors; provided that the structure, group of structures, or appurtenances, including the improvements, are intended for the owner's sole occupancy or occupancy by the owner's family and are not intended for sale or rent, and provided further, that the general public does not have access to this structure. In an action brought under this chapter, proof of the sale or rent or the offering for sale or rent of the structure by the owner-builder within two years after completion or issuance of a certificate of occupancy is prima facie evidence that the project was

undertaken for the purpose of sale or rent and is subject to the penalties provided in this chapter. As used in this item, 'sale' or 'rent' includes an arrangement by which an owner receives compensation in money, provisions, chattel, or labor from the occupancy, or the transfer of the property or the structures on the property.

(6) An owner of nonowner-occupied property who improves the property or who builds or improves structures of less than five thousand square feet or other appurtenances on the property, either by himself or with the owner's employees, if all structural and mechanical work is performed by licensed contractors regardless of the cost of construction and if the property is not sold for two years after completion of the improvements. For purposes of this item, 'structural' means foundation, pier, load-bearing partition, perimeter wall, internal wall exceeding ten feet in height, roof, floor, and any other work deemed by the board to be structural. 'Mechanical' means work described in Section 40-11-410(5).

(7) An owner constructing a farm building or portable storage building with less than five thousand square feet of floor space and used only for livestock or storage.

(8) Public owners performing all or a portion of any work on a project themselves as long as the work performed falls within the limitations of a License Group 3 General Contractor or a License Group 4 Mechanical Contractor, as adjusted by an inflation factor reflecting the Department of Labor's Consumer Price Index.

(9) Renovations and maintenance projects of the South Carolina Department of Corrections whereby all labor is supplied from that department's own labor forces.

(10) The South Carolina Public Service Authority when performing maintenance and renovations to existing facilities and when performing work in accordance with Section 40-11-410(4)(n).

(11) The installation, repair, or maintenance of signs of billboards; provided, however, an electrical license is required to perform a final connection to a branch circuit conductor. The installation or modification of a branch circuit conductor is not considered a part of the installation, repair, or maintenance of a sign or billboard."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 201

(R216, S338)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 24-13-180 SO AS TO PROVIDE THAT CERTAIN PUBLIC, PRIVATE, OR NONPROFIT ENTITIES WHICH ARE ENGAGED IN HELPING TO REHABILITATE AND REINTRODUCE PAROLED PRISON INMATES INTO THE COMMUNITY AND WHICH AS A PART OF THEIR PROGRAMS PROVIDE RESIDENTIAL HOUSING IN THE COMMUNITY TO THESE PAROLEES MUST PROVIDE NOTICE IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COMMUNITIES WHERE THESE RESIDENTIAL HOUSING FACILITIES WILL BE LOCATED, AND ALSO MUST CONDUCT PUBLIC HEARINGS REGARDING THE PROGRAMS AND THE LOCATIONS OF THESE RESIDENTIAL HOUSING FACILITIES IN THE COMMUNITIES WHERE THEY WILL BE LOCATED, TO PROVIDE THAT THESE HEARINGS ARE FOR INFORMATIONAL PURPOSES ONLY AND DO NOT BIND THE DECISION MAKING AUTHORITY OF THE ENTITY, AND TO PROVIDE THAT THE PROVISIONS CONTAINED IN THIS SECTION MUST BE MET BEFORE A FACILITY MAY BE OPENED.

Be it enacted by the General Assembly of the State of South Carolina:

Paroled inmate rehabilitation facilities, public hearings

SECTION 1. Article 1, Chapter 13, Title 24 of the 1976 Code is amended by adding:

"Section 24-13-180. (A) Any public, private, or nonprofit entity whose primary purpose is in helping to rehabilitate and reintroduce into the community paroled inmates and which as part of its program

provides or furnishes residential housing in the community to these parolees on either an individual or communal basis must comply with the following provisions of this section in addition to all other requirements of law:

(1) The entity, at least sixty days before locating any parolees in any type of residential facility, including manufactured homes, must publish a notice in a newspaper of general circulation in the community giving the date, time, and location of the public hearing, and the address of where the residential facility will be located and post a conspicuous notice at the proposed location. A separate notice is required each time such a facility is to be opened.

(2) A public hearing must be conducted by the entity at least thirty days before the first residential facility opens in the community where all residents of the community must be given an opportunity to comment on the program and on the location of any or all of the proposed facilities which have been determined by the entity as of the date of the public hearing. The hearing is for informational purposes only and does not bind the decision-making authority of the entity. The entity solely is responsible for organizing and conducting the hearing. A separate public hearing is required each time a facility is to be opened if more than ninety days has transpired since the last public hearing.

(B) The Department of Probation, Parole and Pardon Services and its staff members are exempt from the provisions of this section. Family members or other persons providing housing to a parolee, but not operating an on-going program targeting the reintegration of parolees, are exempt from the provisions of this section.

(C) This section only applies to a county, incorporated municipality, or town where there are no zoning requirements.

(D) The provisions of this section must be complied with before a facility may be opened after the effective date of this section."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 202

(R217, S381)

AN ACT TO AMEND SECTION 8-11-620, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO LEAVE AND LUMP-SUM PAYMENTS UPON TERMINATION OF EMPLOYMENT, SO AS TO PROVIDE THAT CERTAIN ACTIVE MEMBERS OF THE SOUTH CAROLINA RETIREMENT SYSTEM (SCRS) OR THE SOUTH CAROLINA POLICE OFFICERS RETIREMENT SYSTEM (SCPORS) WHO ARE TERMINATED WITHIN ONE YEAR OF RETIREMENT ELIGIBILITY SHALL HAVE FIVE DAYS AFTER TERMINATION TO PURCHASE SERVICE CREDIT; TO AMEND SECTION 9-1-1140, AS AMENDED, RELATING TO ESTABLISHING SERVICE CREDIT IN THE SCRS, SO AS TO PROVIDE THAT AN ACTIVE MEMBER WHO IS TERMINATED FROM EMPLOYMENT WITHIN ONE YEAR OF RETIREMENT ELIGIBILITY MAY PURCHASE SERVICE CREDIT; AND TO AMEND SECTION 9-11-50, AS AMENDED, RELATING TO ESTABLISHING SERVICE CREDIT IN THE SCPORS, SO AS TO PROVIDE THAT AN ACTIVE MEMBER WHO IS TERMINATED FROM EMPLOYMENT WITHIN ONE YEAR OF RETIREMENT ELIGIBILITY MAY PURCHASE SERVICE CREDIT.

Be it enacted by the General Assembly of the State of South Carolina:

Purchase of service credit following termination of employment within one year of retirement eligibility

SECTION 1. Section 8-11-620(A)(1) of the 1976 Code, as last amended by Act 153 of 2005, is further amended to read:

"(1) Upon termination from state employment, an employee may take both annual leave and a lump-sum payment for unused leave, but this combination may not exceed forty-five days in a calendar year except as provided in Section 8-11-610. If an employee dies, the employee's legal representative is entitled to a lump-sum payment for the employee's unused leave, not to exceed forty-five working days, except as provided in Section 8-11-610. An active member of the South Carolina Retirement System or South Carolina Police Officers Retirement System

who is terminated within one year of retirement eligibility shall have five business days after the date of termination to purchase any service credit that the member is otherwise eligible to purchase as provided in Section 9-1-1140 or Section 9-11-50 in order to attain retirement eligibility."

Purchase of service credit by an active member of the South Carolina Retirement System who is terminated from employment within one year of retirement eligibility

SECTION 2. Section 9-1-1140 of the 1976 Code, as last amended by Act 278 of 2012, is further amended by adding a subsection at the end to read:

"(O) An active member who is terminated within one year of retirement eligibility shall have five business days after the date of termination to purchase any service credit that the member is otherwise eligible to purchase under this section."

Purchase of service credit by an active member of the South Carolina Police Officers Retirement System who is terminated from employment within one year of retirement eligibility

SECTION 3. Section 9-11-50 of the 1976 Code, as last amended by Act 278 of 2012, is further amended by adding a subsection at the end to read:

"(O) An active member who is terminated within one year of retirement eligibility shall have five business days after the date of termination to purchase any service credit that the member is otherwise eligible to purchase under this section."

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 203

(R221, S652)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 45 TO TITLE 34 SO AS TO AUTHORIZE FINANCIAL INSTITUTIONS THAT DO BUSINESS IN SOUTH CAROLINA TO CONDUCT SAVINGS PROMOTION CONTESTS FOR MEMBERS AND CUSTOMERS OF THE FINANCIAL INSTITUTIONS, TO PROVIDE DEFINITIONS, TO PROVIDE CERTAIN CONDITIONS FOR CONDUCTING A SAVING PROMOTION CONTEST BY A PARTICIPATING FINANCIAL INSTITUTION, AND TO AUTHORIZE THE APPROPRIATE FEDERAL OR STATE REGULATORY AGENCY OF EACH FINANCIAL INSTITUTION TO OVERSEE THE CONDUCT OF THE CONTESTS AND ISSUE CEASE AND DESIST ORDERS WHEN NECESSARY.

Be it enacted by the General Assembly of the State of South Carolina:

Savings promotion contests

SECTION 1. Title 34 of the 1976 Code is amended by adding:

"CHAPTER 45

Savings Promotion Contests

Section 34-45-10. The South Carolina General Assembly finds that:

(1) Savings promotion contests encourage people to save money by adding a feature to personal savings accounts that include a chance to win prizes.

(2) Savings promotion contests are not lotteries, because they do not require individuals to pay consideration for a chance to win a prize, and the individual maintains ownership of the money that is deposited into a savings or other qualifying account.

(3) The prizes are funded through the interest that accrues across the pool of savings accounts participating in a savings promotion contest.

(4) Federal law allows both depository financial institutions and credit unions to hold savings promotion contests, subject to certain conditions and authorization under state law.

(5) Savings promotion contests in other states and countries have led to an increase in the number and amount of funds in personal savings accounts.

(6) It is in the best interest of the citizens of South Carolina to encourage increases in personal savings accounts.

Section 34-45-20. As used in this chapter, the following terms shall mean:

(1) 'Appropriate state or federal regulatory agency of a financial institution' means the South Carolina State Board of Financial Institutions, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Reserve System, the National Credit Union Administration, or other state or federal regulatory agency that is statutorily responsible for the supervision of all or part of the operations of a participating financial institution. Nothing in this chapter prohibits financial institutions that are under supervision of these state and federal regulatory agencies from participating in prize-linked savings programs with other state or federally regulated financial institutions.

(2) 'Depositor' means an individual member or customer of a financial institution who:

(a) maintains a qualifying account at a financial institution participating in a savings promotion contest;

(b) is in good standing at a financial institution authorized to do business in South Carolina; and

(c) is eighteen years of age or older.

(3) 'Entry' means a chance or chances obtained by a depositor to win a designated prize or prizes in a savings promotion contest by complying with the terms and conditions of a savings promotion contest.

(4) 'Financial institution' means a bank, a savings institution, or a credit union authorized to do business in South Carolina under federal or state law.

(5) 'Participating financial institution' means a financial institution authorized to do business in South Carolina that is sponsoring a savings promotion contest.

(6) 'Qualifying account' means:

(a) a savings account or other savings product or program offered by a participating financial institution into which deposits may be made by a depositor;

(b) the account is evidenced by periodic statements that are delivered to the depositor or are available to the depositor through electronic access; and

(c) the interest rate for the qualifying account is similar to, and not less than, the interest rates of other comparable nonqualifying accounts.

(7) 'Savings promotion contest' means a contest or promotion sponsored by a financial institution or a group of financial institutions in which a chance of winning designated prizes is obtained by a depositor when the depositor:

(a) deposits a specified amount of money or makes a specified number of deposits into the depositor's qualifying account; or

(b) participates in one or more savings products or programs.

Section 34-45-30. A financial institution authorized to do business in South Carolina under federal or state law, subject to the supervision of the appropriate state or federal regulatory agency of the participating financial institution, may conduct a savings promotion contest in accordance with the provisions of this chapter and this title for the purposes of encouraging its depositors to maintain savings accounts and to increase personal savings.

Section 34-45-40. A participating financial institution may conduct a savings promotion contest for the benefit of its depositors only if all of the following conditions are met:

(1) The terms and conditions of the savings promotion contest must allow a depositor to obtain one or more entries to win a specified prize or prizes. Subject to any limits that the participating financial institution may place on the number of entries that a depositor is allowed to obtain for any savings promotion contest, as set forth in the terms and conditions of a specific savings promotion contest, the participating financial institution must allow a depositor to obtain an entry for a savings promotion contest only by doing either or both of the following:

(a) depositing a minimum specified amount of money or making a specified number of deposits into a qualifying account in accordance with the terms and conditions of a specific savings promotion contest;

(b) participating in one or more savings products or programs in accordance with the terms and conditions of a specific savings promotion contest.

(2) A savings promotion contest must comply with all applicable consumer protection laws.

(3) A participating financial institution conducting a savings promotion contest shall not require any depositor or other individual to pay a consideration for a chance of winning a prize or prizes designated in a savings promotion contest.

(4) A depositor does not make a payment for consideration if the depositing of a specified amount of money, the making of a specified number of deposits, or the participating in one or more savings programs or products are all made or involve the depositor's accounts.

(5) Each entry in a savings promotion contest must have an equal chance of being drawn.

(6) Participating depositors in a savings promotion contest are not required to be present at a drawing to win a prize.

(7) A participating financial institution must maintain books and records necessary to facilitate an audit of a savings promotion contest and, upon written request, must provide those records to the appropriate state or federal regulatory agency of that financial institution.

(8) A participating financial institution must not conduct a savings promotion contest in a manner that jeopardizes the safety or soundness of the financial institution or misleads its depositors.

(9) A participating financial institution must post, online and in any location where entries may be submitted, the terms and conditions of the savings promotion contest.

Section 34-45-50. Each savings promotion contest is subject to oversight by the appropriate state or federal regulatory agency of the participating financial institution, and the appropriate state or federal regulatory agency may issue cease and desist orders relating to the savings promotion contests if the regulatory agency concludes, based on substantial evidence, that a financial institution is engaging in unsafe or unsound practices or that the financial institution is in violation of any law, regulation, or any condition or written agreement imposed by the regulatory agency.

Section 34-45-60. A savings promotion contest offered in accordance with this chapter is not nor does it promote unlawful gambling or an unlawful lottery or raffle."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 204

(R224, S788)

AN ACT TO AMEND SECTION 48-39-150, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE APPROVAL OF PERMITS TO ALTER CRITICAL AREAS, SO AS TO ENACT THE "MANAGED TIDAL IMPOUNDMENT PRESERVATION ACT", BY EXEMPTING PROPERTY THAT IS DEEMED ELIGIBLE UNDER A UNITED STATES ARMY CORP OF ENGINEERS' GENERAL PERMIT FROM PERMITTING REQUIREMENTS IN CERTAIN CIRCUMSTANCES AND GRANTING ENFORCEMENT AUTHORITY TO THE COASTAL DIVISION OF THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL.

Be it enacted by the General Assembly of the State of South Carolina:

Act Citation

SECTION 1. This act must be known and may be cited as the "Managed Tidal Impoundment Preservation Act".

Eligible property exempt from permitting regulations for maintenance and repair

SECTION 2. Section 48-39-150 of the 1976 Code, as last amended by Act 41 of 2011, is further amended by adding an appropriately lettered subsection to read:

"( )(1) A property that is deemed eligible under a general permit issued by the United States Army Corp of Engineers is exempt from the permitting requirements set forth in this chapter for routine, normal, or emergency maintenance or repair activities pursuant to the general permit within currently functioning:

(a) tidal impoundment fields located in tidal navigable waters of the United States, as the term is used in Section 10 of the Rivers and Harbors Act of 1899; or

(b) adjacent nontidal fields that rely on the outgoing tide to drain, where the water regimes of the fields are currently being

manipulated for wildlife management or where the fields have all of the necessary embankments and structures in place to allow for the manipulation of the water regimes for wildlife management.

(2) The division may enforce the conditions of the general permit issued by the United States Army Corp of Engineers in the same manner and with the same authority as if the division had approved the permit pursuant to the provisions of this chapter."

Intent

SECTION 3. The intent of the General Assembly is to make this act applicable to property deemed eligible under the United States Army Corps of Engineers, Charleston District's Managed Tidal Impoundment General Permit Number SAC-2011-1157 and its successors.

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 205

(R225, S868)

AN ACT TO AMEND SECTION 58-7-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO RIGHTS, POWERS, AND PRIVILEGES OF TELEGRAPH AND TELEPHONE COMPANIES CONFERRED ON PIPELINE COMPANIES, SO AS TO PROVIDE THAT CERTAIN RIGHTS, POWERS, PRIVILEGES DO NOT APPLY TO PRIVATE, FOR-PROFIT PIPELINE COMPANIES, AND TO PROVIDE THAT THE PROVISIONS OF THIS ACT ARE REPEALED ON JUNE 30, 2019.

Whereas, petroleum and petroleum products are a national commodity, yet are commodities that may pose a threat to the property and health of South Carolinians if not properly transported or stored; and

Whereas, questions have recently arisen regarding petroleum pipeline siting in South Carolina, as well as questions regarding responsibility for monitoring and for inspecting these pipelines; and

Whereas, the General Assembly recognizes the importance of economic development in this State, yet recognizes there must be a balance between economic development and the protection of the health, safety, welfare, and property of this state's citizens; and

Whereas, the General Assembly also recognizes the importance of, and intends to defend, the rights of private property owners within this State, rights which have been established within the South Carolina Constitution, the laws of this State, and case law; and

Whereas, the South Carolina Attorney General's Office issued an opinion on July 1, 2015, which states there is "substantial doubt" that Section 58-7-10 intended to extend the public power of eminent domain to any private petroleum or oil pipeline company pipeline that is not defined in, or otherwise outside of the regulatory scope of, Title 58 of the South Carolina Code of Laws; and

Whereas, the General Assembly does not find that a private, for-profit pipeline company, which includes a publicly traded for-profit company, that is not defined as a "public utility" in Title 58 of the 1976 Code of Laws meets the current "public use" requirement for purposes of eminent domain; and

Whereas, natural gas and petroleum companies utilize pipelines as a method to transport their respective products and both types of companies are primarily regulated by federal law; however, due to the differences in the products these companies provide, the federal government has differing statutory and regulatory provisions for natural gas and petroleum companies, and the majority of the states differentiate between natural gas and petroleum companies, including South Carolina; and

Whereas, unlike other companies that utilize pipelines that are defined in Title 58 as a public utility, such as natural gas companies and water companies, petroleum companies are not defined in Title 58 as a public utility; and

Whereas, the General Assembly finds that South Carolina Code Section 58-7-10 was not intended to confer the right of eminent domain to a private, for-profit company, including a publicly traded for-profit company, that is not defined as a "public utility" in Title 58 of the 1976 Code of Laws; and

Whereas, a recent pipeline leak of over 300,000 gallons of petroleum product near Belton, South Carolina, has demonstrated the risks inherent in pipeline transportation of refined petroleum products; and

Whereas, the cleanup of refined petroleum products from soil and groundwater is an expensive, imperfect, and time consuming process; and

Whereas, the financial and technical abilities of the party responsible for the cleanup of any refined petroleum products released from a pipeline are critical to ensure that the responsibility for the cleanup is not imposed upon the citizens of South Carolina; and

Whereas, it is the duty of the General Assembly to establish the policy for the authorization of use for eminent domain and to provide statutory processes and procedures to balance the interests of the state's health, safety, welfare, and property of this state's citizens without unnecessarily impeding or discouraging economic development; and

Whereas, it is the duty of the General Assembly to address any potential expansion of the use of eminent domain authority in this State in a meaningful and deliberative manner. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

Certain rights, powers, and privileges inapplicable to private, for-profit pipeline companies

SECTION 1. Section 58-7-10 of the 1976 Code is amended to read:

"Section 58-7-10. (A) Subject to the same duties and liabilities, all the rights, powers, and privileges conferred upon telegraph and telephone companies under Article 17, Chapter 9 of this title are hereby granted to pipeline companies incorporated under the laws of this State or to such companies incorporated under the laws of any other state when

such companies have complied with the laws of this State regulating the doing of business herein by foreign corporations.

(B) The provisions of this section and of Chapter 2, Title 28 do not apply to private, for-profit pipeline companies, including publicly traded for-profit companies, that are not defined within this title as a public utility."

Provisions to sunset June 30, 2019

SECTION 2. Unless the General Assembly amends Section 58-7-10 in any manner before the passing of three years after the effective date of this act or if the language of subsection (B) is reenacted or otherwise extended by the General Assembly, the provisions of subsection (B), as added by this act, are repealed June 30, 2019.

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 206

(R228, S932)

AN ACT TO AMEND SECTION 12-43-220, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PROPERTY TAX ASSESSMENT RATIOS, SO AS TO REVISE AN APPLICATION DEADLINE FOR CERTAIN PROPERTY OWNED BY CERTAIN MEMBERS OF THE ARMED FORCES.

Be it enacted by the General Assembly of the State of South Carolina:

Application deadline for certain assessment ratios

SECTION 1. A. Section 12-43-220(c)(2)(v)(C)(3) of the 1976 Code, as added by Act 133 of 2014, is amended to read:

"(3) This subsubitem does not apply unless the owner of the properties or the owner's agent applies for the four percent assessment ratio on both residences before the first penalty date for the payment of taxes for the tax year for which the owner first claims eligibility for this assessment ratio. The burden of proof for eligibility for the four percent assessment ratio on both residences is on the taxpayer. The taxpayer must provide the proof the assessor requires, including, but not limited to, a copy of the owner's most recently filed South Carolina individual income tax return and copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner. The taxpayer must apply to the county assessor by the first penalty date for the payment of taxes for the tax year in which the taxes are due to utilize the provisions of subsubitems (B) and (C). Along with the application, the applicant must submit a Leave and Earnings Statement (LES) from the current calendar year. Any information contained in the LES that is not related to the active duty status of the member may be redacted."

B. Notwithstanding any other provision of law, if a taxpayer qualified for the special assessment ratio for tax year 2014 or 2015 pursuant to Section 12-43-220(c)(2)(v)(B) or (C), except that the taxpayer applied after the May fifteenth deadline, then the taxpayer must be refunded the appropriate amount so long as the taxpayer makes application for either or both years by January 15, 2017.

Time effective

SECTION 2. This act takes effect upon approval by the Governor and applies for property tax years beginning after 2013.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 207

(R229, S933)

AN ACT TO AMEND SECTION 59-18-310, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO

PETITIONS FOR OBTAINING HIGH SCHOOL DIPLOMAS BY FORMER PUBLIC HIGH SCHOOL STUDENTS WHO FAILED TO GRADUATE SOLELY FOR NOT MEETING EXIT EXAM REQUIREMENTS, SO AS TO ELIMINATE A DEADLINE FOR FILING THESE PETITIONS, TO EXTEND THE DATE BY WHICH THE DEPARTMENT OF EDUCATION SHALL REPORT RELATED INFORMATION TO THE GENERAL ASSEMBLY, AND TO ELIMINATE THE REQUIREMENT THAT THE DEPARTMENT ADVERTISE THE AVAILABILITY OF THESE PETITIONS AFTER DECEMBER 31, 2017.

Be it enacted by the General Assembly of the State of South Carolina:

Petition deadline eliminated, reporting deadline extended, advertising requirement revised

SECTION 1. Section 59-18-310(B)(2) of the 1976 Code, as last amended by Act 155 of 2014, is further amended to read:

"(2) A person who is no longer enrolled in a public school and who previously failed to receive a high school diploma or was denied graduation solely for failing to meet the exit exam requirements pursuant to this section and State Regulation may petition the local school board to determine the student's eligibility to receive a high school diploma pursuant to this chapter. The local school board will transmit diploma requests to the South Carolina Department of Education in accordance with department procedures. Petitions under this section must be submitted to the local school district. Students receiving diplomas in accordance with this section shall not be counted as graduates in the graduation rate calculations for affected schools and districts, either retroactively or in current or future calculations. On or before January 31, 2019, the South Carolina Department of Education shall report to the State Board of Education and the General Assembly the number of diplomas granted, by school district, under the provision. The State Board of Education shall remove any conflicting requirement and promulgate conforming changes in its applicable regulations. The department shall advertise the provisions of this item in at least one daily newspaper of general circulation in the area of each school district within forty-five days after this enactment. After enactment, the department may continue to advertise the provisions of this item, but it shall not be required to advertise after December 31, 2017. At a minimum, this notice must consist of two columns measuring at least ten inches in

length and measuring at least four and one-half inches combined width, and include:

(a) a headline printed in at least a twenty-four point font that is boldfaced;

(b) an explanation of who qualifies for the petitioning option;

(c) an explanation of the petition process;

(d) a contact name and phone number; and

(e) the deadline for submitting a petition."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 208

(R232, S1028)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 46-3-280 SO AS TO CREATE A PROGRAM WITHIN THE DEPARTMENT OF AGRICULTURE TO INTEGRATE VETERANS INTO THE FIELD OF AGRICULTURE AND SUPPORT VETERANS WORKING IN THE FIELD OF AGRICULTURE, TO PROVIDE THAT CLEMSON UNIVERSITY MAY DEVELOP A PROGRAM TO FURTHER ADVANCE THE AGRICULTURE INDUSTRY AND HELP VETERANS PROMOTE THEIR AGRICULTURE PRODUCTS, TO ESTABLISH IN THE STATE TREASURY THE SOUTH CAROLINA VETERANS AND WARRIORS TO AGRICULTURE PROGRAM AND FUND, ITS FUNDING MECHANISM AND HOW FUNDS ARE TO BE SPENT, AND TO PROVIDE THAT THE DEPARTMENT OF AGRICULTURE SHALL PROMULGATE REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

Be it enacted by the General Assembly of the State of South Carolina:

Agriculture programs to assist veterans established

SECTION 1. Chapter 3, Title 46 of the 1976 Code is amended by adding:

"Section 46-3-280. (A)(1) There is created a program within the South Carolina Department of Agriculture to integrate veterans into the field of agriculture and support veterans currently working in agriculture. The Department of Agriculture, the Division of Veterans' Affairs, the Adjutant General, Clemson University, South Carolina State University, and any other institution of higher learning that offers agricultural programs shall work in conjunction to recruit and train eligible veterans, and develop and support the program.

(2) Clemson University, in conjunction with the entities listed in subsection (A)(1), may develop a program that may include, but is not limited to, using repurposed land for agricultural development, promoting high tunnel crops and production, expanding the apiary industry, developing cottage industries, exploring niche crops, raising more livestock, increasing the aquaculture industry and helping veterans promote their agricultural products through farmers markets and cooperatives.

(B) There is established in the state treasury a separate and distinct fund known as the 'South Carolina Veterans and Warriors to Agriculture Program and Fund'. The fund shall consist of gifts, grants and donations, and legislative appropriations which may be made to support the program. Expenditures from the fund shall be used exclusively to pay costs, fees, and expenses necessary to administer the program.

(C) The Department of Agriculture shall promulgate regulations to implement the provisions of this section."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 209

(R233, S1030)

AN ACT TO AMEND SECTION 50-13-645, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PROTECTION OF NONGAME FISH, SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A RECREATIONAL FISHERMAN TO TAKE MORE THAN TWENTY-FIVE AMERICAN EEL A DAY AND THAT EACH AMERICAN EEL TAKEN MUST BE AT LEAST NINE INCHES LONG.

Be it enacted by the General Assembly of the State of South Carolina:

Taking of American eel

SECTION 1. Section 50-13-645 of the 1976 Code is amended to read:

"Section 50-13-645. It is unlawful for a recreational fisherman to take more than twenty-five American eel (Anguilla rostrata) a day. Each American eel must be at least nine inches long."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 210

(R234, S1035)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "SOUTH CAROLINA TELEMEDICINE ACT" BY ADDING SECTION 40-47-37 SO AS TO AUTHORIZE THE PRACTICE OF TELEMEDICINE AND TO ESTABLISH REQUIREMENTS RELATED TO THE PRACTICE OF TELEMEDICINE; TO AMEND SECTION

40-47-20, RELATING TO DEFINITIONS OF TERMS USED IN CHAPTER 47, TITLE 40, SO AS TO DEFINE "TELEMEDICINE"; TO AMEND SECTION 40-47-113, RELATING TO THE REQUIREMENT OF A PHYSICIAN-PATIENT RELATIONSHIP BEFORE PRESCRIBING MEDICATION FOR A PATIENT, SO AS TO AUTHORIZE THE PRESCRIPTION OF MEDICATION AS PART OF THE PRACTICE OF TELEMEDICINE AND TO ESTABLISH LIMITATIONS.

Be it enacted by the General Assembly of the State of South Carolina:

South Carolina Telemedicine Act

SECTION 1. This act may be cited as the "South Carolina Telemedicine Act".

Practice of telemedicine, requirements

SECTION 2. Article 1, Chapter 47, Title 40 of the 1976 Code is amended by adding:

"Section 40-47-37. (A) A licensee who establishes a physician-patient relationship solely via telemedicine as defined in Section 40-47-20(52) shall adhere to the same standard of care as a licensee employing more traditional in-person medical care and be evaluated according to the standard of care applicable to the licensee's area of specialty. A licensee shall not establish a physician-patient relationship by telemedicine pursuant to Section 40-47-113(B) for the purpose of prescribing medication when an in-person physical examination is necessary for diagnosis. The failure to conform to the appropriate standard of care is considered unprofessional conduct under Section 40-47-110(B)(9).

(B) A licensee who establishes a physician-patient relationship solely via telemedicine as defined in Section 40-47-20(52) shall generate and maintain medical records for each patient using such telemedicine services in compliance with any applicable state and federal laws, rules, and regulations, including this chapter, the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Economic and Clinical Health Act (HITECH). Such records shall be accessible to other practitioners and to the patient in a

timely fashion when lawfully requested to do so by the patient or by a lawfully designated representative of the patient.

(C) In addition to those requirements set forth in subsections (A) and (B), a licensee who establishes a physician-patient relationship solely via telemedicine as defined in Section 40-47-20(52) shall:

(1) adhere to current standards for practice improvement and monitoring of outcomes and provide reports containing such information upon request of the board;

(2) provide an appropriate evaluation prior to diagnosing and/or treating the patient, which need not be done in-person if the licensee employs technology sufficient to accurately diagnose and treat the patient in conformity with the applicable standard of care; provided, that evaluations in which a licensee is at a distance from the patient, but a practitioner is able to provide various physical findings the licensee needs to complete an adequate assessment, is permitted; further, provided, that a simple questionnaire without an appropriate evaluation is prohibited;

(3) verify the identity and location of the patient and be prepared to inform the patient of the licensee's name, location, and professional credentials;

(4) establish a diagnosis through the use of accepted medical practices, which may include patient history, mental status evaluation, physical examination, and appropriate diagnostic and laboratory testing in conformity with the applicable standard of care;

(5) ensure the availability of appropriate follow-up care and maintain a complete medical record that is available to the patient and other treating health care practitioners, to be distributed to other treating health care practitioners only with patient consent and in accordance with applicable law and regulation;

(6) prescribe within a practice setting fully in compliance with this section and during an encounter in which threshold information necessary to make an accurate diagnosis has been obtained in a medical history interview conducted by the prescribing licensee; provided, however, that Schedule II and Schedule III prescriptions are not permitted except for those Schedule II and Schedule III medications specifically authorized by the board, which may include, but not be limited to, Schedule II-nonnarcotic and Schedule III-nonnarcotic medications; further, provided, that licensees prescribing controlled substances by means of telemedicine must comply with all relevant federal and state laws including, but not limited to, participation in the South Carolina Prescription Monitoring Program set forth in Article 15, Chapter 53, Title 44; further, provided, that prescribing of lifestyle

medications including, but not limited to, erectile dysfunction drugs is not permitted unless approved by the board; further, provided, that prescribing abortion-inducing drugs is not permitted; as used in this article 'abortion-inducing drug' means a medicine, drug, or any other substance prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman, with knowledge that the termination will with reasonable likelihood cause the death of the unborn child. This includes off-label use of drugs known to have abortion-inducing properties, which are prescribed specifically with the intent of causing an abortion, such as misoprostol (Cytotec), and methotrexate. This definition does not apply to drugs that may be known to cause an abortion, but which are prescribed for other medical indications including, but not limited to, chemotherapeutic agents or diagnostic drugs. Use of such drugs to induce abortion is also known as 'medical', 'drug-induced', and/or 'chemical abortion';

(7) maintain a complete record of the patient's care according to prevailing medical record standards that reflects an appropriate evaluation of the patient's presenting symptoms; provided that relevant components of the telemedicine interaction be documented as with any other encounter;

(8) maintain the patient's records' confidentiality and disclose the records to the patient consistent with state and federal law; provided, that licensees practicing telemedicine shall be held to the same standards of professionalism concerning medical records transfer and communication with the primary care provider and medical home as licensees practicing via traditional means; further, provided, that if a patient has a primary care provider and a telemedicine provider for the same ailment, then the primary care provider's medical record and the telemedicine provider's record constitute one complete medical record;

(9) be licensed to practice medicine in South Carolina; provided, however, a licensee need not reside in South Carolina so long as he or she has a valid, current South Carolina medical license; further, provided, that a licensee residing in South Carolina who intends to practice medicine via telemedicine to treat or diagnose patients outside of South Carolina shall comply with other state licensing boards; and

(10) discuss with the patient the value of having a primary care medical home and, if the patient requests, provide assistance in identifying available options for a primary care medical home.

(D) A licensee, practitioner, or any other person involved in a telemedicine encounter must be trained in the use of the telemedicine equipment and competent in its operation.

(E) Notwithstanding any of the provisions of this section, the board shall retain all authority with respect to telemedicine practice as granted in Section 40-47-10(I) of this chapter."

Definitions, physician practice act

SECTION 3. Section 40-47-20(52) through (55) of the 1976 Code is amended to read:

"(52) 'Telemedicine' means the practice of medicine using electronic communications, information technology, or other means between a licensee in one location and a patient in another location with or without an intervening practitioner.

(53) 'Temporary license' means a current, time-limited document that authorizes practice at the level for which one is seeking licensure.

(54) 'Unprofessional conduct' means acts or behavior that fail to meet the minimally acceptable standard expected of similarly situated professionals including, but not limited to, conduct that may be harmful to the health, safety, and welfare of the public, conduct that may reflect negatively on one's fitness to practice, or conduct that may violate any provision of the code of ethics adopted by the board or a specialty.

(55) 'Voluntary surrender' means forgoing the authorization to practice by the subject of an initial or formal complaint pending further order of the board. It anticipates other formal action by the board and allows any suspension subsequently imposed to include this time.

(56) 'Volunteer license' means authorization of a retired practitioner to provide medical services to others through an identified charitable organization without remuneration."

Prescribing authority, practice of telemedicine

SECTION 4. Section 40-47-113(B) of the 1976 Code is amended to read:

"(B) Notwithstanding subsection (A), a licensee may prescribe for a patient whom the licensee has not personally examined under certain circumstances including, but not limited to, writing admission orders for a newly hospitalized patient, prescribing for a patient of another licensee for whom the prescriber is taking call, prescribing for a patient examined by a licensed advanced practice registered nurse, a physician assistant, or other physician extender authorized by law and supervised by the physician, continuing medication on a short-term basis for a new patient

before the patient's first appointment, or prescribing for a patient for whom the licensee has established a physician-patient relationship solely via telemedicine so long as the licensee complies with Section 40-47-37 of this act."

Time effective

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 211

(R235, S1036)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40-15-176 SO AS TO PROVIDE THE STATE BOARD OF DENTISTRY MAY ISSUE RESTRICTED DENTAL AUXILIARY INSTRUCTORS' LICENSES TO DENTISTS WHO MEET CERTAIN REQUIREMENTS, TO PROVIDE LICENSED DENTAL AUXILIARY INSTRUCTORS MAY PRACTICE DENTISTRY IN LIMITED CIRCUMSTANCES ASSOCIATED WITH CERTAIN ACCREDITED DENTAL AUXILIARY PROGRAMS OF TECHNICAL COLLEGES, AND TO PROVIDE FOR THE RENEWAL AND REVOCATION OF RESTRICTED DENTAL AUXILIARY LICENSES; AND TO AMEND SECTION 40-15-175, RELATING TO RESTRICTED INSTRUCTORS' LICENSES ISSUED BY THE BOARD, SO AS TO REVISE CRITERIA FOR LICENSURE AND REQUIRE RENEWAL BIENNIALLY INSTEAD OF ANNUALLY.

Be it enacted by the General Assembly of the State of South Carolina:

Restricted dental auxiliary instructor's licenses

SECTION 1. Article 1, Chapter 15, Title 40 of the 1976 Code is amended by adding:

"Section 40-15-176. (A) The State Board of Dentistry may issue a restricted dental auxiliary instructor's license to a dentist who:

(1) holds a valid license in another state;

(2) has not been refused a license or had a license revoked in this State, another state or territory of the United States, or the District of Columbia;

(3) passes an examination on jurisprudence as prescribed by the board; and

(4) is teaching dental medicine in South Carolina full-time at a Commission on Dental Accreditation (CODA) accredited dental auxiliary program at a technical college in this State.

(B) A dentist with a restricted dental auxiliary instructor's license is authorized to practice at or on behalf of a CODA-accredited technical college. The holder of a restricted dental auxiliary instructor's license may practice general dentistry or in his or her area of specialty, but only in a clinic or office affiliated with a dental auxiliary program of a technical college. A restricted dental auxiliary instructor's license issued to a faculty member under this section terminates immediately and automatically, without any further action by the board, if the holder ceases to be a faculty member at a dental auxiliary program of a technical college.

(C) A restricted dental auxiliary instructor's license must be renewed biennially in accordance with procedures and fees as established by the board in regulation.

(D) A dentist holding a restricted dental auxiliary instructor's license issued pursuant to this section is subject to the provisions of this chapter and regulations promulgated pursuant to this chapter unless otherwise provided for in this section. The board may revoke a restricted dental auxiliary instructor's license for a violation of this chapter or regulations promulgated pursuant to this chapter or if the holder fails to supply the board, within ten days of its request, with information as to his or her current status and activities in the teaching program."

Restricted instructor's licenses, qualifications revised

SECTION 2. Section 40-15-175 of the 1976 Code is amended to read:

"Section 40-15-175. (A) The State Board of Dentistry may issue a restricted instructor's license to a dentist who:

(1) holds a valid license to practice dentistry in another state, country, or territory;

(2) has met or been approved under the credentialing standards of the Medical University of South Carolina College of Dental Medicine or at a board-recognized, hospital-based residency program which must be situated in this State and with which the person is to be affiliated;

(3) has successfully completed:

(a) the final two years of a program leading to the doctor of dental surgery degree (D.D.S.) or doctor of dental medicine degree (D.M.D.) at an accredited dental school approved by the board;

(b) at least a two-year Commission on Dental Accreditation (CODA) approved advanced education program in a dental specialty recognized by the American Dental Association; or

(c) has successfully completed at least a two-year CODA-approved advanced education program in general dentistry;

(4) has not been refused a license or had a license revoked in this State or another state, country, or territory;

(5) passes an examination on jurisprudence as prescribed by the board; and

(6) is teaching dental medicine in South Carolina full-time at the Medical University of South Carolina College of Dental Medicine or at a board-recognized, hospital-based residency program situated in this State.

(B) A dentist with a restricted instructor's license is authorized to practice at or on behalf of the Medical University of South Carolina College of Dental Medicine or at a board-recognized, hospital-based residency program situated in this State. The holder of a restricted instructor's license may practice general dentistry or in his area of specialty, but only in a clinic or office affiliated with the dental school or with a hospital-based residency program. A restricted instructor's license issued to a faculty member under this section terminates immediately and automatically, without any further action by the board, if the holder ceases to be a faculty member at the dental school or at a board-recognized, hospital-based residency program in this State.

(C) A restricted instructor's license must be renewed biennially in accordance with procedures and fees as established by the board in regulation.

(D) A dentist holding a restricted instructor's license issued pursuant to this section is subject to the provisions of this chapter and regulations promulgated under this chapter unless otherwise provided for in this section. The board may revoke a restricted instructor's license for a violation of this chapter or regulations promulgated under this chapter or if the holder fails to supply the board, within ten days of its request, with

information as to his or her current status and activities in the teaching program."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 212

(R236, S1037)

AN ACT TO AMEND SECTION 40-47-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EXEMPTION OF TEAM PHYSICIANS OF ATHLETIC TEAMS VISITING THE STATE FOR A SPECIFIC SPORTING EVENT FROM PHYSICIAN LICENSING REQUIREMENTS IN THIS STATE, SO AS TO EXPAND THE EXEMPTION TO INCLUDE TEAM PHYSICIANS OF ATHLETIC TEAMS VISITING THE STATE FOR A TEAM TRAINING CAMP.

Be it enacted by the General Assembly of the State of South Carolina:

Physician licensure exemptions for visiting team doctors at sporting events

SECTION 1. Section 40-47-30(B)(1) of the 1976 Code is amended to read:

"(1) A physician licensed in another state, territory, or other jurisdiction of the United States or of any other nation or foreign jurisdiction is exempt from the requirements of licensure in this State, if the physician:

(a) holds an active license to practice in the other jurisdiction;

(b) engages in the active practice of medicine in the other jurisdiction; and

(c) is employed or designated as the team physician by an athletic team visiting the State for a specific sporting event or team training camp."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 213

(R237, S1064)

AN ACT TO AMEND SECTION 38-73-525, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO RATE FILING REQUIREMENTS, SO AS TO REQUIRE AN INSURER WRITING WORKERS' COMPENSATION INSURANCE TO ADOPT LOSS COSTS WITHIN A CERTAIN TIME FRAME, TO REQUIRE AN INSURER TO FILE ITS MULTIPLIER FOR EXPENSES, ASSESSMENTS, PROFIT AND CONTINGENCIES SIXTY DAYS BEFORE USING A NEW MULTIPLIER; AND TO AMEND SECTION 38-73-1210, RELATING TO FILING REQUIREMENTS FOR RATING ORGANIZATION MEMBERS, SO AS TO ESTABLISH THAT AN INSURER WRITING WORKERS' COMPENSATION INSURANCE MAY SATISFY ITS FILING OBLIGATION BY BECOMING A MEMBER OF OR SUBSCRIBER TO A LICENSED RATING ORGANIZATION.

Be it enacted by the General Assembly of the State of South Carolina:

Workers' Compensation Insurance, loss cost and multiplier filings

SECTION 1. Section 38-73-525 of the 1976 Code is amended to read:

"Section 38-73-525. (A) Each insurer writing workers' compensation insurance shall adopt the most recent loss costs within sixty days after approval of these loss costs. This loss costs adoption

must become effective no later than one hundred twenty days after the effective date of the approved loss costs. An insurer must notify the department of its adoption of the most recently approved loss costs by filing a notification on a form and in a manner prescribed by the director or his designee. The notification filing required by this subsection does not constitute a rate filing and is not subject to prior approval.

(B)(1) At least sixty days before using a new multiplier for expenses, assessments, profits, and contingencies, each insurer writing workers' compensation shall file its multiplier for expenses, assessments, profit, and contingencies and any information relied upon by the insurer to support the multiplier and any modifications to loss costs. A copy of the filing must be provided simultaneously to the consumer advocate.

(2) Filings submitted pursuant to item (1) must be filed on a form and in the manner prescribed by the director or his designee and must contain, at a minimum, the following information: commission expense; other acquisition expense; general expense; expenses associated with recoveries from the Second Injury Fund; guaranty fund assessments; other assessments; premium taxes; miscellaneous taxes, licenses, or fees; a provision for profit and contingencies, and the date of approval of the loss costs to which the multiplier is applied, which must be the most recently approved loss costs.

(3) Filings submitted pursuant to item (1) are subject to approval of the director or his designee and must be reviewed by an actuary employed or retained by the department who is a member of the American Academy of Actuaries or an associate or fellow of the Casualty Actuarial Society.

(4)(a) Within the sixty-day period, if the director or his designee believes the information filed is not complete, the director or his designee shall notify the insurer of additional information to be provided. Within fifteen days of receipt of the notification, the insurer shall provide the requested information or file for a hearing challenging the reasonableness of the director's or his designee's request. The burden is on the insurer to justify the denial of the additional information.

(b) Unless a hearing is requested, upon expiration of the sixty-day period or the fifteen-day period, whichever is later, the insurer may use the multiplier for expenses, assessments, profit, and contingencies."

Workers' Compensation Insurance, rating organization requirement

SECTION 2. Section 38-73-1210 of the 1976 Code is amended to read:

"Section 38-73-1210. (A)(1) This item applies to property and casualty insurance but does not apply to workers' compensation insurance. An insurer may satisfy its obligation to make required filings by becoming a member of, or a subscriber to, a licensed rating organization which makes filings and by authorizing the director or his designee to accept the filings on its behalf. However, notwithstanding another provision of this article, a member or subscriber, within twelve months after its membership or subscribership, may not file to adopt a rate approved for use for the rating organization if the rate is more than the rate in use by the member or subscriber before its membership or subscribership in the rating organization. Further, notwithstanding the provisions of Sections 38-73-1300 and 38-73-1310, a member or subscriber, within twelve months after its membership or subscribership, may not be granted an upward deviation from its rate in use when becoming a member or subscriber. However, if a rate increase for the rating organization is approved within twelve months after an insurer becomes a member or subscriber, the member or subscriber may increase its rates by the same percentage of increase granted the rating organization. Nothing contained in this chapter may be construed to require an insurer to become a member of or a subscriber to a rating organization.

(2) This item applies to workers' compensation insurance. An insurer may satisfy its obligation to make required filings by becoming a member of, or a subscriber to, a licensed rating organization that makes filings and by authorizing the director or his designee to accept the filings on its behalf. However, a licensed rating organization may not satisfy the insurer's obligation to make filings required pursuant to Section 38-73-525.

(B) In addition to other activities not prohibited by this chapter, a rating organization may collect, compile, and disseminate to insurers compilations of past and current premiums of insurers."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 214

(R238, S1111)

AN ACT TO AMEND SECTION 56-3-2332, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO LICENSE PLATES FOR CERTAIN MANUFACTURERS, SO AS TO REVISE THE METHOD BY WHICH THE LICENSE PLATE FEE IS CALCULATED AND CREDITED; AND TO SET THE LICENSE PLATE FEE FOR 2017 AND 2018.

Be it enacted by the General Assembly of the State of South Carolina:

Manufacturer standard license plate for employee benefit program and testing, registration fee calculation

SECTION 1. Section 56-3-2332 of the 1976 Code is amended to read:

"Section 56-3-2332. (A) Upon application and payment of the required fee, the Department of Motor Vehicles may issue a standard license plate to a manufacturer for vehicles it has manufactured and which are used in a benefit program for the manufacturer's employees or used by the manufacturer for testing, distribution, evaluation, and promotion.

(B) The annual registration fee provided for by this section is derived by computing the average price of the vehicle manufacturer's fleet times the property tax rates times the average millage for all purposes statewide for the preceding calendar year.

(C) The plates issued in connection with an employee benefit program may be used only on vehicles provided for the applicant's employees. In the application, the manufacturer shall notify the department in which county the employee assigned the vehicle resides. Twenty dollars of the fee must be credited to the general fund of the State and the remainder must be remitted to the county noted on the application. Amounts received by a county pursuant to this subsection must be credited to the accounts of taxing entities in the county as if it were a county property tax and are instead of state sales or use taxes. If the employee resides outside this State, the fee must be credited to the general fund of the State.

(D) The plates issued in connection with testing, distribution, evaluation, and promotion, not to exceed fifty plates, may be used only

for those purposes. Twenty dollars of the fee must be credited to the general fund of the State and the remainder must be remitted to the county in which the principal facility of the manufacturer is located. Amounts received by a county pursuant to this subsection must be credited to the accounts of taxing entities in the county as if it were a county property tax and are instead of state sales or use taxes. The department may require the documentation it determines necessary to ensure compliance with the provisions of this subsection.

(E) Before December thirty-first of each odd-numbered year, the manufacturer shall review the average price of its fleet and submit the cost to the Department of Revenue. The Department of Revenue shall determine the annual registration fee pursuant to subsection (B) and then notify the Department of Motor Vehicles of the adjusted fee amount, which is effective for the next two years."

Registration fee for 2017 and 2018

SECTION 2. Notwithstanding Section 56-3-2332(B), for 2017 and 2018, the annual registration fee for license plates issued pursuant to Section 56-3-2332 is seven hundred eighty-nine dollars.

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 215

(R241, S1177)

AN ACT TO AMEND SECTION 40-3-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS CONCERNING THE PROFESSIONAL LICENSURE OF ARCHITECTS, AND TO AMEND SECTION 40-3-230, RELATING TO TRAINING REQUIREMENTS FOR THE PROFESSIONAL LICENSURE OF ARCHITECTS, BOTH SO AS TO REPLACE REFERENCES TO THE "INTERN

DEVELOPMENT PROGRAM" WITH REFERENCES TO THE "ARCHITECTURAL EXPERIENCE PROGRAM"; AND TO AMEND SECTION 40-3-240, RELATING TO REQUIREMENTS FOR TAKING THE ARCHITECTURAL REGISTRATION EXAMINATION, SO AS TO REPLACE REQUIREMENTS CONCERNING PARTICIPATION IN THE INTERN DEVELOPMENT PROGRAM WITH REQUIREMENTS CONCERNING PARTICIPATION IN THE ARCHITECTURAL EXPERIENCE PROGRAM OR CERTAIN PROGRAMS SANCTIONED BY THE NATIONAL COUNCIL ON ARCHITECTURAL REGISTRATION BOARDS.

Be it enacted by the General Assembly of the State of South Carolina:

Definitions revised

SECTION 1. Section 40-3-20(11)(b) of the 1976 Code is amended to read:

"(b) is currently enrolled in and actively participating in the Architectural Experience Program or who has completed the Architectural Experience Program; and"

Licensure requirements, internship requirement replaced

SECTION 2. Section 40-3-230(C)(2) of the 1976 Code is amended to read:

"(2) have satisfactorily completed the training requirements established by the National Council of Architectural Registration Boards (NCARB) for the Architectural Experience Program (AXP). Changes in the program subsequently adopted by the board do not affect those persons currently enrolled in a previously adopted (AXP) program;"

Licensure applications, internship requirement replaced

SECTION 3. Section 40-3-240(C) of the 1976 Code is amended to read:

"(C) An applicant must satisfy the requirements of Section 40-3-230(C)(1) and must be currently enrolled and actively participating in the Architectural Experience Program or be a student actively

participating in an NCARB-accepted Integrated Path to Architectural Licensure (IPAL) option within an NAAB-accredited professional degree program in architecture in order to be approved by the board to take the Architectural Registration Examination. Once an applicant has been approved to take the examination, any subsequent changes in the education or experience requirements do not affect the applicant's eligibility to take the examination."

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 216

(R242, S1205)

AN ACT TO AMEND SECTION 50-3-315, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEPARTMENT OF NATURAL RESOURCES' DEPUTY ENFORCEMENT OFFICERS, SO AS TO PROVIDE THAT CERTAIN OFFICERS ARE NOT REQUIRED TO OBTAIN THE BONDS REQUIRED BY SECTION 50-3-330; AND TO AMEND SECTION 50-3-330, RELATING TO DEPARTMENT OF NATURAL RESOURCES ENFORCEMENT OFFICERS' OATH AND BONDS, SO AS TO PROVIDE THAT THE OFFICERS SHALL BE COVERED BY A SURETY BOND OF NOT LESS THAN TWO THOUSAND DOLLARS AND THAT THE DEPARTMENT OF NATURAL RESOURCES MUST PAY THE PREMIUMS ON THE SURETY BONDS.

Be it enacted by the General Assembly of the State of South Carolina:

Department of Natural Resources' enforcement officers

SECTION 1. Section 50-3-315(A) of the 1976 Code is amended to read:

"(A) The director may appoint deputy enforcement officers who serve at the pleasure of the director without pay. The officers have statewide police power. However, the director may restrict their territorial jurisdiction. No person may be appointed as an officer who holds another public office. The Secretary of State shall transmit to the director the commissions of all officers."

Enforcement officer bond

SECTION 2. Section 50-3-330 of the 1976 Code is amended to read:

"Section 50-3-330. Every enforcement officer appointed to protect the property of the State shall, before entering upon the duties of his office, take and subscribe before a notary public, or other officer authorized to administer an oath, an oath to perform the duties of his office. Every officer shall be covered by a surety bond with the department of not less than two thousand dollars, subscribed by a licensed, reliable surety company, conditioned for the faithful performance of his duties. The bond may be individual, schedule, or blanket, and on a form approved by the Attorney General. The premiums on the bonds must be paid by the department."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 217

(R244, S1212)

AN ACT TO AMEND SECTION 7-7-490, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN SPARTANBURG COUNTY, SO AS TO ADD THE RIVER RIDGE PRECINCT, TO REDESIGNATE THE MOUNTAIN VIEW BAPTIST PRECINCT

THE CARLISLE WESLEYAN PRECINCT, AND TO REDESIGNATE THE MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE.

Be it enacted by the General Assembly of the State of South Carolina:

Spartanburg County voting precincts designated

SECTION 1. Section 7-7-490 of the 1976 Code, as last amended by Act 57 of 2015, is further amended to read:

"Section 7-7-490. (A) In Spartanburg County there are the following voting precincts:

Abner Creek Baptist
Anderson Mill Elementary
Arcadia Elementary
Beaumont Methodist
Beech Springs Intermediate
Ben Avon Methodist
Bethany Baptist
Bethany Wesleyan
Boiling Springs Elementary
Boiling Springs High School
Boiling Springs Intermediate
Boiling Springs Jr. High
Boiling Springs 9th Grade
Canaan
Cannons Elementary
Carlisle Fosters Grove
Carlisle Wesleyan
Cavins Hobbysville
C.C. Woodson Recreation
Cedar Grove Baptist
Chapman Elementary
Chapman High School
Cherokee Springs Fire Station
Chesnee Elementary
Cleveland Elementary
Clifdale Elementary
Converse Fire Station
Cooley Springs Baptist

Cornerstone Baptist
Cowpens Depot Museum
Cowpens Fire Station
Croft Baptist
Cross Anchor Fire Station
Cudd Memorial
Daniel Morgan Technology Center
Drayton Fire Station
Duncan United Methodist
Eastside Baptist
Ebenezer Baptist
Enoree First Baptist
E.P. Todd Elementary
Fairforest Elementary
Fairforest Middle School
Friendship Baptist
Gable Middle School
Glendale Fire Station
Gramling Methodist
Greater St. James
Hayne Baptist
Hendrix Elementary
Holly Springs Baptist
Jesse Bobo Elementary
Jesse Boyd Elementary
Lake Bowen Baptist
Landrum High School
Landrum United Methodist
Lyman Town Hall
Mayo Elementary
Morningside Baptist
Motlow Creek Baptist
Mt. Calvary Presbyterian
Mt. Moriah Baptist
Mt. Zion Full Gospel Baptist
Oakland Elementary
Pacolet Elementary School
Park Hills Elementary
Pauline Glenn Springs Elementary
Pelham Fire Station
Poplar Springs Fire Station
Powell Saxon Una

R.D. Anderson Vocational
Rebirth Missionary Baptist
Reidville Elementary
Reidville Fire Station
River Ridge Elementary
Roebuck Bethlehem
Roebuck Elementary
Southside Baptist
Spartanburg High School
Startex Fire Station
St. John's Lutheran
Swofford Career Center
Travelers Rest Baptist
Trinity Methodist
Victor Mill Methodist
Wellford Fire Station
Holy Communion
West View Elementary
White Stone Methodist
Whitlock Jr. High
Woodland Heights Recreation Center
Woodruff Elementary
Woodruff Fire Station
Woodruff Leisure Center

(B) Precinct lines defining the precincts in subsection (A) are as shown on the official map on file with the Revenue and Fiscal Affairs Office, and as shown on copies provided to the Board of Voter Registration and Elections of Spartanburg County by the Revenue and Fiscal Affairs Office designated as document P-83-16.

(C) Polling places for the precincts listed in subsection (A) must be determined by the Board of Voter Registration and Elections of Spartanburg County with the approval of a majority of the Spartanburg County Legislative Delegation."

Time effective

SECTION 2. This act takes effect on July 1, 2016.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 218

(R245, S1252)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 23-9-195 SO AS TO REQUIRE THE STATE FIRE MARSHAL TO ISSUE A LICENSE FOR A COMMUNITY FIREWORKS DISPLAY IF CERTAIN SAFETY CONDITIONS AND OTHER REQUIREMENTS ARE MET.

Be it enacted by the General Assembly of the State of South Carolina:

Community fireworks display license

SECTION 1. Article 1, Chapter 9, Title 23 of the 1976 Code is amended by adding:

"Section 23-9-195. The sponsor of a community fireworks display using consumer fireworks may petition the State Fire Marshal, Department of Labor, Licensing and Regulation for a license to hold the display. The license must be granted if:

(1) the county in which the event is to be held has a population of less than thirty thousand;

(2) the governing body of the unincorporated county or the municipality in which the event is to be held approves the display through an ordinance or resolution;

(3) the sponsor is a volunteer nonremunerated individual, group of individuals, or a community organization;

(4) the sponsor can document the presence of police and fire rescue at the event;

(5) the sponsor can provide proof of insurance for the event; and

(6) the sponsor can demonstrate experience in hosting similar events, using similar nonremunerated volunteers without incident.

The State Fire Marshal, Department of Labor, Licensing and Regulation, may charge and retain a fee for the petition equal to the cost of the application fee of other similar filings."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 219

(R247, S1262)

AN ACT TO AMEND SECTION 59-40-50, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CHARTER SCHOOLS DESIGNATED AS ALTERNATIVE EDUCATION CAMPUSES, SO AS TO PROVIDE ALTERNATIVE EDUCATION CAMPUSES MAY GIVE MISSION-ALIGNED ADMISSIONS PREFERENCES TO CERTAIN EDUCATIONALLY DISADVANTAGED STUDENTS, AND TO PROVIDE RELATED DEFINITIONS, PROCEDURES, AND CRITERIA; AND TO AMEND SECTION 59-40-111, RELATING TO CATEGORIES OF ALTERNATIVE EDUCATION CAMPUSES, SO AS TO INCLUDE CHARTER SCHOOLS WITH THE EXPLICIT MISSION AND PURPOSE OF SERVING ENROLLED STUDENT POPULATIONS OF WHICH AT LEAST FIFTY PERCENT DEMONSTRATE CERTAIN EDUCATIONAL DISADVANTAGES, AND TO REVISE MISSION AND STUDENT POPULATION CONSIDERATIONS FOR ACCOUNTABILITY AND ACADEMIC PERFORMANCE STANDARDS APPLICABLE TO ALTERNATIVE EDUCATION CAMPUSES.

Be it enacted by the General Assembly of the State of South Carolina:

Mission-aligned admissions preferences for certain educationally disadvantaged students

SECTION 1. Section 59-40-50(B)(7), as last amended by Act 164 of 2012, and (8), as last amended by Act 29 of 2013, of the 1976 Code is further amended to read:

"(7) admit all children eligible to attend public school to a charter school, subject to space limitations, except in the case of an application to create a single gender charter school or, in the case of a charter school designated as an Alternative Education Campus, pursuant to Section 59-40-111, with an explicit mission and purpose of specializing in providing evidence-based, specific educational or behavioral health services for educationally disadvantaged students with a demonstrated need for such services. Demonstrated need may include, but not be limited to, as documented in an Individualized Education Program (IEP), 504 plan, a medical or psychological diagnosis, or documentation that the student is not meeting grade-specific standards in literacy as documented by the student's school. For purposes of this section, educationally disadvantaged students are those students as defined by the Every Student Succeeds Act (ESSA). Evidence-based services must include, but are not limited to, services to students who need evidence-based, specialized, multi-sensory instruction in literacy or other services included in the students' IEP or 504 plan. This specialized mission and purpose must be defined in the school's charter and charter contract as approved by the sponsor and as allowed by ESSA. However, it is required that the racial composition of the charter school enrollment reflect that of the local school district in which the charter school is located or that of the targeted student population of the local school district that the charter school proposes to serve, to be defined for the purposes of this chapter as differing by no more than twenty percent from that population. This requirement is also subject to the provisions of Section 59-40-70(D). If the number of applications exceeds the capacity of a program, class, grade level, or building, students must be accepted by lot, and there is no appeal to the sponsor. In the case of a charter school designated as an Alternative Education Campus, pursuant to Section 59-40-111, that is serving educationally disadvantaged students, if the number of applicants exceeds the capacity of a program, class, grade level, or building, students may be accepted by weighted lot as allowed by ESSA with mission-aligned preference and the process clearly described in their charter and charter contract approved by their sponsor, and there is no appeal to the sponsor;

(8) not limit or deny admission or show preference in admission decisions to any individual or group of individuals, except in the case of an application to create a single gender charter school, in which case gender may be the only reason to show preference or deny admission to the school; a charter school may give enrollment priority to a sibling of a pupil currently enrolled and attending, or who, within the last six years, attended the school for at least one complete academic year. A public charter school shall give enrollment preference to students enrolled in the public charter school the previous school year. An enrollment preference for returning students excludes those students from entering into a lottery. A charter school also may give priority to children of a charter school employee and children of the charter committee, if priority enrollment for children of employees and of the charter committee does not constitute more than twenty percent of the enrollment of the charter school. In the case of a charter school designated as an Alternative Education Campus, pursuant to Section 59-40-111, mission-aligned preference may be given to educationally disadvantaged students as specifically defined in their charter and charter contract approved by their sponsor and as allowed by ESSA. In addition, a charter school located on a federal military installation or base where the appropriate authorities have made buildings, facilities, and grounds on the installation or base available for use by the charter school as its principal location also may give enrollment priority to otherwise eligible students who are dependents of military personnel living in military housing on the base or installation or who are currently stationed at the base or installation not to exceed fifty percent of the total enrollment of the charter school. This priority is in addition to the other priorities provided by this item, but no child may be counted more than once for purposes of determining the percentage makeup of each priority;"

Categories expanded, considerations for accountability and academic performance standards revised

SECTION 2. Section 59-40-111 of the 1976 Code, as added by Act 288 of 2014, is amended to read:

"Section 59-40-111. (A) For purposes of this chapter, an Alternative Education Campus (AEC) is any charter school with an explicit mission and purpose as outlined in its charter to serve an enrolled student population with:

(1) severe limitations that preclude appropriate administration of the assessments administered pursuant to federal and state requirements;

(2) fifty percent or more of students having Individualized Education Programs (IEPs) in accordance with federal regulations or a demonstrated need for specific services or specialized instruction as defined in Section 59-40-50, and the school shall provide the needed evidence-based specialized instruction, interventions, services, support, and accommodations based on the needs of the students; or

(3) eighty-five percent or more of enrolled students meeting the definition of a 'high-risk' student including students who:

(a) have been adjudicated as juvenile delinquents or who are awaiting disposition of charges that may result in adjudication;

(b) have dropped out of school or who have not been continuously enrolled and regularly attending any school for at least one semester before enrolling in this school;

(c) have been expelled from school or who have engaged in behavior that would justify expulsion;

(d) have documented histories of personal drug or alcohol use or who have parents or guardians with documented dependencies on drugs or alcohol;

(e) have documented histories of personal street gang involvement or who have immediate family members with documented histories of street gang involvement;

(f) have documented histories of child abuse or neglect;

(g) have parents or guardians in prison or on parole or probation;

(h) have documented histories of domestic violence in the immediate family;

(i) have documented histories of repeated school suspensions;

(j) are under the age of twenty years who are parents or pregnant women;

(k) are homeless, as defined in the McKinney-Vento Homeless Assistance Act; or

(l) have a documented history of a serious psychiatric or behavioral disorder including, but not limited to, an eating disorder or a history of suicidal or self-injurious behaviors.

(B) Such schools must be classified as AECs by their sponsor.

(C) A high-poverty rating alone shall not qualify any charter school for status as an AEC.

(D) Charter school applicants seeking such a designation shall provide sufficient information in their charter application to allow the authorizer to make a determination as to whether that classification applies.

(E) Charter schools already in operation may seek AEC classification by petitioning their sponsor.

(F) Charter schools receiving an AEC designation either before or after opening, shall be held to applicable state and federal accountability standards along with the academic performance standards and expectations established by written agreement between the sponsor and the school that takes into account the school's specialized mission and student population with comparisons to any available nationally normed data with similar subsets of students and is included in their annual report in accordance with Section 59-40-140(H) and is included in the school report card compiled by the Education Oversight Committee."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 220

(R251, H3449)

AN ACT TO AMEND SECTION 50-13-675, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO NONGAME FISHING DEVICES AND GEAR THAT ARE PERMITTED TO BE USED IN CERTAIN BODIES OF FRESHWATER, SO AS TO PROVIDE THAT THE DEPARTMENT OF NATURAL RESOURCES MAY ISSUE ONE RECREATIONAL LICENSE TO A PERSON SIXTY-FIVE YEARS OF AGE OR OLDER FOR THE USE OF HOOP NETS ALONG THE WATEREE RIVER, AND TO MAKE A TECHNICAL CHANGE.

Be it enacted by the General Assembly of the State of South Carolina:

Hoop net recreational licenses

SECTION 1. Section 50-13-675(55) of the 1976 Code, as last amended by Act 114 of 2012, is further amended to read:

"(55) Wateree River:
(a) hoop nets:
(i) recreational license - persons sixty-five years of age or older - one;
(ii) commercial license - ten;
(b) set hooks:
(i) recreational license - fifty;
(ii) commercial license - fifty;
(c) traps:
(i) recreational license - two;
(ii) commercial license - forty;
(d) trotlines:
(i) recreational license - one line with fifty hooks maximum;
(ii) commercial license - three lines with one hundred fifty hooks maximum;"

Time effective

SECTION 2. This act takes effect upon approval by the Governor. However, Section 50-13-675(55)(a)(i) and Section 50-13-675(55)(a)(ii) are repealed on January 1, 2021.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 221

(R252, H3560)

AN ACT TO AMEND SECTION 59-25-410, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ANNUAL DEADLINE BY WHICH PUBLIC SCHOOL DISTRICTS MUST NOTIFY TEACHERS OF THEIR EMPLOYMENT STATUS FOR THE ENSUING YEAR, SO AS TO EXTEND THE DEADLINE TO

MAY FIRST; TO AMEND SECTION 59-25-420, RELATING TO THE ANNUAL DEADLINE BY WHICH TEACHERS MUST NOTIFY PUBLIC SCHOOL DISTRICTS OF THEIR ACCEPTANCE OF TEACHING CONTRACTS OFFERED BY THE DISTRICT, SO AS TO EXTEND THE DEADLINE TO MAY ELEVENTH; TO AMEND SECTION 59-25-460, RELATING TO NOTICES OF DISMISSAL AND THE CONDUCT OF RELATED PROCEEDINGS, SO AS TO PROVIDE THE HEARINGS ARE EVIDENTIARY HEARINGS, TO PROVIDE THE HEARINGS MAY BE CONDUCTED BY SCHOOL BOARDS OR THEIR DESIGNEES, TO PROVIDE REQUIRED QUALIFICATIONS FOR BOARD DESIGNEES, TO PROVIDE FOR PRELIMINARY MEETINGS AT WHICH PARTIES AND THEIR REPRESENTATIVES MAY DISCUSS ALTERNATIVE RESOLUTIONS, TO REVISE THE PROCESS FOR DISTRICTS TO ADOPT CERTAIN POLICIES CONCERNING THEIR DISMISSAL PROCEDURES, AND TO PROVIDE MISCELLANEOUS REQUIREMENTS CONCERNING THE CONDUCT OF HEARINGS AND RELATED MATTERS; TO AMEND SECTION 59-25-470, RELATING TO THE SCHEDULING OF TEACHER DISMISSAL HEARINGS, SO AS TO MAKE CONFORMING CHANGES, TO EXTEND THE PERIOD FOR SCHEDULING HEARINGS TO FORTY-FIVE DAYS, AND TO REVISE PROCEDURES CONCERNING THE CONDUCT OF HEARINGS; TO AMEND SECTION 59-25-480, RELATING TO APPEALS OF BOARD DECISIONS, SO AS TO CORRECT ARCHAIC LANGUAGE; AND TO AMEND SECTION 59-25-490, RELATING TO DEPOSITIONS IN TEACHER DISMISSAL HEARINGS, SO AS TO CORRECT ARCHAIC LANGUAGE.

Be it enacted by the General Assembly of the State of South Carolina:

Annual teacher employment notification deadline extended

SECTION 1. Section 59-25-410 of the 1976 Code is amended to read:

"Section 59-25-410. (A) The boards of trustees of the several school districts annually before May first shall decide and notify, in writing, a teacher, as defined in Section 59-1-130, whom the district employs concerning his reemployment for the ensuing year. If the superintendent fails to notify a teacher who has been employed by a school district for

a majority of the current school year of his status for the ensuing year, the teacher is considered to be reemployed for the ensuing year and the board shall issue a contract to him as though the board had reemployed him in the usual manner. Notice of the superintendent's recommendation not to renew an employment contract must be given in writing before May first.

(B) On or before August fifteenth, the superintendent, principal, where applicable, or supervisor shall notify the teacher of his tentative assignment for the ensuing school year.

(C) This section does not apply to a teacher whose contract of employment or dismissal is under appeal under Section 59-25-450.

(D) For purposes of this article, 'teacher' means an employee possessing a professional certificate issued by the State Department of Education, except an employee working pursuant to a multiyear contract."

Annual teacher acceptance of employment offer deadline extended

SECTION 2. Section 59-25-420 of the 1976 Code is amended to read:

"Section 59-25-420. (A) A teacher who is reemployed by written notification pursuant to Section 59-25-410 shall before May eleventh notify the board of trustees in writing of his acceptance of the contract. Failure on the part of the teacher to notify the board of acceptance within the specified time limit is conclusive evidence of the teacher's rejection of the contract.

(B) A teacher, receiving a notice that he will not be reemployed for the ensuing year, has the same notice and opportunity for a hearing provided in this article for a teacher dismissed for cause during the school year."

Dismissal process revised

SECTION 3. Section 59-25-460 of the 1976 Code is amended to read:

"Section 59-25-460. (A) A teacher may not be dismissed unless written notice specifying the cause of dismissal first is given to the teacher by the superintendent and the teacher is given an opportunity for an evidentiary hearing. The superintendent or his designee may meet with the teacher before issuing a notice of dismissal to discuss alternative resolutions. The parties attending this meeting must have the option of having a representative present. This written notice must include the fact

that a hearing before the board or its designee is available to the teacher upon request if the request is made in writing within fifteen days as provided in Section 59-25-470. Any such hearing must be public unless the teacher requests in writing that it be private. A board that chooses to delegate the evidentiary hearing to one or more designees, as provided in this section, shall indicate in board policy that it engages in this practice. The hearing process becomes effective when the board adopts the policy, and must be communicated to all affected employees within fifteen days. A subsequent change only may be made pursuant to the board policy revision process.

(B)(1) If the board chooses to delegate the evidentiary hearing to a designee, the designee must be:

(a) an attorney licensed to practice law in this State;

(b) certified by the South Carolina Supreme Court as a mediator or arbitrator; and

(c) designated by the board to hear all evidentiary hearings in the district for the school year, except when:

(i) both parties consent to use an alternate hearing officer; or

(ii) the district uses more than one designee, in which case the parties may by mutual consent select one of these designees for their hearing or, if they fail to reach such an agreement, the board randomly shall select one of its designees for the hearing.

(2) If the designee holds the evidentiary hearing, he shall issue a written report and recommendation containing findings of facts and conclusions of law to the board, superintendent, and teacher within fifteen days after the hearing concludes. The superintendent and the teacher may submit a written response to this report and recommendation to the board within ten days after the date on which the report and recommendation are issued, after which the board shall issue a decision affirming or withdrawing the notice of suspension or dismissal within thirty days. In the interim, the board may conduct a hearing on the order to consider any written responses from the superintendent and teacher, but this hearing may not operate to extend the thirty-day limit in which the board shall issue its decision affirming or withdrawing the notice of suspension or dismissal. The board retains final decision-making authority regarding the teacher dismissal or suspension recommendation based on its consideration of the record, the report and recommendation, and any written submission of the superintendent and teacher.

(C) If the board holds the evidentiary hearing, the board shall issue its decision within the thirty days after the hearing. This decision must be in writing and must include findings of facts and conclusions of law.

(D) The board shall determine if the evidence shows good and just cause for the notice of suspension or dismissal, and accordingly shall render a decision to affirm or withdraw the notice of suspension or dismissal.

(E) The District Board of Trustees as provided in subsection (C), or its designee, as provided in subsection (B), may issue subpoenas requiring the attendance of witnesses at the hearing and, at the request of the teacher against whom a charge is made, shall issue these subpoenas, but it may limit the number of these witnesses to ten. Testimony at a hearing must be taken under oath. A member of the board, or its designee, may administer oaths to witnesses. The board, or its designee, shall cause a record of the proceedings to be kept and shall employ a competent reporter to take stenographic or stenotype notes of all testimony.

(F) If the board's decision is favorable to the teacher, the board shall pay the cost of the reporter's attendance and services at the hearing. If the decision is unfavorable to the teacher, one-half of the cost of the reporter's attendance and services must be borne by the teacher. A party desiring a transcript of the hearing must pay for the costs of obtaining the transcript."

Dismissal hearing scheduling and procedures revised

SECTION 4. Section 59-25-470 of the 1976 Code is amended to read:

"Section 59-25-470. (A) Within fifteen days after receipt of notice of suspension or dismissal, a teacher may serve upon the chairman of the board or the superintendent a written request for a hearing before the board, or its designee.

(B) If the teacher fails to make such a request, or after a hearing as provided in this article, the board shall take action and shall enter an order as it considers lawful and appropriate.

(C) The hearing must be held by the board, or its designee, within forty-five days after the request is served. A notice of the time and place of the hearing must be given the teacher not less than five days before the date of the hearing.

(D) The teacher may be present with counsel at the hearing, and may cross-examine witnesses, may offer evidence and witnesses, and present defenses to the charges. The board, or its designee, shall order the appearance of any witness requested by the teacher, subject to the limitations of Section 59-25-460. The superintendent shall initiate the introduction of evidence in substantiation of the charges."

Appeals, archaic language corrected

SECTION 5. Section 59-25-480 of the 1976 Code is amended to read:

"Section 59-25-480. (A) The decision of the district board of trustees is final, unless within thirty days afterward an appeal is made to the court of common pleas of any county in which the major portion of such district lies.

(B) Notice of the appeal and the grounds thereof shall be filed with the district board of trustees. The district board shall, within thirty days thereafter, file a certified copy of the transcript record with the clerk of such court. An appeal from the order of the circuit court shall be taken in the manner provided by the South Carolina Appellate Court Rules. If the decision of the board is reversed on appeal, on a motion of either party the trial court shall order reinstatement and shall determine the amount for which the board shall be liable for actual damages and court costs. In no event shall any liability extend beyond two years from the effective date of dismissal. Amounts earned or amounts earnable with reasonable diligence by the person wrongfully suspended shall be deducted from any back pay."

Depositions, archaic language corrected

SECTION 6. Section 59-25-490 of the 1976 Code is amended to read:

"Section 59-25-490. A party to a proceeding conducted pursuant to this chapter may depose a witness within or without the State and either by commission or de bene esse. The deposition must be taken pursuant and subject to the same provisions, conditions, and restrictions that apply to taking of similar depositions in actions brought in the court of common pleas. The same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification of them and matters of practice relating to them apply."

Time effective

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 222

(R253, H3653)

AN ACT TO AMEND CHAPTER 20, TITLE 23, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE LAW ENFORCEMENT ASSISTANCE AND SUPPORT ACT, SO AS TO REVISE THE DEFINITION FOR THE TERM "LAW ENFORCEMENT AGENCY" AND THE TERM "LAW ENFORCEMENT SERVICES", TO PROVIDE A DEFINITION FOR THE TERM "MUTUAL AID AGREEMENT", TO DELETE THE PROVISION THAT ALLOWS LAW ENFORCEMENT AGENCIES TO ENTER INTO CONTRACTUAL AGREEMENTS TO PROVIDE LAW ENFORCEMENT SERVICES, TO ALLOW POLITICAL SUBDIVISIONS TO ENTER INTO MUTUAL AID AGREEMENTS TO PROVIDE LAW ENFORCEMENT SERVICES, TO PROVIDE FOR THE CONTENT OF A MUTUAL AID AGREEMENT, TO SPECIFY THE OFFICIALS WHO MAY ENTER INTO AND ENFORCE A MUTUAL AID AGREEMENT, TO PROVIDE FOR THE LEGAL RIGHTS, POWERS, AND DUTIES OF LAW ENFORCEMENT OFFICERS WHO PARTICIPATE IN A MUTUAL AID AGREEMENT, AND TO MAKE TECHNICAL CHANGES; AND TO REPEAL SECTIONS 23-1-210, 23-1-215, AND 23-20-50 RELATING TO A LAW ENFORCEMENT AGENCY TRANSFERRING AN OFFICER TO ANOTHER LAW ENFORCEMENT AGENCY, AGREEMENTS BETWEEN LAW ENFORCEMENT AGENCIES TO TRANSFER OFFICERS BETWEEN AGENCIES TO INVESTIGATE CRIME, AND THE APPROVAL OF CONTRACTS ENTERED INTO UNDER THE LAW ENFORCEMENT ASSISTANCE AND SUPPORT ACT.

Be it enacted by the General Assembly of the State of South Carolina:

Law Enforcement Assistance Support Act

SECTION 1. Chapter 20, Title 23 of the 1976 Code is amended to read:

"CHAPTER 20

Law Enforcement Assistance and Support Act

Section 23-20-10. This chapter may be cited as the 'Law Enforcement Assistance and Support Act'.

Section 23-20-20. As used in this chapter:

(1) 'Law enforcement agency' means any state, county, municipal, or local law enforcement authority that enters into an agreement for the procurement of law enforcement support services.

(2) 'Law enforcement provider' means any in-state or out-of-state law enforcement authority that provides law enforcement services to a law enforcement agency pursuant to this chapter.

(3) 'Law enforcement services' means any law enforcement assistance or service performed by a certified law enforcement officer.

(4) 'Mutual aid agreement' means any agreement entered into on behalf of a law enforcement agency in this State for the purpose of providing the proper and prudent exercise of public safety functions across jurisdictional lines, including, but not limited to, multijurisdictional task forces, criminal investigations, patrol services, crowd control, traffic control and safety, and other emergency service situations. Such agreements must not be permitted for the sole purpose of speed enforcement.

Section 23-20-30. (A) Any county, incorporated municipality, or other political subdivision of this State may enter into mutual aid agreements as may be necessary for the proper and prudent exercise of public safety functions. All agreements must adhere to the requirements contained in Section 23-20-40.

(B) Nothing in this chapter may be construed to alter, amend, or affect any rights, duties, or responsibilities of law enforcement authorities established by South Carolina's constitutional or statutory laws or established by the ordinances of South Carolina's political subdivisions, except as expressly provided for in this chapter.

Section 23-20-40. (A) All mutual aid agreements for law enforcement services must be in writing and include, but may not be limited to, the following:

(1) a statement of the specific services to be provided;

(2) specific language dealing with financial agreements between the parties;

(3) specification of the records to be maintained concerning the performance of services to be provided to the agency;

(4) language dealing with the duration, modification, and termination of the agreement;

(5) specific language dealing with the legal contingencies for any lawsuits or the payment of damages that arise from the provided services;

(6) a stipulation as to which law enforcement authority maintains control over the law enforcement provider's personnel;

(7) specific arrangements for the use of equipment and facilities; and

(8) specific language dealing with the processing of requests for information pursuant to the Freedom of Information Act for public safety functions performed or arising under these agreements.

(B) Except as provided in subsection (C), a mutual aid agreement entered into on behalf of a law enforcement authority must be approved by the appropriate governing bodies of each concerned county, incorporated municipality, or other political subdivision of this State. Agreements entered into are executed between governing bodies, and, therefore, may last until the agreement is terminated by a participating party of the agreement.

(C) An elected official whose office was created by the Constitution or by general law of this State is not required to seek approval from the elected official's governing body in order to participate in mutual aid agreements.

(D) Provided the conditions and terms of the mutual aid agreements are followed, the chief executive officers of the law enforcement agencies in the concerned counties, incorporated municipalities, or other political subdivisions have the authority to send and receive such resources, including personnel, as may be needed to maintain the public peace and welfare.

(E) The officers of the law enforcement provider have the same legal rights, powers, and duties to enforce the laws of this State as the law enforcement agency requesting the services.

Section 23-20-60. The Governor, upon the request of a law enforcement authority or in his discretion, may by executive order, waive the requirement for a written agreement for law enforcement services required by this chapter during a natural disaster or other emergency affecting public safety."

Repeal

SECTION 2. Sections 23-1-210, 23-1-215, and 23-20-50 of the 1976 Code are repealed.

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 223

(R255, H3799)

AN ACT TO AMEND SECTION 23-31-215, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ISSUANCE OF CONCEALED WEAPON PERMITS, SO AS TO PROVIDE THAT SOUTH CAROLINA SHALL RECOGNIZE CONCEALED WEAPON PERMITS ISSUED BY GEORGIA AND NORTH CAROLINA UNDER CERTAIN CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

Concealed weapon permits

SECTION 1. Section 23-31-215(N) of the 1976 Code, as last amended by Act 349 of 2008, is further amended to read:

"(N)(1) Valid out-of-state permits to carry concealable weapons held by a resident of a reciprocal state must be honored by this State, provided, that the reciprocal state requires an applicant to successfully

pass a criminal background check and a course in firearm training and safety. A resident of a reciprocal state carrying a concealable weapon in South Carolina is subject to and must abide by the laws of South Carolina regarding concealable weapons. SLED shall maintain and publish a list of those states as the states with which South Carolina has reciprocity.

(2) Notwithstanding the reciprocity requirements of item (1), South Carolina shall automatically recognize concealed weapon permits issued by Georgia and North Carolina.

(3) The reciprocity provisions of this section shall not be construed to authorize the holder of any out-of-state permit or license to carry, in this State, any firearm or weapon other than a handgun."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 224

(R256, H3891)

AN ACT TO AMEND SECTION 56-31-50, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SURCHARGES ON RENTAL OR PRIVATE PASSENGER MOTOR VEHICLES FOR THIRTY-ONE DAYS OR LESS, SO AS TO DEFINE NECESSARY TERMS, TO DELETE EXISTING SURCHARGE PROVISIONS AND INSTEAD PROVIDE RENTAL COMPANIES ENGAGED IN THE BUSINESS OF RENTING VEHICLES FOR PERIODS OF NINETY DAYS OR LESS MAY CHARGE CERTAIN MOTOR VEHICLE LICENSE FEES, TO PROVIDE FEES CHARGED MUST REPRESENT GOOD FAITH ESTIMATES BY MOTOR VEHICLE RENTAL COMPANIES OF THEIR DAILY CHARGES CALCULATED TO RECOVER THEIR ACTUAL TOTAL ANNUAL RECOVERABLE COSTS, TO PROVIDE REQUIREMENTS FOR WHEN VEHICLE LICENSE FEES ANNUALLY COLLECTED BY MOTOR VEHICLE RENTAL COMPANIES EXCEED THE ACTUAL

ANNUAL COSTS, TO IMPOSE DISCLOSURE REQUIREMENTS IN RENTAL AGREEMENTS, AND TO SUBJECT THESE VEHICLE LICENSE FEES TO CERTAIN SALES AND USE TAXES; BY ADDING SECTION 56-31-60 SO AS TO PROVIDE MANDATORY RENTAL FEES FOR QUALIFIED HEAVY EQUIPMENT, TO PROVIDE EXCEPTIONS, TO DEFINE NECESSARY TERMS, AND TO EXEMPT QUALIFIED HEAVY DUTY PROPERTY EQUIPMENT SUBJECT TO HEAVY EQUIPMENT RENTAL FEES FROM PERSONAL PROPERTY TAXES; AND TO REPEAL SECTION 12-37-717 RELATING TO SURCHARGES ON HEAVY EQUIPMENT RENTAL CONTRACTS.

Be it enacted by the General Assembly of the State of South Carolina:

Motor vehicle rental fees, definitions, good faith estimates, disclosures, excess fees, taxes

SECTION 1. Section 56-31-50 of the 1976 Code is amended to read:

"Section 56-31-50. (A) As used in this section:

(1) 'Motor vehicle rental company' means an individual or business entity whose business activity is renting motor vehicles to consumers under rental agreements for periods of ninety days or less.

(2) 'Vehicle license fee' means a charge that may be separately stated and charged on the rental contract in a vehicle rental transaction originating in this State to recover the motor vehicle rental company's costs incurred for:

(a) licensing, titling, registering, plating, and inspecting of its rental vehicles; and

(b) taxes paid in connection with registering its rental vehicles.

(B) Rental companies engaged in the business of renting vehicles for periods of ninety days or less may charge, at the time the vehicle or rental vehicle is rented in South Carolina, separately stated fees which may include, but must not be limited to, vehicle license fees, airport access fees, airport concession fees, and all applicable taxes. For purposes of this section, a vehicle or rental vehicle is rented in South Carolina if it is picked up by the renter in South Carolina.

(C) If a motor vehicle rental company includes a vehicle license fee for a rental transaction disclosed on the rental agreement, the amount of the charge must represent the good faith estimate by the motor vehicle rental company of its daily charge calculated to recover its actual total

annual recoverable costs, pursuant to subsection (A)(2), on its rental motor vehicle fleet for the corresponding calendar year.

(D)(1) If the total amount of the vehicle license fees collected by a motor vehicle rental company pursuant to this section in any calendar year exceeds the actual costs of the car rental company, as allowed under subsection (A)(2), for that calendar year, the car rental company shall:

(a) retain the excess amount; and

(b) adjust the estimated average per vehicle charge for the following calendar year by a corresponding amount.

(2) Nothing in this section may prevent a motor vehicle rental company from making adjustments to a vehicle license fee per vehicle charge during the calendar year to reflect interim developments affecting the motor vehicle rental company's prior estimated per vehicle fee for that calendar year.

(E)(1) If a motor vehicle rental company charges a vehicle license fee, the amount of the fee must be:

(a) disclosed at the time of reservation and as part of any estimated pricing provided to the renter; and

(b) shown as a separately itemized charge on the rental agreement.

(2) The vehicle license fee must be described in the terms and conditions of the rental agreement as the estimated average per day portion of the motor vehicle company's costs incurred for:

(a) licensing, titling, registering, plating, and inspecting its rental vehicles; and

(b) taxes paid in connection with registering its rental vehicles.

(F) The vehicle license fee authorized by this section is subject to state and local sales and use tax in the manner and to the same extent as the fee charged for the lease or rental of the rental vehicle."

Heavy equipment rental fees, definitions, applicability and exemptions, tax exemption

SECTION 2. Chapter 31, Title 56 of the 1976 Code is amended by adding:

"Section 56-31-60. (A) As used in this section:

(1) 'Qualified heavy equipment property' means any construction, earthmoving, or industrial equipment that is mobile and rented by a qualified renter, including attachments for the equipment or other ancillary equipment or tools. Qualified heavy equipment property is

mobile if it is not permanently affixed to real property and is moved amongst worksites.

(2) 'Qualified renter' means a renter:

(i) whose primary business is renting out qualified heavy equipment property. Primary business means over fifty-one percent of the annual revenue of the business in any given year; and

(ii) that is engaged in a line of business described in Code 532412 or 532310 of the North American Industry Classification System published by the U.S. Census Bureau, 2012 edition.

(3) 'Qualified rental' means qualified heavy equipment property rented for three hundred sixty-five days or less, qualified heavy equipment property rented pursuant to an open-ended contract, or qualified heavy equipment property rented via a contract without a specified time period.

(4) 'Rental price' means the amount of the charge for renting the qualified heavy equipment, excluding any separately stated charges that are not rental charges, including, but not limited to, separately stated charges for delivery and pickup fees, damage waivers, environmental fees, sales tax, or any other ancillary charge.

(B)(1) Except as provided in subsection (2), a person or company in the business of renting qualified heavy equipment property located in this State shall include on the rental invoice a two and one-half percent heavy equipment rental fee on the rental price for any item of qualified heavy equipment property rented to a customer by a qualified renter. The total amount of the heavy equipment rental fee collected shall be remitted to the state Department of Revenue on a quarterly basis. The Department of Revenue shall distribute the remitted fee to the local jurisdiction where the qualified heavy equipment was rented. The local jurisdiction shall distribute the received funds in the same manner as the personal property tax is distributed.

(2) Notwithstanding subsection (1), the heavy equipment rental fee shall not apply to the rental of heavy equipment property directly rented to the federal government, the State, or any political subdivision of the State. There are no other exemptions from this fee.

(3) The heavy equipment rental fee shall be levied on all qualified rentals.

(4) Qualified heavy equipment property subject to the heavy equipment rental fee is exempt from personal property tax.

(5) The Department of Revenue may promulgate regulations relating to the administration and enforcement of this section.

(C) The heavy equipment rental fee applies to all qualified rentals made from a rental location in South Carolina where the customer picks

up the equipment, or all qualified rentals from a rental location in the State where the qualified heavy equipment property is delivered in the State. The heavy equipment rental fee does not apply to rentals made from a rental location in the State and delivered outside the State.

(D) The heavy equipment rental fee is not subject to state or local sales tax."

Repeal

SECTION 3. Section 12-37-717 of the 1976 Code is repealed.

Time effective

SECTION 4. This act takes effect on January 1, 2017.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 225

(R257, H3952)

AN ACT TO AMEND SECTION 44-23-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS APPLICABLE TO BOTH MENTALLY ILL PERSONS AND PERSONS WITH INTELLECTUAL DISABILITY, SO AS TO ADD A DEFINITION FOR "GRAVELY DISABLED"; TO AMEND SECTION 44-17-410, AS AMENDED, RELATING TO THE EMERGENCY ADMISSION OF A PERSON LIKELY TO CAUSE SERIOUS HARM TO HIMSELF OR OTHERS, SO AS TO PROVIDE FOR A WRITTEN AFFIDAVIT STATING A BELIEF THAT THE INDIVIDUAL IS A PERSON WITH A MENTAL ILLNESS AND BECAUSE OF THIS CONDITION THERE IS THE LIKELIHOOD OF SERIOUS HARM; AND TO AMEND SECTION 44-17-440, RELATING TO THE CUSTODY AND TRANSPORT OF A PERSON REQUIRING IMMEDIATE CARE, SO AS TO REQUIRE A STATE OR LOCAL LAW ENFORCEMENT OFFICER PREFERABLY WITH CRISIS INTERVENTION TRAINING TO TAKE INTO CUSTODY AND

TRANSPORT THE PERSON TO THE HOSPITAL, AND TO PROVIDE FOR WHO SHALL TRANSPORT THE INDIVIDUAL FROM ONE FACILITY TO ANOTHER.

Be it enacted by the General Assembly of the State of South Carolina:

Definitions

SECTION 1. Section 44-23-10 of the 1976 Code, as last amended by Act 47 of 2011, is further amended to read:

"Section 44-23-10. When used in this chapter, Chapter 9, Chapter 11, Chapter 13, Articles 3, 5, 7, and 9 of Chapter 17, Chapter 24, Chapter 27, Chapter 48, and Chapter 52, unless the context clearly indicates a different meaning:

(1) 'Attending physician' means the staff physician charged with primary responsibility for the treatment of a patient.

(2) 'Conservator' means a person who legally has the care and management of the estate of one who is incapable of managing his own estate, whether or not he has been declared legally incompetent.

(3) 'Department' means the South Carolina Department of Mental Health.

(4) 'Designated examiner' means a physician licensed by the Board of Medical Examiners of this State or a person registered by the department as specially qualified, under standards established by the department, in the diagnosis of mental or related illnesses.

(5) 'Director' means the Director of the South Carolina Department of Mental Health.

(6) 'Discharge' means an absolute release or dismissal from an institution or a hospital.

(7) 'Gravely disabled' means a person who, due to mental illness, lacks sufficient insight or capacity to make responsible decisions with respect to his treatment and because of this condition is likely to cause harm to himself through neglect, inability to care for himself, personal injury, or otherwise.

(8) 'Guardian' or 'legal guardian' means a person who legally has the care and management of the person of one who is not sui juris.

(9) 'Hospital' means a public or private hospital.

(10) 'Interested person' means a parent, guardian, spouse, adult next of kin, or nearest friend.

(11) 'Leave of absence' means a qualified release from an institution or a hospital.

(12) 'Licensed physician' means an individual licensed under the laws of this State to practice medicine or a medical officer of the government of the United States while in this State in the performance of official duties.

(13) 'Likelihood of serious harm' means because of mental illness there is:

(a) a substantial risk of physical harm to the person himself as manifested by evidence of threats of, or attempts at, suicide or serious bodily harm;

(b) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior and serious harm to them; or

(c) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that the person is gravely disabled and that reasonable provision for the person's protection is not available in the community.

(14) 'Mental health clinic' means an institution, or part of an institution, maintained by the department for the treatment and care on an outpatient basis.

(15) 'Nearest friend' means any responsible person who, in the absence of a parent, guardian, or spouse, undertakes to act for and on behalf of another individual who is incapable of acting for himself for that individual's benefit, whether or not the individual for whose benefit he acts is under legal disability.

(16) 'Nonresident licensed physician' means an individual licensed under the laws of another state to practice medicine or a medical officer of the government of the United States while performing official duties in that state.

(17) 'Observation' means diagnostic evaluation, medical, psychiatric and psychological examination, and care of a person for the purpose of determining his mental condition.

(18) 'Officer of the peace' means any state, county, or city police officer, officer of the State Highway Patrol, sheriff, or deputy sheriff.

(19) 'Parent' means natural parent, adoptive parent, stepparent, or person with legal custody.

(20) 'Patient' means a person who seeks hospitalization or treatment under the provisions of this chapter, Chapter 9, Chapter 11, Chapter 13, Article 1 of Chapter 15, Chapter 17, Chapter 27, Chapter 48, and Chapter 52 or any person for whom such hospitalization or treatment is sought.

(21) 'Person with a mental illness' means a person with a mental disease to such an extent that, for the person's own welfare or the welfare

of others or of the community, the person requires care, treatment, or hospitalization.

(22) 'Person with intellectual disability' means a person, other than a person with a mental illness primarily in need of mental health services, whose inadequately developed or impaired intelligence and adaptive level of behavior require for the person's benefit, or that of the public, special training, education, supervision, treatment, care, or control in the person's home or community or in a service facility or program under the control and management of the Department of Disabilities and Special Needs.

(23) 'State hospital' means a hospital, or part of a hospital, equipped to provide inpatient care and treatment and maintained by the department.

(24) 'State mental health facility' or 'facility' means any hospital, clinic, or other institution maintained by the department.

(25) 'State of citizenship' means the last state in which a person resided for one or more consecutive years, exclusive of time spent in public or private hospitals and penal institutions or on parole or unauthorized absence from such hospitals and institutions and of time spent in service in any of the Armed Forces of the United States; the residence of a person must be determined by the actual physical presence, not by the expressed intent of the person.

(26) 'Treatment' means the broad range of emergency, outpatient, intermediate, and inpatient services and care that may be extended to a patient, including diagnostic evaluation and medical, psychiatric, psychological, and social service care and vocational rehabilitation and counseling."

Affidavit for emergency admission

SECTION 2. Section 44-17-410(1) of the 1976 Code is amended to read:

"(1) written affidavit under oath by a person stating:

(a) a belief that the individual is a person with a mental illness as defined in Section 44-23-10(21) and because of this condition there is the likelihood of serious harm as defined in Section 44-23-10(13) to himself or others if not immediately hospitalized;

(b) the specific type of serious harm thought probable if the person is not immediately hospitalized and the factual basis for this belief;"

Custody and transport

SECTION 3. Section 44-17-440 of the 1976 Code is amended to read:

"Section 44-17-440. (A) The certificate required by Section 44-17-410, emergency admission, must authorize and require a state or local law enforcement officer, preferably in civilian clothes and preferably with crisis intervention training, to take into custody and transport the person to the hospital designated by the certification. No person may be taken into custody after the expiration of three days from the date of certification. A friend or relative may transport the individual to the mental health facility designated in the application or engage the services of an emergency medical technician as defined by Section 44-61-310, if the friend or relative has read and signed a statement on the certificate which clearly states that it is the responsibility of a state or local law enforcement officer to provide timely transportation for the patient and that the friend or relative freely chooses to assume that responsibility and liability. A friend or relative who chooses to transport the patient is not entitled to reimbursement from the State for the cost of the transportation. An officer or an emergency medical technician acting in accordance with this article is immune from civil liability. Upon entering a written agreement between the local law enforcement agency, the governing body of the local government, the emergency medical service providers, and the directors of the community mental health centers, an alternative transportation program utilizing peer supporters and case managers may be arranged for nonviolent persons requiring mental health treatment. The agreement clearly must define the responsibilities of each party and the requirements for program participation.

(B) An individual who has been certified for an involuntary emergency admission but not yet admitted to a facility and needs to be transported from a mental health center or an emergency department of a hospital to another facility for admission may be transported by an emergency medical technician."

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 226

(R258, H3999)

AN ACT TO AMEND SECTION 44-66-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PERSONS WHO MAY MAKE HEALTH CARE DECISIONS FOR PATIENTS WHO ARE UNABLE TO PROVIDE CONSENT, SO AS TO MAKE CHANGES TO THE ORDER OF PRIORITY, TO ADD CLASSES OF PERSONS WITH THE AUTHORITY TO MAKE THESE HEALTH CARE DECISIONS, AND FOR OTHER PURPOSES.

Be it enacted by the General Assembly of the State of South Carolina:

Health care decisions, incompetent patients

SECTION 1. Section 44-66-30 of the 1976 Code is amended to read:

"Section 44-66-30. (A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in the following order of priority:

(1) a guardian appointed by the court pursuant to Article 5, Part 3 of the South Carolina Probate Code, if the decision is within the scope of the guardianship;

(2) an attorney-in-fact appointed by the patient in a durable power of attorney executed pursuant to Section 62-5-501, if the decision is within the scope of his authority;

(3) a person given priority to make health care decisions for the patient by another statutory provision;

(4) a spouse of the patient unless the spouse and the patient are separated pursuant to one of the following:

(a) entry of a pendente lite order in a divorce or separate maintenance action;

(b) formal signing of a written property or marital settlement agreement; or

(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

(5) an adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;

(6) a parent of the patient;

(7) an adult sibling of the patient, or if the patient has more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation;

(8) a grandparent of the patient, or if the patient has more than one grandparent, a majority of the grandparents who are reasonably available for consultation;

(9) any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient, or if the patient has more than one other adult relative, a majority of those other adult relatives who are reasonably available for consultation.

(B) Documentation of efforts to locate a decision maker who is a person identified in subsection (A) must be recorded in the patient's medical record.

(C) If persons of equal priority disagree on whether certain health care should be provided to a patient who is unable to consent, an authorized person, a health care provider involved in the care of the patient, or any other person interested in the welfare of the patient may petition the probate court for an order determining what care is to be provided or for appointment of a temporary or permanent guardian.

(D) Priority pursuant to this section must not be given to a person if a health care provider responsible for the care of a patient who is unable to consent determines that the person is not reasonably available, is not willing to make health care decisions for the patient, or is unable to consent as defined in Section 44-66-20(8).

(E) An attending physician or other health care professional responsible for the care of a patient who is unable to consent may not give priority or authority pursuant to subsections (A)(5) through (A)(10) to a person if the attending physician or health care professional has actual knowledge that, before becoming unable to consent, the patient did not want that person involved in decisions concerning his care.

(F) This section does not authorize a person to make health care decisions on behalf of a patient who is unable to consent if, in the opinion of the certifying physicians, the patient's inability to consent is temporary, and the attending physician or other health care professional

responsible for the care of the patient determines that the delay occasioned by postponing treatment until the patient regains the ability to consent will not result in significant detriment to the patient's health.

(G) A person authorized to make health care decisions pursuant to subsection (A) shall base those decisions on the patient's wishes to the extent that the patient's wishes can be determined. Where the patient's wishes cannot be determined, the person shall base the decision on the patient's best interest.

(H) A person authorized to make health care decisions pursuant to subsection (A) either may consent or withhold consent to health care on behalf of the patient."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 227

(R259, H4124)

AN ACT TO AMEND SECTION 44-11-70, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO APPOINTMENT AND POWERS OF MARSHALS AT STATE MENTAL HEALTH FACILITIES, SO AS TO SUBSTITUTE DEPARTMENT OF MENTAL HEALTH FOR MENTAL HEALTH COMMISSION AND LAW ENFORCEMENT OFFICERS FOR MARSHALS, AND FOR OTHER PURPOSES.

Be it enacted by the General Assembly of the State of South Carolina:

Department of Mental Health, powers

SECTION 1. Section 44-11-70 of the 1976 Code is amended to read:

"Section 44-11-70. The Department of Mental Health may employ law enforcement officers as may be necessary to maintain the security

of state mental health facilities. The law enforcement officers must be vested with all the powers and charged with all the duties of police officers generally. They may, without warrant, arrest persons guilty of disorderly conduct or of trespass on state mental health facilities and have them tried in any court of competent jurisdiction."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 228

(R261, H4413)

AN ACT TO AMEND SECTION 63-7-40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO LOCATIONS AT WHICH A PERSON MAY LEAVE AN INFANT UNDER CERTAIN CIRCUMSTANCES WITHOUT CRIMINAL PENALTY, SO AS TO REQUIRE SAFE HAVENS TO POST A NOTICE STATING THAT THE LOCATION IS A SAFE HAVEN, TO REQUIRE THE DEPARTMENT OF SOCIAL SERVICES TO PREPARE THE NOTICE FOR USE BY SAFE HAVENS, TO ALLOW THE PLACEMENT OF AN INFANT NOT MORE THAN SIXTY DAYS OLD AT A SAFE HAVEN, AND TO CHANGE THE DEFINITION OF "INFANT".

Be it enacted by the General Assembly of the State of South Carolina:

Infant safe haven requirements

SECTION 1. Section 63-7-40(B), (G), and (J) of the 1976 Code is amended to read:

"(B)(1) A facility, agency, or other location designated as a safe haven pursuant to subsection (J)(2) must post a notice prepared by the department on its premises that is prominently displayed for view by the

public, stating that the facility, agency, or other location is a safe haven at which a person may leave an infant.

(2) The safe haven must offer the person leaving the infant information concerning the legal effect of leaving the infant with the safe haven.

(3) The safe haven must ask the person leaving the infant to identify any parent of the infant other than the person leaving the infant with the safe haven. The safe haven also must attempt to obtain from the person information concerning the infant's background and medical history as specified on a form provided by the department. This information must include, but is not limited to, information concerning the use of a controlled substance by the infant's mother, provided that information regarding the use of a controlled substance by the infant's mother is not admissible as evidence of the unlawful use of a controlled substance in any court proceeding. The safe haven must give the person a copy of the form and a prepaid envelope for mailing the form to the department if the person does not wish to provide the information to the safe haven. The department must provide these materials to safe havens.

(4) Identifying information disclosed by the person leaving the infant must be kept confidential by the safe haven and disclosed to no one other than the department. However, if a court determines that the immunity provisions of subsection (H) do not apply, the safe haven may disclose the information as permitted by confidentiality protections applicable to records of the safe haven, if the safe haven has such confidentiality protections for records. The department must maintain confidentiality of this information in accordance with Section 63-7-1990.

(G) A person who leaves an infant at a safe haven or directs another person to do so must not be prosecuted for any criminal offense on account of such action if:

(1) the person is a parent of the infant or is acting at the direction of a parent;

(2) the person leaves the infant in the physical custody of a staff member or an employee of the safe haven; and

(3) the infant is not more than sixty days old or the infant is reasonably determined by the hospital or hospital outpatient facility to be not more than sixty days old.

This subsection does not apply to prosecution for the infliction of any harm upon the infant other than the harm inherent in abandonment.

(J) For purposes of this section:

(1) 'infant' means a person not more than sixty days old; and

(2) 'safe haven' means a hospital or hospital outpatient facility, a law enforcement agency, a fire station, an emergency medical services station, or any staffed house of worship during hours when the facility is staffed."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 229

(R262, H4416)

AN ACT TO AMEND SECTION 6-1-970, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EXEMPTIONS FROM IMPACT FEES, SO AS TO ADD EXEMPTIONS FOR CERTAIN SCHOOLS AND VOLUNTEER FIRE DEPARTMENTS; AND TO AMEND SECTION 6-1-920, RELATING TO THE DEFINITION OF "PUBLIC FACILITIES", SO AS TO ADD CERTAIN PUBLIC EDUCATION FACILITIES.

Be it enacted by the General Assembly of the State of South Carolina:

Exemptions from impact fees

SECTION 1. Section 6-1-970 of the 1976 Code is amended to read:

"Section 6-1-970. The following structures or activities are exempt from impact fees:

(1) rebuilding the same amount of floor space of a structure that was destroyed by fire or other catastrophe;

(2) remodeling or repairing a structure that does not result in an increase in the number of service units;

(3) replacing a residential unit, including a manufactured home, with another residential unit on the same lot, if the number of service units does not increase;

(4) placing a construction trailer or office on a lot during the period of construction on the lot;

(5) constructing an addition on a residential structure which does not increase the number of service units;

(6) adding uses that are typically accessory to residential uses, such as a tennis court or a clubhouse, unless it is demonstrated clearly that the use creates a significant impact on the system's capacity;

(7) all or part of a particular development project if:

(a) the project is determined to create affordable housing; and

(b) the exempt development's proportionate share of system improvements is funded through a revenue source other than development impact fees;

(8) constructing a new elementary, middle, or secondary school; and

(9) constructing a new volunteer fire department."

Public facilities

SECTION 2. Section 6-1-920(18) of the 1976 Code is amended by adding an appropriately lettered subitem to read:

"( ) public education facilities for grades K-12 including, but not limited to, schools, offices, classrooms, parking areas, playgrounds, libraries, cafeterias, gymnasiums, health and music rooms, computer and science laboratories, and other facilities considered necessary for the proper public education of the state's children."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 230

(R263, H4542)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "THE RIGHT TO TRY ACT" BY ADDING CHAPTER 137 TO TITLE 44 SO AS TO GIVE CERTAIN PATIENTS WITH A TERMINAL ILLNESS THE RIGHT TO TRY AN INVESTIGATIONAL DRUG, BIOLOGICAL PRODUCT, OR DEVICE TO TREAT THE ILLNESS; TO PROVIDE PROTECTION FROM LIABILITY FOR ENTITIES PROVIDING CARE FOR A PATIENT USING AN INVESTIGATIONAL DRUG, BIOLOGICAL PRODUCT, OR DEVICE AND FOR MANUFACTURERS OF THESE DRUGS, BIOLOGICS, AND DEVICES; TO PROTECT CERTAIN HEALTH CARE PROVIDERS AND ENTITIES FROM PROFESSIONAL DISCIPLINE OR OTHER SANCTIONS FOR RECOMMENDING AN INVESTIGATIONAL DRUG, BIOLOGICAL PRODUCT, OR DEVICE; AND FOR OTHER PURPOSES.

Be it enacted by the General Assembly of the State of South Carolina:

Right to Try Act

SECTION 1. This act may be referred to and cited as the "Right to Try Act".

Health care, investigational treatments

SECTION 2. Title 44 of the 1976 Code is amended by adding:

"CHAPTER 137

The Right to Try Act

Section 44-137-10. As used in this chapter:

(1) 'Eligible patient' means an individual who:

(a) has a terminal illness, attested to by a treating physician;

(b) has, in consultation with a treating physician, considered and exhausted all other treatment options currently approved by the United States Food and Drug Administration;

(c) has received a recommendation from the treating physician for use of an investigational drug, biological product, or device for treatment of the terminal illness;

(d) has given informed consent in writing to use the investigational drug, biological product, or device for treatment of the terminal illness or, if the individual is a minor or is otherwise incapable of providing informed consent, the parent or legal guardian has given informed consent in writing to use the investigational drug, biological product, or device; and

(e) has documentation from the treating physician that the individual meets all of the criteria for this definition, including an attestation from the treating physician that the treating physician was consulted in the creation of the written, informed consent required under this chapter.

(2) 'Investigational drug, biological product, or device' means a drug, biological product, or device that has successfully completed Phase I of a clinical trial but has not yet been approved for general use by the United States Food and Drug Administration and remains under investigation in a clinical trial approved by the United States Food and Drug Administration.

(3) 'Terminal illness' means a progressive disease or medical or surgical condition that:

(a) entails significant functional impairment;

(b) is not considered by a treating physician to be reversible even with administration of available treatments approved by the United States Food and Drug Administration; and

(c) will result in death without life-sustaining procedures.

(4) 'Informed consent' means a written document that is signed by an eligible patient; or if the patient is a minor, by a parent or legal guardian; or if the patient is incapacitated or without sufficient mental capacity, by a designated health care agent pursuant to a health care power of attorney, that at a minimum includes:

(a) an explanation of the currently approved products and treatments for the eligible patient's terminal illness;

(b) an attestation that the eligible patient concurs with the treating physician in believing that all currently approved treatments are unlikely to prolong the eligible patient's life;

(c) clear identification of the specific investigational drug, biological product, or device proposed for treatment of the eligible patient's terminal illness;

(d) a description of the potentially best and worst outcomes resulting from use of the investigational drug, biological product, or

device to treat the eligible patient's terminal illness, along with a realistic description of the most likely outcome. The description shall be based on the treating physician's knowledge of the proposed treatment in conjunction with an awareness of the eligible patient's terminal illness and shall include a statement acknowledging that new, unanticipated, different, or worse symptoms might result from, and that death could be hastened by, the proposed treatment;

(e) a statement that eligibility for hospice care may be withdrawn if the eligible patient begins treatment of the terminal illness with an investigational drug, biological product, or device and that hospice care may be reinstated if such treatment ends and the eligible patient meets hospice eligibility requirements;

(f) a statement that the eligible patient's health benefit plan or third-party administrator and provider are not obligated or required to pay for any cost of any investigational drug, biological product, or device or for any care or treatments consequent to the use of such investigational drug, biological product, or device; and

(g) a statement that the eligible patient understands that he is liable for all expenses consequent to the use of the investigational drug, biological product, or device and that this liability extends to the eligible patient's estate, unless a contract between the patient and the manufacturer of the drug, biological product, or device states otherwise.

Section 44-137-20. (A) A manufacturer of an investigational drug, biological product, or device may make available to an eligible patient, and an eligible patient may request, the manufacturer's investigational drug, biological product, or device. Nothing in this article shall be construed to require a manufacturer of an investigational drug, biological product, or device to make such investigational drug, biological product, or device available to an eligible patient.

(B) A manufacturer of an investigational drug, biological product, or device may provide the investigational drug, biological product, or device to an eligible patient without receiving compensation or may require the eligible patient to pay the costs of, or the costs associated with, the manufacture of the investigational drug, biological product, or device.

Section 44-137-30. If an eligible patient dies while being treated with an investigational drug, biological product, or device, the eligible patient's heirs are not liable for any outstanding debt related to the treatment, including any costs attributed to lack of insurance coverage for the treatment.

Section 44-137-40. (A) A licensing board shall not revoke, fail to renew, suspend, or take any other disciplinary action against a health care provider licensed in this State, based solely on the health care provider's recommendations to an eligible patient regarding access to or treatment with an investigational drug, biological product, or device.

(B) An entity responsible for Medicare certification shall not take action against a health care provider's Medicare certification based solely on the health care provider's recommendation that a patient have access to an investigational drug, biological product, or device.

Section 44-137-50. No official, employee, or agent of this State shall block or attempt to block an eligible patient's lawful access to an investigational drug, biological product, or device. Counseling, advice, or a recommendation consistent with medical standards of care from a licensed health care provider does not constitute a violation of this section.

Section 44-137-60. No private right of action may be brought against a manufacturer of an investigational drug, biological product, or device, or against any other person or entity involved in the care of an eligible patient using an investigational drug, biological product, or device, for any harm caused to the eligible patient resulting from the use of the investigational drug, biological product, or device as long as the manufacturer or other person or entity has made a good-faith effort to comply with the provisions of this chapter and has exercised reasonable care in actions undertaken pursuant to this chapter.

Section 44-137-70. (A) This chapter does not expand coverage an insurer must provide pursuant to Title 38.

(B) This chapter does not require:

(1) a governmental agency to pay costs associated with the use, care, or treatment of a patient with an investigational drug, biological product, or device; or

(2) a hospital or other health care facility licensed pursuant to Chapter 7, Title 44 to provide new or additional services, unless approved or required by the hospital or facility.

(C) A health plan, third party administrator, or governmental agency is not required to, but may, provide coverage for the cost of an investigational drug, biological product, or device, or the cost of services related to the use of an investigational drug, biological product, or device under this chapter."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 231

(R265, H4548)

AN ACT TO AMEND SECTION 37-2-307, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CLOSING FEES ASSESSED ON MOTOR VEHICLE SALES CONTRACTS, SO AS TO REQUIRE A MOTOR VEHICLE DEALER WHO CHARGES A CLOSING FEE TO PAY A REGISTRATION FEE AND THE FEE MUST BE INCLUDED IN THE ADVERTISED PRICE OF THE MOTOR VEHICLE; TO DEFINE THE TERM CLOSING FEE; TO ESTABLISH THE PROCEDURES A DEALER SHALL UNDERTAKE BEFORE CHARGING A CLOSING FEE AND TO AUTHORIZE THE DEPARTMENT OF CONSUMER AFFAIRS TO DETERMINE WHETHER A CLOSING FEE IS REASONABLE; TO PROVIDE THAT A DEALER WHO COMPLIES WITH CERTAIN STATUTORY REQUIREMENTS MAY LAWFULLY CHARGE A CLOSING FEE, TO ALLOW A MOTOR VEHICLE DEALER TO ASSERT ANY DEFENSES PROVIDED TO A CREDITOR PURSUANT TO TITLE 37, AND TO ALLOW A PURCHASER INJURED OR DAMAGED BY THE ACTION OF A MOTOR VEHICLE DEALER IN VIOLATION OF CERTAIN STATUTORY REQUIREMENTS MAY ASSERT THE REMEDIES AVAILABLE PURSUANT TO TITLE 37; TO AUTHORIZE THE DEPARTMENT OF CONSUMER AFFAIRS TO ADMINISTER AND ENFORCE MOTOR VEHICLE DEALER CLOSING FEES; AND TO EXPRESS THE INTENT OF THE GENERAL ASSEMBLY.

Be it enacted by the General Assembly of the State of South Carolina:

Closing fees on motor vehicle sales contracts authorized and requirements for the fee

SECTION 1. Section 37-2-307 of the 1976 Code is amended to read:

"Section 37-2-307. (A)(1) Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year before January thirty-first to the Department of Consumer Affairs. The department shall set the fee annually in an amount not to exceed twenty-five dollars.

(2) The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

(B) A closing fee is defined as a fee charged for all administrative and financial work needed to transfer the motor vehicle to the consumer, person, or entity including, but not limited to, compliance with all state, federal, and lender requirements, preparation and retrieval of documents, protection of the private personal information of the consumer, records retention, and storage costs.

(C)(1) Prior to charging a closing fee, a motor vehicle dealer shall provide written notice to the Department of Consumer Affairs of the maximum amount of a closing fee the dealer intends to charge on an annual basis. The department may review the amount of the closing fee for reasonableness using the criteria in item (3) if the maximum amount of the closing fee intended to be charged by a dealer in a vehicle transaction exceeds two hundred twenty-five dollars per vehicle. The department shall not conduct a review of the amount of the closing fee for reasonableness when the maximum amount the dealer intends to charge in a vehicle transaction is not more than two hundred twenty-five dollars per vehicle. If the department intends to conduct a formal review of a proposed closing fee, the department shall provide written notice to the motor vehicle dealer of the department's intention to review the proposed closing fee within thirty days of receiving the proposed closing fee notice. If the department does not provide a motor vehicle dealer with written notice of the department's intention to review the proposed closing fee within thirty days, the motor vehicle dealer is authorized to charge the proposed closing fee. If the department determines that a proposed closing fee is not reasonable, the department shall issue a written order detailing the department's findings. The department may require the fee to be reduced or require the motor vehicle dealer to submit a new fee for review. The dealer is at all times authorized to submit a new closing fee that is equal to or less than two hundred twenty-five

dollars per vehicle which is not subject to review. During the pendency of the review period, a motor vehicle dealer is authorized to charge a closing fee at an amount not to exceed the amount most recently on file and permitted to be charged by the department. If the department finds that a closing fee is not reasonable, the motor vehicle dealer may request a hearing in accordance with the Administrative Procedures Act.

(2) If the maximum amount of the closing fee that the dealer intends to charge is not more than two hundred twenty-five dollars per vehicle, the closing fee is deemed approved by the department and the dealer does meet and fulfill all reasonableness requirements and criteria in compliance with the law and this section.

(3) In determining the reasonableness of a closing fee, the department shall allow the following items to be included in a reasonable closing fee:

(a) all administrative expenses, costs, staff, supplies, materials, and financial work needed to transfer the motor vehicle to the consumer and to procure the closing of the motor vehicle transaction;

(b) all costs for administrative expenses, costs, staff, supplies, and materials necessary by the dealer to comply with all state, federal, and lender requirements;

(c) all costs for administrative costs, staff, and materials needed for the preparation and retrieval of documents;

(d) all costs for administrative costs, staff, supplies, and materials necessary for the protection of the private personal information of the consumer; and

(e) all costs for administrative costs, staff, supplies, and materials necessary for records retention and storage costs of such records.

(D) Whether the vehicle transaction is a credit sale, consumer lease, or cash transaction:

(1) notwithstanding another provision of law, a motor vehicle dealer who complies with this section and any regulation promulgated under it and who charges a closing fee is not engaging in any action which is arbitrary, in bad faith, unconscionable, an unfair or deceptive practice, or an unfair method of competition for purposes of Sections 56-15-30 and 56-15-40 with regard to the charging of a closing fee and may lawfully charge a closing fee;

(2) a motor vehicle dealer may assert any defenses provided to a creditor pursuant to the provisions of this title; and

(3) a purchaser injured or damaged by an action of a motor vehicle dealer in violation of this section or any regulation promulgated

thereunder, may assert the remedies available pursuant to the provisions of this title.

(E)(1) The Department of Consumer Affairs shall administer and enforce the subject of motor vehicle dealer closing fees including, but not limited to, this section. The department shall make and promulgate such rules and regulations relating to motor vehicle dealer closing fees to administer and enforce this section. The department shall have access to a motor vehicle dealer's books, accounts, and records to determine if the dealer is complying with the provisions of this section, and this financial information must be kept confidential and privileged from disclosure, except as provided by law.

(2) If the department determines that a closing fee is not reasonable, the department shall issue a written order detailing the department's findings. The department may require the fee to be reduced or require the motor vehicle dealer to submit a new fee for review. If the department finds that a closing fee is not reasonable, the motor vehicle dealer may request a hearing in accordance with the Administrative Procedures Act.

(F) It is the intent of the General Assembly to authorize a motor vehicle dealer to charge a closing fee in compliance with this section and to protect a motor vehicle dealer from civil liability for charging a closing fee if the fee is charged in compliance with this title and any Department of Consumer Affairs regulation or administrative interpretation. It is further the intent to protect consumers by the disclosure and notice provisions established in this section and with the remedies provided by this title."

Time effective

SECTION 2. This act takes effect upon approval by the Governor; provided, however, a motor vehicle dealer must be allowed an additional period of thirty days from the effective date to comply with Section 37-2-307(C).

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 232

(R266, H4580)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44-7-263 SO AS TO PROVIDE THAT ANY HOME OR FACILITY APPROVED AND ANNUALLY REVIEWED BY THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS AS A MEDICAL FOSTER HOME IN WHICH CARE IS PROVIDED EXCLUSIVELY TO THREE OR FEWER VETERANS ARE EXEMPT FROM THE PROVISIONS OF CHAPTER 7, TITLE 44 IN REGARD TO HOSPITALS, NURSING HOMES, AND OTHER FACILITIES REQUIRED TO BE LICENSED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL.

Be it enacted by the General Assembly of the State of South Carolina:

Exemption from provisions

SECTION 1. Article 3, Chapter 7, Title 44 of the 1976 Code is amended by adding:

"Section 44-7-263. Notwithstanding the provisions of Section 44-7-260, the provisions of this chapter do not apply to any home or facility approved and annually reviewed by the United States Department of Veterans Affairs as a Medical Foster Home in which care is provided exclusively to three or fewer veterans."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 233

(R269, H4773)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT "MARGY'S LAW"; TO AMEND SECTION 44-78-15, RELATING TO DEFINITIONS IN THE EMERGENCY MEDICAL SERVICES DO NOT RESUSCITATE ORDER ACT, SO AS TO DEFINE THE TERM "DO NOT RESUSCITATE BRACELET"; TO AMEND SECTION 44-78-20, RELATING TO THE AVAILABILITY OF DO NOT RESUSCITATE ORDERS FOR EMERGENCY SERVICES TO THE TERMINALLY ILL, SO AS TO PROVIDE FOR THE AVAILABILITY OF DO NOT RESUSCITATE BRACELETS IN ADDITION TO WRITTEN ORDERS; TO AMEND SECTION 44-78-25, RELATING TO DUTIES OF EMERGENCY MEDICAL SERVICES PERSONNEL WHEN PRESENTED DO NOT RESUSCITATE ORDERS, SO AS TO MAKE A CONFORMING CHANGE; TO AMEND SECTION 44-78-30, RELATING TO REQUIRED FORMS FOR DO NOT RESUSCITATE ORDERS, SO AS TO PROVIDE REQUIREMENTS FOR THE FORM OF DO NOT RESUSCITATE BRACELETS, TO PROVIDE PATIENTS MUST BEAR THE COSTS OF OBTAINING THE BRACELETS, AND TO PROVIDE COMMERCIAL VENDORS APPROVED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO DEVELOP AND DISTRIBUTE THE BRACELETS SHALL NOT FULFILL REQUESTS FOR BRACELETS WITHOUT RECEIVING ORDERS FROM HEALTH CARE PROVIDERS; AND TO AMEND SECTIONS 44-78-35, 44-78-40, 44-78-45, AND 44-78-60, ALL RELATING TO MISCELLANEOUS PROVISIONS IN THE ACT, SO AS TO MAKE CONFORMING CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

Citation

SECTION 1. This act must be known and may be cited as "Margy's Law".

Do not resuscitate bracelets defined

SECTION 2. Section 44-78-15 of the 1976 Code is amended to read:

"Section 44-78-15. As used in this chapter:

(1) 'Do not resuscitate bracelet' or 'bracelet' means a standardized identification bracelet that:

(a) meets the specifications established under Section 44-78-30(B) or that is approved by the department under Section 44-78-30(B);

(b) bears the inscription 'Do Not Resuscitate'; and

(c) signifies that the wearer is a patient who has obtained a do not resuscitate order which has not been revoked.

(2) 'Do not resuscitate order for emergency services' means a document made pursuant to this article to prevent EMS personnel from employing resuscitative measures or any other medical process that would only extend the patient's suffering with no viable medical reason to perform the procedure.

(3) 'EMS personnel' means emergency medical personnel certified by the South Carolina Department of Health and Environmental Control including first responders who have completed a Department of Health and Environmental Control approved medical first responder program.

(4) 'Health care provider' means a person licensed to practice medicine or osteopathy pursuant to Chapter 47, Title 40.

(5) 'Palliative treatment' means the degree of treatment which must be provided to a patient in the routine delivery of emergency medical services, which assures the comfort and alleviation of pain and suffering to all extents possible, regardless of whether the patient has executed a document as provided for in this chapter.

(6) 'Resuscitative treatment' means artificial stimulation of the cardiopulmonary systems of the human body, through either electrical, mechanical, or manual means including, but not limited to, cardiopulmonary resuscitation.

(7) 'Terminal condition' means an incurable or irreversible condition that within reasonable medical judgment could cause death within a reasonably short period of time if life sustaining procedures are not used."

Do not resuscitate orders, bracelets included

SECTION 3. Section 44-78-20 of the 1976 Code is amended to read:

"Section 44-78-20. (A) A patient who has a terminal condition, a surrogate for a patient with a terminal condition under the Adult Health Care Consent Act, or an agent of a person with a terminal condition named by the patient in a Health Care Power of Attorney may request a health care provider responsible for the care of the patient to execute a 'do not resuscitate order for emergency services' if the:

(1) patient has a terminal condition; and

(2) terminal condition has been diagnosed by a health care provider and the health care provider's record establishes the time, date, and medical condition which gives rise to the diagnosis of a terminal condition.

(B) At the request of the patient for whom a do not resuscitate order is written or his surrogate or agent, the health care provider who executes the do not resuscitate order shall make the order in writing on a form conforming to the requirements of Section 44-78-30(A), and either shall:

(1) affix to the wrist of the patient a do not resuscitate bracelet that meets the specifications established under Section 44-78-30(B); or

(2) provide the patient or his surrogate or agent with an order form, from a commercial vendor approved by the department pursuant to Section 44-78-30(B), to allow the patient to order a do not resuscitate bracelet from the commercial vendor."

EMS personnel duties, conforming change

SECTION 4. Section 44-78-25 of the 1976 Code is amended to read:

"Section 44-78-25. When called to render emergency medical services, EMS personnel must not use any resuscitative treatment if the patient has a 'do not resuscitate order for emergency services' and the document is presented to the EMS personnel upon their arrival or if the patient is wearing a do not resuscitate bracelet. EMS personnel must provide that degree of palliative care called for under the circumstances which exist at the time treatment is rendered."

Bracelet form requirements, burden of costs, orders required before vendors may provide

SECTION 5. Section 44-78-30 of the 1976 Code is amended to read:

"Section 44-78-30. (A) A document purporting to be a 'do not resuscitate order' for EMS purposes must be in substantially the following form:

NOTICE TO EMS PERSONNEL

This notice is to inform all emergency medical personnel who may be called to render assistance to _____ he/she has a terminal condition which has been diagnosed by me and has specifically requested that no resuscitative efforts including artificial stimulation of the cardiopulmonary system by electrical, mechanical, or manual means be made in the event of cardiopulmonary arrest.

REVOCATION PROCEDURE

THIS FORM MAY BE REVOKED BY AN ORAL STATEMENT BY THE PATIENT TO EMS PERSONNEL OR BY MUTILATING, OBLITERATING, OR DESTROYING THE DOCUMENT IN ANY MANNER.

Date:_____

_____

Patient's signature (or surrogate or agent)

_____

Physician's signature

_____

Physician's address

_____

Physician's telephone number

(B) The department may approve a do not resuscitate bracelet developed and distributed by a commercial vendor if the bracelet contains an emblem that displays an internationally recognized medical symbol on the front and the words 'South Carolina Do Not Resuscitate EMS' and the patient's first name and last name on the back. The department may not approve a do not resuscitate bracelet developed and distributed by a commercial vendor if the vendor does not require a health care provider's order for the bracelet before distributing it to a patient.

(C) The cost of obtaining a bracelet must be borne by the patient and may not be provided by the department at the expense of the department.

(D) The vendor approved by the department shall not fulfill a request for a do not resuscitate bracelet without receiving a health care provider's order for the bracelet with the request."

EMS personnel liability limitations, conforming change

SECTION 6. Section 44-78-35 of the 1976 Code is amended to read:

"Section 44-78-35. No health care provider or EMS personnel is liable for damages, may be the subject of disciplinary proceedings, or may be subject to civil or criminal liability due to:

(1) issuing a 'do not resuscitate order for emergency medical services' or a 'do not resuscitate bracelet';

(2) good faith reliance on a 'do not resuscitate order for emergency medical services' or a 'do not resuscitate bracelet' resulting in:

(a) the withholding of resuscitative treatment; or

(b) the withholding of resuscitative treatment already in progress once a duly executed 'do not resuscitate order for emergency medical services' is identified;

(3) initiating resuscitative treatment on a 'do not resuscitate patient' if EMS personnel were unaware of the existence of the order or bracelet or if EMS personnel reasonably and in good faith believed the 'do not resuscitate order' had been canceled or revoked or, where applicable, if the do not resuscitate bracelet has been tampered with or removed; or

(4) initiating resuscitative treatment on a 'do not resuscitate patient' where in the best medical judgment of EMS personnel, the care was necessary to relieve pain or suffering or to provide comfort care to the patient."

Full resuscitative measures required absent an order, conforming change

SECTION 7. Section 44-78-40 of the 1976 Code is amended to read:

"Section 44-78-40. In the absence of a 'do not resuscitate order for emergency medical services' or a 'do not resuscitate bracelet', EMS personnel shall give full resuscitative measures as are medically indicated in all cases."

EMS personnel obligations to honor do not resuscitate bracelets or transfer patients

SECTION 8. Section 44-78-45 of the 1976 Code is amended to read:

"Section 44-78-45. (A) A health care provider and an EMS personnel shall follow the request of the patient and must not provide resuscitative measures when the patient has a 'do not resuscitate order for emergency medical services' or is wearing a 'do not resuscitate bracelet', except where the:

(1) order is revoked pursuant to Section 44-78-60; or

(2) bracelet, when applicable, appears to have been tampered with or removed.

(B) A health care provider or EMS personnel who cannot honor the order or bracelet immediately must transfer care of the patient to an EMS personnel or health care provider who will honor the order or bracelet."

Revocations, conforming changes

SECTION 9. Section 44-78-60 of the 1976 Code is amended to read:

"Section 44-78-60. A patient may revoke a 'do not resuscitate order for emergency services' by:

(1) mutilating, obliterating, or destroying the 'do not resuscitate order for emergency medical services' document in any manner;

(2) orally expressing to an emergency medical technician, first responder, or to a person who serves as a member of an emergency health care facility's personnel, the desire to be resuscitated, after which the emergency medical technician, first responder, or the member of the emergency health care facility shall disregard the 'do not resuscitate order for emergency medical services' document and, if applicable, promptly remove the bracelet;

(3) defacing, burning, cutting, or otherwise destroying the bracelet, if applicable; or

(4) removing the bracelet or asking another person to remove the bracelet."

Time effective

SECTION 10. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 234

(R271, H4878)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 23-3-85 SO AS TO PROVIDE THAT COMMUNICATIONS BETWEEN A PUBLIC SAFETY EMPLOYEE OR THE EMPLOYEE'S IMMEDIATE FAMILY AND CERTAIN CRITICAL INCIDENT SUPPORT SERVICE PROVIDERS SHALL BE CONFIDENTIAL AND PRIVILEGED UNDER CERTAIN CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

Confidential communications

SECTION 1. Article 1, Chapter 3, Title 23 of the 1976 Code is amended by adding:

"Section 23-3-85. (A) As used in this section:

(1) 'Client' means a public safety employee or a public safety employee's immediate family.

(2) 'Immediate family' means the spouse, child, stepchild, parent, or stepparent.

(3) 'Peer-support team' means any critical incident support service provider who has received training to provide emotional and moral support to a client involved in a critical incident, including, but not limited to, chaplains, mental health professionals, and public safety peers.

(B) Notwithstanding any other provision of law, except as provided in subsection (C), communications between a client and any member of a peer-support team, including other clients involved in the same peer-support process, shall be confidential and privileged as provided by Section 19-11-95(B).

(C) The confidentiality and privilege created by subsection (B) shall not apply when:

(1) the disclosure is authorized by the client making the disclosure, or, if the client is deceased, the disclosure is authorized by the client's executor, administrator, or in the case of unadministrated estates, the client's next of kin. This provision only applies to statements made by the client;

(2) the peer-support team member was an initial responding officer, witness, or party to the critical incident;

(3) the communication was made when the member of the peer-support team was not performing official duties in the peer-support process; or

(4) the disclosure evidences a present threat to the client or to any other individual, or the disclosure constitutes an admission of a violation of state or federal law.

(D) Notwithstanding any other provision of law, this section does not require the disclosure of any otherwise privileged communications and does not relieve any mandatory reporting requirements."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 235

(R277, H5020)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 53-3-210 SO AS TO DECLARE THE THIRD SATURDAY OF MAY OF EACH YEAR AS "SOUTH CAROLINA DAY OF SERVICE" AND ENCOURAGE ALL SOUTH CAROLINIANS TO ROLL UP THEIR SLEEVES AND LEND A HAND TO MAKE A POSITIVE DIFFERENCE IN OUR GREAT STATE.

Whereas, while 2015 was a year of unparalleled tragedies and other difficult challenges in South Carolina, the compassion, faith, and courageous endeavors of our people and communities set the Palmetto State apart, showing that in times of need we come together, neighbors helping neighbors; and

Whereas, sustained efforts to fill unmet community needs through such activities as checking on neighbors, delivering meals, removing litter and

beautifying an area, mentoring a student, or repairing a building will continue to unite the citizens of our State; and

Whereas, Leadership South Carolina Class of 2016 is establishing an annual South Carolina Day of Service on the third Saturday of May to support and celebrate the spirit of the Palmetto State by encouraging our residents to give back to their communities and State in a meaningful, yet simple, way; and

Whereas, an annual South Carolina Day of Service provides a unique opportunity to volunteer as an individual, group, school, or business to create a better South Carolina. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

South Carolina Day of Service designated

SECTION 1. Chapter 3, Title 53 of the 1976 Code is amended by adding:

"Section 53-3-210. The third Saturday in May of each year is declared to be 'South Carolina Day of Service' in South Carolina; and all South Carolinians are encouraged to roll up their sleeves and lend a hand to make a positive difference in our great State."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 236

(R289, H5299)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 25-1-445 SO AS TO REQUIRE THE DIRECTOR OF THE SOUTH CAROLINA

EMERGENCY MANAGEMENT DIVISION TO DEVELOP A SYSTEM BY WHICH A PERSON WHO TRANSPORTS GOODS OR SERVICES, OR WHO ASSISTS IN THE RESTORATION OF UTILITY SERVICES CAN BE CERTIFIED FOR THE PURPOSE OF REENTRY INTO AN AREA SUBJECT TO A STATE OR LOCAL CURFEW, TO PROVIDE QUALIFICATIONS FOR CERTIFICATION, AND TO SPECIFY THE CIRCUMSTANCES UNDER WHICH A CERTIFIED PERSON IS ALLOWED TO REENTER OR REMAIN IN A CURFEW AREA.

Be it enacted by the General Assembly of the State of South Carolina:

Entry into area under curfew

SECTION 1. Article 4, Chapter 1, Title 25 of the 1976 Code is amended by adding:

"Section 25-1-445. (A) The Director of the South Carolina Emergency Management Division shall develop a system by which a person who transports goods or services, or assists in ensuring their availability, and a person who assists in the restoration of utility or other services can be certified as such for the purpose of reentry into an area subject to a state or local curfew. The certification system shall be included in the State Emergency Plan.

(B) Before certification, the employer must be in good standing with the South Carolina Secretary of State as a bona fide company doing business in South Carolina. The employer's status may be verified on the website maintained by the South Carolina Secretary of State. A certification of the employer constitutes a certification of the employer's employees.

(C) Notwithstanding the existence of any curfew, a person who is certified pursuant to this section shall be allowed to reenter or remain in the curfew area for the limited purpose of transporting goods or services or assisting in the restoration of utility or other services. Nothing in this section shall prohibit law enforcement or local officials from denying access to an area in order to preserve, protect, or sustain the life, health, safety, or economic well-being of a person or property or from granting access as otherwise deemed necessary.

(D) Nothing in this section shall limit the Governor's authority, when an emergency has been declared, to set, alter, or exceed the terms of any curfew."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 237

(R254, H3710)

AN ACT TO AMEND SECTION 12-43-225, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE MULTIPLE LOT DISCOUNT, SO AS TO PROVIDE AN ADDITIONAL YEAR OF ELIGIBILITY IN CERTAIN CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

Multiple lot discount extension

SECTION 1. Section 12-43-225(D) of the 1976 Code, as last amended by Act 277 of 2014, is further amended to read:

"(D)(1) For lots which received the discount provided in subsection (B) on December 31, 2011, there is granted additional eligibility for that discount in all property tax years beginning after 2011 and before 2017, in addition to any remaining period provided for in subsection (B). If ten or more lots receiving the discount under this item are sold to a new owner primarily in the business of real estate development, the new owner may make written application within sixty days of the date of sale to the assessor for the remaining eligibility period under this item.

(2) For lots which received the discount provided in subsection (C) after December 31, 2008, and before January 1, 2012, upon written application to the assessor no later than thirty days after mailing of the property tax bill, there is granted additional eligibility for that discount in all property tax years beginning after 2011 and before 2017. If a lot receiving the additional eligibility under this item is transferred to a new owner primarily in the business of residential development or residential

construction during its eligibility period, the new owner may apply to the county assessor for the discount allowed by this item for the remaining period of eligibility, which must be allowed if the new owner applied for the discount within thirty days of the mailing of the tax bill and meets the other requirements of this section."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 6th day of June, 2016.

No. 238

(R264, H4546)

AN ACT TO AMEND SECTION 63-7-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS USED IN THE CHILDREN'S CODE, SO AS TO ADD DEFINITIONS FOR "AGE OR DEVELOPMENTALLY APPROPRIATE", "CAREGIVER", AND "REASONABLE AND PRUDENT PARENT STANDARD"; BY ADDING SECTION 63-7-25 SO AS TO PROVIDE FOR THE RIGHT OF CHILDREN IN OUT-OF-HOME CARE TO PARTICIPATE IN AGE OR DEVELOPMENTALLY APPROPRIATE ACTIVITIES; TO AMEND SECTION 63-7-1700, AS AMENDED, RELATING TO PERMANENCY PLANNING, SO AS TO PROVIDE FOR COURT CONSIDERATION OF LOCAL FOSTER CARE REVIEW BOARD RECOMMENDATIONS, TO REQUIRE THE COURT TO TAKE INTO CONSIDERATION RECOMMENDATIONS OF THE DEPARTMENT OF SOCIAL SERVICES, THE LOCAL FOSTER CARE REVIEW BOARD, AND THE GUARDIAN AD LITEM BEFORE APPROVING A PLACEMENT PLAN, AND TO REQUIRE THE COURT TO REVIEW THE DEPARTMENT'S EFFORTS TO ENSURE A FOSTER CHILD HAS THE OPPORTUNITY TO ENGAGE IN AGE OR DEVELOPMENTALLY APPROPRIATE ACTIVITIES; TO AMEND SECTION 63-7-2310, RELATING TO THE FOSTER

CARE SYSTEM, SO AS TO REQUIRE THE DEPARTMENT TO MAKE EFFORTS TO NORMALIZE THE LIVES OF CHILDREN IN FOSTER CARE BY ENABLING PARTICIPATION IN AGE OR DEVELOPMENTALLY APPROPRIATE ACTIVITIES; TO AMEND SECTION 63-11-720, RELATING TO FUNCTIONS AND POWERS OF LOCAL FOSTER CARE REVIEW BOARDS, SO AS TO CHANGE CERTAIN FUNCTIONS OR POWERS, INCLUDING THE FREQUENCY WITH WHICH BOARDS MUST REVIEW FOSTER CARE CASES; TO AMEND SECTION 63-11-750, RELATING TO THE FOSTER CARE REVIEW BOARD'S RIGHT TO PARTICIPATE IN CHILD ABUSE AND NEGLECT JUDICIAL PROCEEDINGS, SO AS TO ALLOW THE BOARD TO INTRODUCE, EXAMINE, AND CROSS-EXAMINE WITNESSES; AND FOR OTHER PURPOSES.

Be it enacted by the General Assembly of the State of South Carolina:

Children's Code definitions

SECTION 1. Section 63-7-20 of the 1976 Code is amended to read:

"Section 63-7-20. When used in this chapter or Chapter 9 or 11 and unless the specific context indicates otherwise:

(1) 'Abandonment of a child' means a parent or guardian wilfully deserts a child or wilfully surrenders physical possession of a child without making adequate arrangements for the child's needs or the continuing care of the child.

(2) 'Affirmative determination' means a finding by a preponderance of evidence that the child was abused or neglected by the person who is alleged or determined to have abused or neglected the child and who is mentioned by name in a report or finding. This finding may be made only by:

(a) the court;

(b) the Department of Social Services upon a final agency decision in its appeals process; or

(c) waiver by the subject of the report of his right to appeal. If an affirmative determination is made by the court after an affirmative determination is made by the Department of Social Services, the court's finding must be the affirmative determination.

(3) 'Age or developmentally appropriate' means:

(a) activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are

determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group;

(b) in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child; and

(c) activities that include, but are not be limited to, the following:

(i) sports;

(ii) field trips;

(iii) extracurricular activities;

(iv) social activities;

(v) after school programs or functions;

(vi) vacations with caregiver lasting up to two weeks;

(vii) overnight activities away from caregiver lasting up to one week;

(viii) employment opportunities; and

(ix) in-state or out-of-state travel, excluding overseas travel;

(d) activities that do not conflict with any pending matters before the court, an existing court order, or the child's scheduled appointments for evaluations or treatment.

(4) 'Caregiver' means a foster parent, kinship foster parent, or employee of a group home who is designated to make decisions regarding age or developmentally appropriate activities or experiences on behalf of a child in the custody of the department.

(5) 'Child' means a person under the age of eighteen.

(6) 'Child abuse or neglect' or 'harm' occurs when the parent, guardian, or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment, but excluding corporal punishment or physical discipline which:

(i) is administered by a parent or person in loco parentis;

(ii) is perpetrated for the sole purpose of restraining or correcting the child;

(iii) is reasonable in manner and moderate in degree;

(iv) has not brought about permanent or lasting damage to the child; and

(v) is not reckless or grossly negligent behavior by the parents.

(b) commits or allows to be committed against the child a sexual offense as defined by the laws of this State or engages in acts or

omissions that present a substantial risk that a sexual offense as defined in the laws of this State would be committed against the child;

(c) fails to supply the child with adequate food, clothing, shelter, or education as required under Article 1 of Chapter 65 of Title 59, supervision appropriate to the child's age and development, or health care though financially able to do so or offered financial or other reasonable means to do so and the failure to do so has caused or presents a substantial risk of causing physical or mental injury. However, a child's absences from school may not be considered abuse or neglect unless the school has made efforts to bring about the child's attendance, and those efforts were unsuccessful because of the parents' refusal to cooperate. For the purpose of this chapter 'adequate health care' includes any medical or nonmedical remedial health care permitted or authorized under state law;

(d) abandons the child;

(e) encourages, condones, or approves the commission of delinquent acts by the child including, but not limited to, sexual trafficking or exploitation, and the commission of the acts are shown to be the result of the encouragement, condonation, or approval; or

(f) has committed abuse or neglect as described in subsections (a) through (e) such that a child who subsequently becomes part of the person's household is at substantial risk of one of those forms of abuse or neglect.

(7) 'Child protective investigation' means an inquiry conducted by the department in response to a report of child abuse or neglect made pursuant to this chapter.

(8) 'Child protective services' means assistance provided by the department as a result of indicated reports or affirmative determinations of child abuse or neglect, including assistance ordered by the family court or consented to by the family. The objectives of child protective services are to:

(a) protect the child's safety and welfare; and

(b) maintain the child within the family unless the safety of the child requires placement outside the home.

(9) 'Court' means the family court.

(10) 'Department' means the Department of Social Services.

(11) 'Emergency protective custody' means the right to physical custody of a child for a temporary period of no more than twenty-four hours to protect the child from imminent danger.

Emergency protective custody may be taken only by a law enforcement officer pursuant to this chapter.

(12) 'Guardianship of a child' means the duty and authority vested in a person by the family court to make certain decisions regarding a child, including:

(a) consenting to a marriage, enlistment in the armed forces, and medical and surgical treatment;

(b) representing a child in legal actions and to make other decisions of substantial legal significance affecting a child; and

(c) rights and responsibilities of legal custody when legal custody has not been vested by the court in another person, agency, or institution.

(13) 'Indicated report' means a report of child abuse or neglect supported by facts which warrant a finding by a preponderance of evidence that abuse or neglect is more likely than not to have occurred.

(14) 'Institutional child abuse and neglect' means situations of known or suspected child abuse or neglect where the person responsible for the child's welfare is the employee of a public or private residential home, institution, or agency.

(15) 'Legal custody' means the right to the physical custody, care, and control of a child; the right to determine where the child shall live; the right and duty to provide protection, food, clothing, shelter, ordinary medical care, education, supervision, and discipline for a child and in an emergency to authorize surgery or other extraordinary care. The court may in its order place other rights and duties with the legal custodian. Unless otherwise provided by court order, the parent or guardian retains the right to make decisions of substantial legal significance affecting the child, including consent to a marriage, enlistment in the armed forces, and major nonemergency medical and surgical treatment, the obligation to provide financial support or other funds for the care of the child, and other residual rights or obligations as may be provided by order of the court.

(16) 'Mental injury' means an injury to the intellectual, emotional, or psychological capacity or functioning of a child as evidenced by a discernible and substantial impairment of the child's ability to function when the existence of that impairment is supported by the opinion of a mental health professional or medical professional.

(17) 'Party in interest' includes the child, the child's attorney and guardian ad litem, the natural parent, an individual with physical or legal custody of the child, the foster parent, and the local foster care review board.

(18) 'Person responsible for a child's welfare' includes the child's parent, guardian, foster parent, an operator, employee, or caregiver, as defined by Section 63-13-20, of a public or private residential home, institution, agency, or childcare facility or an adult who has assumed the

role or responsibility of a parent or guardian for the child, but who does not necessarily have legal custody of the child. A person whose only role is as a caregiver and whose contact is only incidental with a child, such as a babysitter or a person who has only incidental contact but may not be a caretaker, has not assumed the role or responsibility of a parent or guardian. An investigation pursuant to Section 63-7-920 must be initiated when the information contained in a report otherwise sufficient under this section does not establish whether the person has assumed the role or responsibility of a parent or guardian for the child.

(19) 'Physical custody' means the lawful, actual possession and control of a child.

(20) 'Physical injury' means death or permanent or temporary disfigurement or impairment of any bodily organ or function.

(21) 'Preponderance of evidence' means evidence which, when fairly considered, is more convincing as to its truth than the evidence in opposition.

(22) 'Probable cause' means facts and circumstances based upon accurate and reliable information, including hearsay, that would justify a reasonable person to believe that a child subject to a report under this chapter is abused or neglected.

(23) 'Protective services unit' means the unit established within the Department of Social Services which has prime responsibility for state efforts to strengthen and improve the prevention, identification, and treatment of child abuse and neglect.

(24) 'Reasonable and prudent parent standard' means the standard of care characterized by careful and sensible parental decisions that maintain the health, safety, and best interest of a child while at the same time encouraging the growth and development of the child, that a caregiver shall use when determining whether to allow a child in foster care to participate in age or developmentally appropriate activities.

(25) 'Subject of the report' means a person who is alleged or determined to have abused or neglected the child, who is mentioned by name in a report or finding.

(26) 'Suspected report' means all initial reports of child abuse or neglect received pursuant to this chapter.

(27) 'Unfounded report' means a report made pursuant to this chapter for which there is not a preponderance of evidence to believe that the child is abused or neglected. For the purposes of this chapter, it is presumed that all reports are unfounded unless the department determines otherwise."

Children in out-of-home care, age or developmentally appropriate activities

SECTION 2. Article 1, Chapter 7, Title 63 of the 1976 Code is amended by adding:

"Section 63-7-25. (A) Every child placed with a caregiver for out-of-home care pursuant to this chapter is entitled to participate in age or developmentally appropriate activities.

(B) Each caregiver shall use the reasonable and prudent parent standard, as defined in Section 63-7-20, in determining whether to allow a child living in out-of-home care to participate in age or developmentally appropriate activities. When using the reasonable and prudent parent standard the caregiver must consider the following:

(1) the best interest of the child based upon information known by the caregiver;

(2) the overall health and safety of the child;

(3) the child's age, maturity, behavioral history, and ability to participate in the proposed activity;

(4) the potential risks and the appropriateness of the proposed activity;

(5) the importance of encouraging the child's emotional and developmental growth; and

(6) any permissions or prohibitions outlined in an existing court order.

(C) Each caregiver shall use reasonable and prudent efforts to immediately notify the department when the caregiver approves any overnight travel out-of-state, whether with the caregiver or away from the caregiver, so that the department is informed as to where the child will be. Notice to the department may be in the form of a phone call, text message, email, letter, or in-person conversation with the caseworker assigned to the child.

(D) Department approval is required prior to any overseas travel with the child."

Permanency planning process, age or developmentally appropriate activities

SECTION 3. Section 63-7-1700(B) and (C) of the 1976 Code, as last amended by Act 160 of 2010, is further amended to read:

"(B) The department shall attach a supplemental report to the motion or summons and petition which must contain at least:

(1) that information necessary to support findings required in subsections (C) through (H), as applicable;

(2) the recommended permanent plan and suggested timetable for attaining permanence;

(3) a statement of whether or not the court has authorized the department to forego or terminate reasonable efforts pursuant to Section 63-7-1640;

(4) the most recent written report of the local foster care review board;

(5) results of consultation with children, age fourteen or older, to include the placement request of the child; and

(6) steps the department is taking to facilitate the caregiver's compliance with the reasonable and prudent parent standard, pursuant to Section 63-7-20 and Section 63-7-25, and the department's efforts to determine whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities.

The department may use the same form for the supplemental report, reports from the department to the local foster care review board, and reports compiled for internal department reviews.

(C) At the permanency planning hearing, the court shall approve a plan for achieving permanence for the child.

(1) The court shall review the proposed plans of the department, the guardian ad litem, and the local foster care review board and shall address the recommendations of each in the record.

(2) At each permanency planning hearing where the department's plan is not reunification with the parents, custody or guardianship with a fit and willing relative, or termination of parental rights and adoption, the department must provide documentation of the department's intensive, ongoing, yet unsuccessful efforts to return the child home or secure a placement for the child with a fit and willing relative, a legal guardian, or an adoptive parent. If the court approves a plan of another planned permanent living arrangement (APPLA), the court must find compelling reasons for approval of the plan, including compelling reasons why reunification with the parents, custody, or guardianship with a fit and willing relative, or termination of parental rights and adoption is not in the best interest, and that the plan is and continues to be in the child's best interest. The court shall not approve or order APPLA pursuant to this item for children under the age of sixteen. At each hearing in which the court approves or renews APPLA for a child

over the age of sixteen, the court must ask the child about the child's wishes as to the placement plan.

(3) In addition to the requirements in items (1) and (2), at each permanency planning hearing, the court shall review the department's efforts to facilitate the caregiver's compliance with the reasonable and prudent parent standard pursuant to Section 63-7-20 and Section 63-7-25 and the department's efforts to determine whether the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities."

Foster care, age or developmentally appropriate activities

SECTION 4. Section 63-7-2310 of the 1976 Code is amended to read:

"Section 63-7-2310. (A) To protect and nurture children in foster care, the Department of Social Services and its employees shall:

(1) use its best efforts to normalize the lives of children in foster care by allowing a caregiver, without the department's prior approval, to make decisions similar to those a parent would be entitled to make regarding a child's participation in age or developmentally appropriate activities. In determining whether to allow a child in foster care to participate in an activity, a caregiver must exercise the reasonable and prudent parent standard pursuant to Section 63-7-20 and Section 63-7-25;

(2) adhere strictly to the prescribed number of personal contacts, pursuant to Section 63-7-1680(B)(3). These contacts must be personal, face-to-face visits between the caseworker or member of the casework team and the foster child. These visits may be conducted in the foster home and in the presence of other persons who reside in the foster home; however, if the caseworker suspects that the child has been abused or neglected during the placement with the foster parent, the caseworker must observe and interview the child outside the presence of other persons who reside in the foster home;

(3) ensure that a caseworker interviews the foster parent, either in person or by telephone, at least once each month. No less frequently than once every two months, ensure that a caseworker or member of the casework team interviews the foster parent face-to-face during a visit in the foster home;

(4) ensure that a caseworker interviews other adults residing in the foster home, as defined in Section 63-1-40, face-to-face at least once each quarter. A foster parent must notify the department if another adult moves into the home, and the caseworker must interview the adult

face-to-face within one month after receiving notice. Interviews of foster parents pursuant to item (3) and of other adults residing in the home pursuant to this item may be conducted together or separately at the discretion of the department;

(5) ensure that its staff visit in the foster home and interview the foster parent or other adults in the home more frequently when conditions in the home, circumstances of the foster children, or other reasons defined in policy and procedure suggest that increased oversight or casework support is appropriate. When more than one caseworker is responsible for a child in the foster home, the department may assign one caseworker to conduct the required face-to-face interview with the other adults residing in the foster home;

(6) provide to the foster child, if age appropriate, a printed card containing a telephone number the child may use to contact a designated unit or individual within the Department of Social Services and further provide an explanation to the child that the number is to be used if problems occur which the child believes his or her caseworker cannot or will not resolve;

(7) provide to the foster child, if age appropriate, a document describing the rights of the child regarding education, health, visitation, court participation, and the right to stay safe and avoid exploitation and obtain a signed acknowledgement from the child upon receipt of the document;

(8) strongly encourage by letter of invitation, provided at least three weeks in advance, the attendance of foster parents to all Foster Care Review Board proceedings held for children in their care. If the foster parents are unable to attend the proceedings, they must submit a progress report to the Foster Care Review Board, at least three days prior to the proceeding. Failure of a foster parent to attend the Foster Care Review Board proceeding or failure to submit a progress report to the Foster Care Review Board does not require the board to delay the proceeding. The letter of invitation and the progress report form must be supplied by the agency;

(9) be placed under the full authority of sanctions and enforcement by the family court pursuant to Section 63-3-530(30) and Section 63-3-530(36) for failure to adhere to the requirements of this subsection.

(B) If the department places a child in foster care in a county which does not have jurisdiction of the case, the department may designate a caseworker in the county of placement to make the visits required by subsection (A).

(C) In fulfilling the requirements of subsection (A), the Department of Social Services shall reasonably perform its tasks in a manner which

is least intrusive and disruptive to the lives of the foster children and their foster families.

(D) The Department of Social Services, in executing its duties under subsection (A)(5), must provide a toll free telephone number which must operate twenty-four hours a day.

(E) Any public employee in this State who has actual knowledge that a person has violated any of the provisions of subsection (A) must report those violations to the state office of the Department of Social Services; however, the Foster Care Review Board must report violations of subsection (A)(5) in their regular submissions of advisory decisions and recommendations which are submitted to the family court and the department. Any employee who knowingly fails to report a violation of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

(F) Foster parents have a duty to make themselves reasonably available for the interviews required by subsection (A)(3) and to take reasonable steps to facilitate caseworkers' interviews with other adults who reside in the home as required by subsection (A)(4). Failure to comply with either the duties in this subsection or those in subsection (A)(4) constitutes grounds for revocation of a foster parent's license or other form of approval to provide care to children in the custody of the department. Revocation would depend on the number of instances of noncompliance, the foster parents' wilfulness in noncompliance, or other circumstances indicating that noncompliance by the foster parents significantly and unreasonably interferes with the department's ability to carry out its protective functions under this section.

(G) The department shall adopt and implement any policies consistent with this section that are necessary to promote a caregiver's ability to make decisions described by subsection (A)(1). The department shall make efforts to identify and review any department policy or procedure that may impede a caregiver's ability to make such decisions.

(H) The department shall incorporate into its training for caregivers, as defined in Section 63-7-20(4), and agency personnel the importance of a child's participation in age or developmentally appropriate activities, the benefits of such activities to a child's well-being, and decision-making under the reasonable and prudent parent standard pursuant to Section 63-7-20 and Section 63-7-25."

Foster Care Review Board, functions and powers

SECTION 5. Section 63-11-720 of the 1976 Code is amended to read:

"Section 63-11-720. (A) The functions and powers of local foster care review boards are:

(1) to review once every six months the cases of children who have resided in public foster care for a period of more than four consecutive months to determine what efforts have been made by the supervising agency or child caring facility to acquire a permanent home for the child. Once probable cause has been established to retain the child in foster care, the local review board shall have the discretion to review the case of any child who has been subjected to aggravated circumstances as set forth in Section 63-7-1640(C). Under no circumstances shall the local foster care review board review a child's case more than three times in a twelve month period;

(2) following review of a case pursuant to this section, the local foster care review board shall submit a written report and recommendations to the court concerning the case, which shall be addressed on the record by the court at the next permanency planning hearing pursuant to Section 63-7-1700(C)(1). In order for the report and recommendations of the Foster Care Review Board to be easily identifiable and accessible by the judge, the report and recommendations must be visually distinct from other documents in the case file in their coloring or other prominent aspect. A child's return home for temporary placements, trial placements, visits, holidays, weekend visits, or changes from one foster care placement to another must not be construed to mean a break or lapse in determination of a consecutive four-month period for children in public foster care;

(3) to encourage the return of children to their natural parents, or, upon determination during a case review of the local review board that this return is not in the best interest of the child, to recommend to the appropriate agency action be taken for a maximum effort to place the child for adoption;

(4) to promote and encourage all agencies and facilities involved in placing children in foster care to place children with persons suitable and eligible as adoptive parents;

(5) to advise foster parents of their right to petition the family court for termination of parental rights and for adoption and to encourage these foster parents to initiate these proceedings in an appropriate case when it has been determined by the local review board that return to the natural parent is not in the best interest of the child;

(6) to recommend that a child caring facility or agency exert all possible efforts to make arrangements for permanent foster care or guardianship for children for whom return to natural parents or adoption is not feasible or possible as determined during a case review by the local review board;

(7) to report to the state office of the Department of Social Services and other adoptive or foster care agencies any deficiencies in these agencies' efforts to secure permanent homes for children discovered in the local board's review of these cases as provided for in item (1).

(B) Any case findings or recommendations of a local review board are advisory."

Foster Care Review Board, participation in child abuse and neglect proceedings

SECTION 6. Section 63-11-750 of the 1976 Code is amended to read:

"Section 63-11-750. (A) The Foster Care Review Board may participate, through counsel, in child abuse and neglect proceedings pursuant to Sections 63-7-1660, 63-7-1700, 63-7-2520 and in any hearing held pursuant to a motion filed by a named party or party in interest. Participation includes the opportunity to cross-examine witnesses and to present its recommendation to the court.

(B) This section does not require notice of any hearing to be served upon the Foster Care Review Board unless it is a party to the case.

(C) If the Foster Care Review Board intends to participate in any hearing pursuant to this section, it shall inform the Department of Social Services, the court, and the guardian ad litem coordinator or counsel for the guardian ad litem of its intention to appear and participate in the hearing at least twenty-four hours in advance of the hearing.

(D) If the Foster Care Review Board intends to become a party to the action, it shall file a motion to intervene. There is a rebuttable presumption that the motion to intervene shall be granted absent a showing that intervention would be unjust or inappropriate in a particular case."

Time effective

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 5th day of June, 2016.

No. 239

(R267, H4577)

AN ACT TO AMEND SECTION 55-5-280, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE STATE AVIATION FUND, SO AS TO PROVIDE THAT PERCENTAGES OF REVENUES OF CERTAIN PROPERTY TAXES LEVIED ON AIRCRAFT BY THE STATE MUST BE DIRECTED TO THE STATE AVIATION FUND.

Be it enacted by the General Assembly of the State of South Carolina:

State Aviation Fund

SECTION 1. Section 55-5-280(B) of the 1976 Code, as last amended by Act 270 of 2012, is further amended to read:

"(B) In any fiscal year in which the tax levied by the State pursuant to Section 12-37-2410, et seq., exceeds two and one-half million dollars, the revenues in excess of two and one-half million dollars must be directed to the State Aviation Fund; however, any revenue in excess of five million dollars must be credited in equal amounts to the general fund and the State Aviation Fund."

Time effective

SECTION 2. This act takes effect upon approval by the Governor and first applies to Fiscal Year 2016-2017.

Ratified the 2nd day of June, 2016.

Approved the 5th day of June, 2016.

No. 240

(R272, H4931)

AN ACT TO AMEND SECTION 38-53-85, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EDUCATION AND CONTINUING EDUCATION REQUIREMENTS FOR PROFESSIONAL BONDSMEN, SURETY BONDSMEN, AND RUNNERS, SO AS TO INCREASE THE NUMBER OF HOURS OF EDUCATION REQUIRED FOR LICENSURE AND FOR CONTINUING EDUCATION.

Be it enacted by the General Assembly of the State of South Carolina:

Education and continuing education requirements increased

SECTION 1. Section 38-53-85 of the 1976 Code is amended to read:

"Section 38-53-85. (A)(1) An applicant for a license to work as a professional bondsman, surety bondsman, or runner must complete not less than thirty hours of education in subjects pertinent to the duties and responsibilities of a professional and surety bondsman or runner, including all laws and regulations related to being a professional or surety bondsman or runner. A written examination must be administered at the conclusion of the course work. An applicant must pass the examination before he can be licensed.

(2) A person licensed as a professional bondsman, surety bondsman, or runner annually must complete not less than eight hours of continuing education in subjects related to the duties and responsibilities of a professional and surety bondsman or runner before his license may be renewed. The continuing education courses may not include a written or oral examination. The eight-hour annual requirement is in addition to the twenty-four hour continuing education requirement for surety insurance agents required in Section 38-43-106.

(B) A person licensed as a professional bondsman, surety bondsman, or runner before the effective date of this section is not required to complete the requisite thirty hours of education but must complete eight hours of continuing education courses to have his license renewed.

(C) The South Carolina Bail Agent's Association or another group or association approved by the Department of Insurance to provide educational courses to bondsmen must establish an educational curriculum for bondsman licensure. The department must approve the

courses offered and ensure that the courses meet the standards for education established by this section and the department. The course work requirement for licensure may not be satisfied by a mail order course. The department also must approve a written examination to be administered by a group that provides educational courses administered at the conclusion of the thirty-hour course work.

(D) A person who falsely represents that he has met the educational requirements of this section is subject, after being afforded notice and an opportunity for a due process hearing by the Administrative Law Court, to the penalty provided in Section 38-53-340.

(E) A professional bondsman, surety bondsman, or runner who is more than sixty years of age and who has at least twenty years of licensure is exempt from the continuing education requirements in this section.

(F) The director shall establish rules and regulations for the effective administration of this section."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 5th day of June, 2016.

No. 241

(R274, H4939)

AN ACT TO PROVIDE THAT CERTAIN EDUCATION OFFICIALS ARE DIRECTED TO EACH APPOINT ONE REPRESENTATIVE TO A COMMITTEE TO BE CHAIRED BY THE APPOINTEE OF THE STATE SUPERINTENDENT OF EDUCATION TO REVIEW TITLE 59 OF THE 1976 CODE AND REPORT TO THE GENERAL ASSEMBLY BY DECEMBER 31, 2016, WITH AN UPDATE EVERY FIVE YEARS OF ALL STATUTES THAT ARE OBSOLETE OR NO LONGER APPLICABLE, AND TO PROVIDE THAT THE REPORT ALSO MUST IDENTIFY ALL THE FEDERAL EDUCATION STATUTES AND REGULATIONS WITH WHICH THE STATE

IS REQUIRED TO COMPLY, AND THE TOTAL COST TO THE STATE TO COMPLY; AND TO PROVIDE THAT THE DEPARTMENT ALSO SHALL DEVELOP A SYSTEM FOR PROVIDING SERVICES AND TECHNICAL ASSISTANCE TO DISTRICTS WHICH SHALL INCLUDE ACADEMIC ASSISTANCE AND ASSISTANCE WITH FINANCES, TO PROVIDE THAT THE STATE SUPERINTENDENT OF EDUCATION SHALL REPORT THE DESIGN OF THE SYSTEM TO THE GENERAL ASSEMBLY NO LATER THAN DECEMBER 31, 2016, AND TO PROVIDE THAT THE DEPARTMENT SHALL MONITOR THE PROFESSIONAL DEVELOPMENT OF TEACHERS, STAFF, AND ADMINISTRATORS IN DISTRICTS IT DETERMINES ARE UNDERPERFORMING TO ASCERTAIN WHAT IMPROVEMENTS AND CHANGES ARE NECESSARY, AND ALSO SHALL MONITOR THE OPERATIONS OF SCHOOL BOARDS IN UNDERPERFORMING DISTRICTS IN ORDER TO DETERMINE IF THEY ARE OPERATING EFFICIENTLY AND EFFECTIVELY.

Be it enacted by the General Assembly of the State of South Carolina:

Obsolete and federal education statutes identified

SECTION 1. The General Assembly directs the State Superintendent of Education, the Executive Director of the Education Oversight Committee, the Chairman of the House Education and Public Works Committee, and the Chairman of the Senate Education Committee to each appoint one representative to a committee to be chaired by the appointee of the State Superintendent of Education to review Title 59 of the South Carolina Code of Laws and report to the General Assembly all statutes that are obsolete or no longer applicable. In addition, the report must identify all the federal education statutes and regulations with which the State of South Carolina is required to comply. The committee, with the assistance of the Revenue and Fiscal Affairs Office, must include in the report the total cost to the State of South Carolina to comply with the identified federal education statutes and regulations. This report must be submitted by December 31, 2016, and updated at least every five years thereafter.

Assistance to districts, monitoring of performance

SECTION 2. (A) The State Department of Education shall develop a system for providing services and technical assistance to districts that shall include academic assistance and assistance with finances. The State Superintendent of Education shall report the design of the system to the General Assembly no later than December 31, 2016. Every year thereafter, the Superintendent shall report on the progress of the system in regard to assistance provided to the local school districts and data documenting the impact of the assistance on student academic achievement and on high school graduation rates.

(B) In addition to the provisions of subsection (A), the State Department of Education shall monitor the professional development of teachers, staff, and administrators in districts it determines are underperforming to ascertain what improvements and changes are necessary in accordance with the provisions of the Education Accountability Act. The department also shall monitor the operations of school boards in underperforming districts in order to determine if they are operating efficiently and effectively. These improvements and changes must be communicated to the school districts and other parties or entities involved.

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 5th day of June, 2016.

No. 242

(R278, H5021)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "ADULT STUDENTS WITH DISABILITIES EDUCATIONAL RIGHTS CONSENT ACT" BY ADDING ARTICLE 3 TO CHAPTER 33, TITLE 59 SO AS TO PROVIDE PROCEDURES AND POLICIES THROUGH WHICH STUDENTS WHO ARE ELIGIBLE FOR SPECIAL EDUCATION

UNDER THE INDIVIDUALS WITH DISABILITIES ACT AND WHO HAVE NOT BEEN DETERMINED TO BE INCAPACITATED IN PROBATE COURT MAY BE IDENTIFIED AS UNABLE TO PROVIDE INFORMED CONSENT WITH RESPECT TO HIS EDUCATIONAL PROGRAM AND DELEGATE THE AUTHORITY TO MAKE SUCH DECISIONS TO AN AGENT OR REPRESENTATIVE; AND TO DESIGNATE THE EXISTING SECTIONS OF CHAPTER 33, TITLE 59 AS ARTICLE 1 ENTITLED "GENERAL PROVISIONS".

Be it enacted by the General Assembly of the State of South Carolina:

Adult Students with Disabilities Education Rights Consent Act

SECTION 1. Chapter 33, Title 59 of the 1976 Code is amended by adding:

"Article 3

Adult Students with Disabilities Educational Rights Consent Act

Section 59-33-310. This chapter may be cited as the 'Adult Students with Disabilities Educational Rights Consent Act'.

Section 59-33-320. When a student who is eligible for special education under the Individuals with Disabilities Education Act 'IDEA', 20 U.S.C. Section 1411, et seq., reaches age eighteen or is emancipated by a court of competent jurisdiction, all rights accorded to the student's parents under this article transfer to the student except as provided in Sections 59-33-330 and 59-33-340. Nothing in this article may be construed to deny an adult student eligible for special education the right to have an adult of his choice support the student in making decisions regarding the student's individualized education program.

Section 59-33-330. An adult student who is eligible for special education, who has not been determined to be incapacitated pursuant to Article 5, Title 62, may delegate his right to make educational decisions to another adult. An adult student may delegate educational rights by naming an agent through a duly executed power of attorney or by using a form that the State Department of Education shall develop and provide.

Section 59-33-340. An adult student who is eligible for special education and has not been determined to be incapacitated pursuant to Article 5, Title 62, may be identified as incapable of communicating, with or without reasonable accommodations, his wishes, interests, or preferences with respect to his educational program as early as sixty calendar days before his eighteenth birthday or sixty-five business days before an eligibility meeting, if he is undergoing initial eligibility for special education services, and also may have an educational representative designated pursuant to the following procedures:

(1)(a) The student's physician, nurse practitioner, physician's assistant, psychologist, or psychiatrist must certify in writing to the local education agency in which the adult student is enrolled that he has examined or interviewed the student and, based upon this exam, finds the student incapable of communicating, with or without reasonable accommodations, his wishes, interests, or preferences regarding his educational program. The licensed professional's certification must include the date of the examination, the basis for the determination, and whether the student's incapability of communicating, with or without reasonable accommodations, his wishes, interests, or preferences with respect to his educational program is likely to last until after age twenty-one. The licensed professional's certification must remain in effect during the period the student receives educational services as an adult, regardless of whether the student transfers to another school or local education agency, if the student's subsequent local education agency is promptly provided with the documentation that the prior local education agency relied on in allowing an educational representative to participate on the student's behalf. The licensed professional referenced in this item may not be an employee of the local education agency or state education agency serving the student.

(b) For the purposes of this section, a person is considered incapable of communicating, with or without reasonable accommodations, his wishes, interests, or preferences if he is unable to:

(i) express, either verbally, through an interpreter, or through augmented communication devices, his wishes, interests, or preferences for his education program; or

(ii) understand, even with the support from family, administrators, and experts in the field, what choices are available in a proposed education decision or program. 'Support' in this context includes a wide range of disability supports, including explaining options in plain language, using interpreters, providing visual aids, providing the information more slowly, or in similar chunks, or any other

method that is effective in communicating with the student with a disability.

(2) Upon receiving the certification, the superintendent of the local education agency or his designee shall, within ten days, provide a copy of the designation to the student and notify him in writing that a professional has certified that he is incapable of communicating, with or without reasonable accommodations, his wishes, interests, or preferences with respect to his educational program and that an educational representative will be designated to make such decisions for him. The superintendent also shall notify the student in writing that he has a right to challenge the designation of the educational representative.

(3) A challenge to the designation of an educational representative must be made in writing and may be made by the student or by another person with a bona fide interest and knowledge of the student, except that challenges may not be made by an employee of a local education agency or state education agency. A challenge by an adult student must assert that he is capable of communicating, with or without reasonable accommodations, his wishes, interests, or preferences concerning his educational program as provided in this section.

(a) A challenge may be made at any time during which an educational representative is designated to act on the adult student's behalf. A challenge must be provided in writing to the superintendent of the local school district or his designee, who shall within ten business days notify the student and current appointed representative in writing.

(b) Upon receipt of a written challenge in accordance with this section, the local education agency may not rely on an educational representative for any purpose.

(4) If the adult student does not object to the designation, his custodial parent or adult spouse may act as the educational representative. If the custodial parent or the adult spouse are unavailable to act on behalf of the student, the educational representative may be an adult sibling, grandparent, or other adult relative, in that order of priority. If these relatives are not willing and able to serve as the educational representative of the adult student, then the local education agency providing services to the student shall designate a surrogate parent, as defined in 34 C.F.R. Section 300.519 to serve in this capacity.

(5) The authority of an educational representative is limited to the authority to consent to educational services, and specifically does not include the authority to remove an adult student from educational services. The authority of an educational representative continues until he challenges the designation, he is no longer eligible for special

education, or an order is issued pursuant to Article 5, Title 62, which terminates the authority of the educational representative.

Section 59-33-350. The educational agent or educational representative is authorized to make educational decisions for a student and has the same rights as the student to participate in the individualized educational program and to request, receive, examine, copy, and consent to the disclosure of the plan or another educational record. The educational agent or the educational representative shall participate based upon a determination of the student's preferences to the extent they can be determined. If the student's preferences cannot be determined, then the decisions must be based upon the student's best interest as determined by the educational agent or educational representative. An educational agent or educational representative who in good faith makes a decision about educational services is not subject to civil or criminal liability because of the substance of the decision.

Section 59-33-360. As part of the student's transition plan, starting at age thirteen, local education agencies shall assist students eligible for special education with the transition to adulthood, including the need to make educational decisions.

Section 59-33-370. The South Carolina Department of Education shall promulgate regulations, policies, and guidelines to implement this article."

Directives

SECTION 2. Sections 59-33-10 through 59-33-110 of the 1976 Code are designated as Article 1, Chapter 33, Title 59 entitled "General Provisions". The Code Commissioner accordingly is directed to change references from "chapter" to "article" as appropriate.

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 5th day of June, 2016.

No. 243

(R279, H5023)

AN ACT TO AMEND SECTION 40-60-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE COMPOSITION OF THE SOUTH CAROLINA REAL ESTATE APPRAISERS BOARD, SO AS TO PROVIDE ONE MEMBER MUST BE A CERTIFIED RESIDENTIAL APPRAISER; TO AMEND SECTION 40-60-20, AS AMENDED, RELATING TO DEFINITIONS IN THE SOUTH CAROLINA REAL ESTATE APPRAISER LICENSE AND CERTIFICATION ACT, SO AS TO DELETE AND REVISE CERTAIN DEFINITIONS; TO AMEND SECTION 40-60-30, RELATING TO ACTIVITIES REQUIRING LICENSURE AS A REAL ESTATE APPRAISER, SO AS TO REVISE EXCEPTIONS; TO AMEND SECTION 40-60-34, AS AMENDED, RELATING TO MISCELLANEOUS REQUIREMENTS FOR LICENSES, CERTIFICATIONS, AND PERMITS ISSUED BY THE SOUTH CAROLINA REAL ESTATE APPRAISERS BOARD, SO AS TO REVISE REQUIREMENTS CONCERNING EXPIRED AND REVOKED LICENSES, CERTIFICATIONS, AND PERMITS; TO AMEND SECTION 40-60-36, AS AMENDED, RELATING TO APPRAISER EDUCATION, SO AS TO PROVIDE REPRIMANDS FOR VIOLATIONS MAY BE PUBLIC OR PRIVATE; TO AMEND SECTION 40-60-50, RELATING TO FEES, SO AS TO DELETE THE REQUIREMENT THAT CERTAIN FEES BE PAID BY CERTIFIED FUNDS; TO AMEND SECTION 40-60-80, AS AMENDED, RELATING TO INVESTIGATIONS OF COMPLAINTS AND VIOLATIONS, SO AS TO DELETE THE SIX-MONTH LIMIT ON STAYS AND SUPERSEDEAS OF CERTAIN BOARD ORDERS PENDING APPEAL, AND TO PROVIDE PARTIES AGGRIEVED BY FINAL DECISIONS OF THE BOARD MAY APPEAL PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT; AND TO AMEND SECTION 40-60-120, RELATING TO THE EFFECTIVE TIME OF CERTAIN DISCIPLINARY ORDERS OF THE BOARD, SO AS TO MAKE A CONFORMING CHANGE TO REFLECT THE AVAILABILITY OF PUBLIC AND PRIVATE REPRIMANDS, AND TO DELETE A PROVISION STATING PETITIONS FOR REVIEW DO NOT OPERATE AS SUPERSEDEAS OR STAYS.

Be it enacted by the General Assembly of the State of South Carolina:

Board composition revised

SECTION 1. Section 40-60-10(B)(4) of the 1976 Code is amended to read:

"(4) Four members must be licensed or certified appraisers, actively engaged in real estate appraisal for at least three years, at least two of whom must be certified general appraisers and at least one of whom must be a certified residential appraiser. In appointing real estate appraisers to the board, the Governor, while not automatically excluding other appraisers, shall give preference to real estate appraisers whose primary source of income is derived from appraising real estate and not real estate brokerage."

Definitions revised

SECTION 2. Section 40-60-20 of the 1976 Code, as last amended by Act 180 of 2014, is further amended to read:

"Section 40-60-20. As used in this chapter unless the context requires otherwise:

(1) 'Analysis' means a study of real estate or real property other than one estimating value.

(2) 'Appraisal', as a noun, means the act or process of developing an opinion of value; as an adjective, 'appraisal' means of or pertaining to appraising and related functions including, but not limited to, appraisal practice and appraisal services.

(3) 'Appraisal assignment' or 'valuation assignment' means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion that estimates the value of real estate.

(4) 'Appraisal Foundation' means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois, containing the Appraisal Standards Board (ASB), Appraiser Qualifications Board (AQB), a board of trustees, and other advisory bodies.

(5) 'Appraisal report' means any communication, written or oral, of an appraisal. The testimony of an individual dealing with the analyses,

conclusions, or opinions concerning identified real estate or real property may be considered to be an oral appraisal report.

(6) 'Appraisal subcommittee' means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. Section 3301, et seq.), as amended, as well as the Secretary of the Department of Housing and Urban Development, or his designee, under the Department of Housing and Urban Development Reform Act of 1989 (12 U.S.C. Section 1708(e)).

(7) 'Appraiser' means a person who holds a permit, license, or certification issued by the board that allows the person to appraise real property.

(8) 'Apprentice appraiser' means an individual authorized by permit to assist a state-certified appraiser in the performance of an appraisal if the apprentice is actively and personally supervised by the certified appraiser.

(9) 'Board' means the South Carolina Real Estate Appraisers Board established pursuant to the provisions of this chapter.

(10) 'Complex residential property appraisal' means one in which the property to be appraised, the form of ownership, or market conditions are atypical.

(11) 'Federally related transaction' means any real estate-related financial transaction which a federal financial institution regulatory agency engages in, contracts for, or regulates.

(12) 'Market analysis' means a study of real estate market conditions for a specific type of property.

(13) 'Mass appraisal' means the process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing.

(14) 'Mass appraiser' means any appraiser who is employed in the office of a tax assessor to appraise real property for ad valorem tax purposes and who is licensed or certified as a mass appraiser.

(15) 'Noncomplex residential property appraisal' means one in which the property to be appraised, the form of ownership, and market conditions are those which are typically found in the subject market.

(16) 'Person' means an individual, corporation, partnership, or association, foreign and domestic.

(17) 'Real estate' means an identified parcel or tract of land including improvements, if any.

(18) 'Real estate appraisal activity' means the act or process of performing an appraisal and preparing an appraisal report.

(19) 'Real property' means the interests, benefits, and rights inherent in the ownership of real estate.

(20) 'Residential appraisal' is an appraisal of a vacant or improved parcel of land that is devoted to or available for use as a one to four family abode including, but not limited to, a single family home, apartment, or rooming house.

(21) 'Standards of professional appraisal practice' or 'USPAP' means the National Uniform Standards of Professional Appraisal Practice as adopted by the Appraisal Standards Board of the Appraisal Foundation and adopted by the board.

(22) 'State-certified general appraiser' means an appraiser authorized to engage in the appraisal of all types of real property.

(23) 'State-certified general mass appraiser' means an appraiser authorized to engage in all types of real estate mass appraisal activity for ad valorem purposes.

(24) 'State-certified residential appraiser' means an appraiser authorized to engage in the appraisal of one to four residential units without regard to transaction value or complexity and nonresidential appraisals with a transaction value less than two hundred fifty thousand dollars.

(25) 'State-certified residential mass appraiser' means an appraiser authorized to engage in the mass appraisal of one to four residential units without regard to value or complexity and nonresidential appraisals with a transaction value less than two hundred fifty thousand dollars.

(26) 'State-licensed appraiser' means an appraiser authorized to engage in the appraisal of noncomplex one to four residential units having a transaction value less than one million dollars and complex one to four residential units and nonresidential appraisals having a transaction value less than two hundred fifty thousand dollars.

(27) 'State-licensed mass appraiser' means an appraiser authorized to engage in the mass appraisal of noncomplex one to four residential units having a transaction value less than one million dollars and complex one to four residential units and nonresidential appraisals having a transaction value less than two hundred fifty thousand dollars.

(28) 'Timberland' means forestland that is producing or is capable of producing timber as a crop.

(29) 'Valuation' means an estimate of the value of real estate or real property."

Conduct requiring licensure, exceptions revised

SECTION 3. Section 40-60-30 of the 1976 Code is amended to read:

"Section 40-60-30. It is unlawful for an individual to assume or use a title, designation, or abbreviation likely to create the impression that the person is a real estate appraiser or to engage in real estate appraisal activity or advertise as an appraiser without a valid license issued by the department. However, nothing in this chapter may be construed to apply to:

(1) A real estate licensee licensed in accordance with Chapter 57, Title 40 who performs a market analysis or gives an opinion as to the price of real estate on the condition that the market analysis or opinion is not referred to as an appraisal. Before performing a market analysis, the real estate licensee must disclose to the requesting party: 'This market analysis may not be used for the purposes of obtaining financing in a federally related transaction'.

(2) A forester registered pursuant to Chapter 27, Title 48 who appraises or values standing or growing timber or timberland located in this State and issues an appraisal or valuation on the timber or timberland, as permitted by Chapter 27, Title 48 and Regulation 53-13. When an appraisal or valuation is to be used in a federally related transaction, the registered forester must be licensed or certified under this chapter if required by federal law or regulation.

(3) An employee of a lender in the performance of appraisals or valuations with respect to which federal law or regulations does not require a licensed or certified appraiser. This exception does not apply to third party contractors."

Requirements for reinstatement and post-revocation licensure revised

SECTION 4. Section 40-60-34 of the 1976 Code, as last amended by Act 180 of 2014, is further amended to read:

"Section 40-60-34. (A) The board shall prescribe the form of a permit, license, and certificate containing an identification number that the appraiser shall use when signing appraisal reports. When an appraiser advertises or executes contracts or other instruments, the appraiser's name, appraiser classification, and number assigned by the board must be printed or typed adjacent to the appraiser's signature.

(B) The apprentice appraiser performing fee appraisal work or seeking to establish experience for a state-licensed or state-certified designation shall:

(1) perform appraisal assignments only under the direct supervision of a state-certified appraiser;

(2) maintain, jointly with the supervising appraiser, a log containing the following for each assignment:

(a) type of property;

(b) date of report;

(c) address of appraised property;

(d) description of work performed by the trainee and scope of review and supervision of the supervising appraiser;

(e) number of actual work hours by the trainee on the assignment; and

(f) signature and state certification number of the supervising appraiser with a separate appraisal log maintained for each supervising appraiser, if applicable;

(3) sign or be given credit in all appraisal reports for which the apprentice acts as an appraiser;

(4) maintain or have access to complete copies of all appraisals.

(C) The apprentice appraiser performing mass appraisal work seeking to establish credit for a licensed or certified mass appraiser designation shall:

(1) perform appraisal assignments only under the direct supervision of a state-certified residential or state-certified general real estate appraiser, mass or otherwise;

(2) maintain a log on a form provided by the board.

(D) The appraiser supervising an apprentice fee appraiser shall:

(1) personally review appraisal reports prepared by the apprentice and sign and certify the report as being independently and impartially prepared in compliance with the National USPAP and applicable statutory requirements;

(2) provide a copy or access to final appraisal documents to any participating apprentice;

(3) directly supervise no more than three apprentice appraisers at any one given time;

(4) be certified for a minimum of three years and not subject to any disciplinary action within the immediately preceding three years; and

(5) attend a trainee/supervisor orientation conducted in compliance with AQB requirements.

(E) The appraiser supervising an apprentice appraiser performing mass appraisal work shall personally review and approve all work performed by the apprentice to ensure that the work is prepared in

compliance with the National USPAP and applicable statutory requirements.

(F) The board may issue to an appraiser who is licensed or certified in another state a temporary permit, which is only effective for one specific appraisal assignment. If the appraisal is not completed within six months from the date of the permit, the board may grant an extension upon request from the appraiser. The appraiser shall place the following notation on all statements of qualification, contracts, or other instruments: 'Practicing in the State of South Carolina under Temporary Permit No.'.

(G) Licenses, certifications, and apprentice permits expire biennially on June thirtieth. As a condition of renewal, an appraiser shall provide evidence satisfactory to the board of having met the continuing education requirements established by this chapter. An apprentice appraiser may maintain the permit for five years provided continuing education requirements are satisfied.

(H) Permits, licenses, or certifications not renewed by date of expiration are no longer valid but may be reinstated within twelve months after expiration upon proper application, payment of renewal fee, a late penalty, as established in the fee schedule, and proof of having met continuing education requirements as prescribed.

(I) A permit, license, or certification that has expired and has not been reinstated by the last day of the twelfth month following expiration must be canceled. Such a canceled permit, license, or certification may be considered for reinstatement as provided by the board in regulation.

(J) A license or certification may be placed on inactive status by informing the board in writing and must be renewed in the same manner as provided for active renewal.

(K) A fee appraiser must retain for five years the original or exact copy of each appraisal report prepared or signed by the appraiser and all supporting data assembled and formulated by the appraiser in preparing each appraisal report. The five-year period for retention of records is applicable to each engagement of the services of the appraiser and commences on the date of delivery of each appraisal report to the client. The appraiser must retain the work file for a period of at least two years after final disposition of appeals of all judicial proceedings in which the appraiser provided testimony related to the assignment, whichever period expires last.

(L) An appraiser who has had a permit, license, or certification revoked by the board may not be issued a new permit, license, or certification within two years after the date of the revocation or at any

time thereafter except upon an affirmative vote of a majority of the board."

Appraiser education provider misconduct, public and private reprimands allowed

SECTION 5. Section 40-60-36(C) of the 1976 Code, as last amended by Act 180 of 2014, is further amended to read:

"(C) The board may deny, publicly or privately reprimand, fine, suspend, or revoke the approval of an education provider or instructor if the board finds that the education provider or instructor has violated or failed to satisfy the provisions of this chapter or the regulations and standards promulgated pursuant to this chapter."

Fee payments, certified fund requirement eliminated

SECTION 6. Section 40-60-50(D) of the 1976 Code is amended to read:

"(D) Application and license fees are payable to the department in advance and must accompany an examination application or a license application. Fees are nonrefundable."

Pending board decision appeals, temporary relief eliminated

SECTION 7. Section 40-60-80 of the 1976 Code, as last amended by Act 180 of 2014, is further amended to read:

"Section 40-60-80. (A) The department shall investigate complaints and violations of this chapter as provided in this chapter and Section 40-1-80.

(B) If a complaint filed with the board involves an appraisal report that varies from a sales, lease, or exchange price, the board may decline to conduct an investigation.

(C) The board is prohibited from conducting an investigation based solely on a dispute over the value of property for ad valorem tax purposes.

(D) A person aggrieved by a final action of the board may seek review of the decision in accordance with Section 40-1-160 and the South Carolina Administrative Procedures Act."

Disciplinary decisions, public and private reprimands included, supersedeas and stay effects eliminated

SECTION 8. Section 40-60-120(B) of the 1976 Code is amended to read:

"(B) A decision by the board to publicly or privately reprimand, fine, revoke, suspend, or otherwise restrict a license or to limit or otherwise discipline a licensee becomes effective upon delivery of a copy of the decision to the licensee."

Time effective

SECTION 9. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 5th day of June, 2016.

No. 244

(R281, H5040)

AN ACT TO AMEND SECTION 37-1-201, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TERRITORIAL APPLICATION OF THE CONSUMER PROTECTION CODE, SO AS TO EXPAND HOW A CREDITOR MAY INDUCE A CONSUMER TO ENTER INTO A TRANSACTION; TO AMEND SECTION 37-1-203, RELATING TO JURISDICTION AND SERVICE OF PROCESS, SO AS TO REPLACE THE TERM "CREDITOR" WITH THE TERM "PERSON"; TO AMEND SECTION 37-1-302, RELATING TO THE DEFINITION OF THE "FEDERAL CONSUMER CREDIT PROTECTION ACT", SO AS TO REMOVE THE REFERENCE TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM; TO AMEND SECTION 37-2-102, RELATING TO THE SCOPE OF CHAPTER 2 OF THE CONSUMER PROTECTION CODE, SO AS TO APPLY CERTAIN PROVISIONS TO THE SALE OF MOTOR VEHICLES; TO AMEND SECTION 37-2-305, RELATING TO FILING AND POSTING THE MAXIMUM RATE SCHEDULE,

SO AS TO REMOVE THE PROVISION REQUIRING THE DEPARTMENT OF CONSUMER AFFAIRS TO MAINTAIN A FILE FOR EACH CREDITOR'S ORIGINAL AND ALL REVISED MAXIMUM RATE SCHEDULES, AMONG OTHER THINGS; TO AMEND SECTION 37-3-305, RELATING TO FILING AND POSTING A MAXIMUM RATE SCHEDULE, SO AS TO REMOVE THE PROVISION REQUIRING THE DEPARTMENT OF CONSUMER AFFAIRS TO MAINTAIN A FILE FOR EACH CREDITOR'S ORIGINAL AND ALL REVISED MAXIMUM RATE SCHEDULES, AMONG OTHER THINGS; TO AMEND SECTION 37-5-102, RELATING TO THE SCOPE OF CHAPTER 5 OF THE CONSUMER PROTECTION CODE, SO AS TO EXTEND THE PROVISIONS OF THE CHAPTER TO OTHER TRANSACTIONS GOVERNED BY TITLE 37; TO AMEND SECTION 37-6-102, RELATING TO THE APPLICABILITY OF CHAPTER 6, TITLE 37, SO AS TO APPLY THE PROVISIONS OF THE CHAPTER TO A PERSON WHO IS SUBJECT TO TITLE 37 OR AN ACTION OF THE ADMINISTRATOR; TO AMEND SECTION 37-6-107, RELATING TO THE APPLICATION OF CHAPTER 6 TO ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW, SO AS TO REMOVE THE REFERENCE TO PART FOUR OF CHAPTER 6 AND INSERT THAT THE ADMINISTRATIVE PROCEDURES ACT APPLIES TO AND GOVERNS ALL ADMINISTRATIVE ACTIONS TAKEN PURSUANT TO THE CHAPTER; TO AMEND SECTION 37-6-108, RELATING TO ADMINISTRATIVE ENFORCEMENT ORDERS, SO AS TO REMOVE LANGUAGE REQUIRING AN ADMINISTRATOR TO BRING AN ACTION BEFORE THE ADMINISTRATIVE LAW COURT; TO AMEND SECTION 37-6-110, RELATING TO INJUNCTIONS AGAINST VIOLATIONS OF THE CONSUMER PROTECTION CODE, SO AS TO REPLACE THE TERM "CREDITOR" WITH THE TERM "PERSON"; TO AMEND SECTION 37-6-113, RELATING TO CIVIL ACTIONS BY THE ADMINISTRATOR, SO AS TO REPLACE THE TERM "CREDITOR" WITH THE TERM "RESPONDENT"; TO AMEND SECTION 37-6-115, RELATING TO REMEDIES AVAILABLE UNDER THE CONSUMER PROTECTION CODE, SO AS TO REPLACE THE TERM "DEBTORS" WITH THE TERM "CONSUMERS"; AND TO AMEND SECTION 37-6-118, RELATING TO INVESTIGATION OF UNFAIR TRADE PRACTICES IN CONSUMER TRANSACTIONS, SO AS TO

UPDATE THE PROCEDURES AVAILABLE TO A PERSON AGGRIEVED BY AN ORDER OF THE ADMINISTRATOR.

Be it enacted by the General Assembly of the State of South Carolina:

Consumer credit transaction, definition expanded

SECTION 1. Section 37-1-201(1) of the 1976 Code is amended to read:

"(1) Except as otherwise provided in this section, this title applies to consumer credit transactions made in this State. For purposes of this title, a consumer credit transaction is made in this State if:

(a) a signed writing evidencing the obligation or offer of the consumer is received by the creditor in this State; or

(b) the creditor induces the consumer who is a resident of this State to enter into the transaction by offering or advertising in this State by any means, including, but not limited to, face-to-face solicitation, mail, brochure, print, radio, television, Internet, or any other electronic means."

Jurisdiction and service of process, expanded to include "person"

SECTION 2. Section 37-1-203 of the 1976 Code is amended to read:

"Section 37-1-203. (1) Subject to constitutional and statutory jurisdictional limitations, the courts of this State may exercise jurisdiction over any person with respect to any conduct in this State governed by this title or with respect to any claim arising from a transaction subject to this title. In addition to any other method provided by statute, personal jurisdiction may be acquired in a civil action or proceeding instituted in a court by the service of process in the manner provided by this section.

(2) If a person is not a resident of this State or is a corporation not authorized to do business in this State and engages in any conduct in this State governed by this title, or engages in a transaction subject to this title, he may designate an agent upon whom service of process may be made in this State. The agent shall be a resident of this State or a corporation authorized to do business in this State. The designation shall be in writing and filed with the Secretary of State. If no designation is made and filed or if process cannot be served in this State upon the designated agent, process may be served upon the Secretary of State, but service upon him is not effective unless the plaintiff or petitioner

forthwith mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows."

Federal Consumer Credit Protection Act, definition

SECTION 3. Section 37-1-302 of the 1976 Code is amended to read:

"Section 37-1-302. In this title 'Federal Consumer Credit Protection Act' means the Consumer Credit Protection Act (Public Law 90-321: 82 Stat. 146), as amended from time to time, and includes regulations issued under the act. Title I of the Federal Consumer Credit Protection Act is referred to throughout this title as the 'Federal Truth-in-Lending Act'."

Scope, expanded to apply to motor vehicle sales

SECTION 4. Section 37-2-102 of the 1976 Code is amended to read:

"Section 37-2-102. This chapter applies to consumer credit sales, including home solicitation sales, and consumer leases; Sections 37-2-307 and 37-2-308 of Part 3 apply to the sale of motor vehicles; in addition, Part 6 applies to other than consumer credit sales and Part 7 applies to consumer rental-purchase agreements."

Credit sales, Department of Consumer Affairs no longer required to maintain a file for each creditor

SECTION 5. Section 37-2-305 of the 1976 Code is amended to read:

"Section 37-2-305. (1) Every creditor (Section 37-1-301(13)), intending to impose a credit service charge in excess of eighteen percent per annum other than an assignee of a credit obligation, making consumer credit sales (Section 37-2-104) in this State on or before the effective date of this section, and in the case of a creditor not making consumer credit sales in this State on that date, on or before the date the creditor begins to make such credit sales in this State, shall file a rate schedule with the Department of Consumer Affairs and, except as otherwise provided in this section, post in one conspicuous place in every place of business in this State, if any, in which offers to make consumer credit sales are extended, a maximum rate schedule issued by

the department which contains the items set forth in subsections (2), (3), and (4).

(a) A creditor that has seller credit cards or similar arrangements (Section 37-1-301(26)) is not required to post a copy of the required rate schedule in any place of business which is authorized to honor such transactions; provided that the creditor shall include a conspicuous statement of the maximum rate it intends to charge for these transactions in the initial disclosure statement required to be provided the debtor by the Federal Truth-In-Lending Act and notifies the debtor of any change in the maximum rate on or before the effective date of the change.

(b) [Reserved]

(2) The rate schedule required to be filed and posted by subsection (1) must contain a list of the maximum rate of credit service charge (Section 37-2-109) stated as an annual percentage rate, determined in accordance with the Federal Truth-In-Lending Act and Federal Reserve Board Regulation Z, that the creditor intends to charge for consumer credit transactions in each of the following categories of credit:

(a) unsecured credit sales;
(b) secured credit sales other than those secured by real estate;
(c) credit sales secured by real estate;
(d) open-end (revolving) credit;
(e) all other.

If a variable rate is applicable to one or more categories or subcategories, the rate schedule must designate the rate as a variable rate and disclose the index for calculating changes in the rate and the cap or other limitation, if any, on any increases or decreases in the rate.

The creditor may include as many subcategories as it chooses under each of the specified categories, and may, at its option, include a series of rates for different dollar amounts and maturities. A creditor may omit one or more of the categories from the rate schedule if the creditor does not make consumer credit transactions falling within the omitted categories.

(3) The rate schedule that is filed by the creditor must be reproduced by the department in at least fourteen-point type for posting as required by subsection (1). The terms ‘Credit Service Charge’ and ‘Annual Percentage Rate’ will be printed in larger size type than the other terms in the posted rate schedule. The following statement must be included in the posted rate schedule: ‘Consumers: All creditors making consumer credit sales in South Carolina are required by law to post a schedule showing the maximum rate of CREDIT SERVICE CHARGES expressed as the FINANCE CHARGE stated as ANNUAL PERCENTAGE RATES that the creditor intends to charge for various

types of consumer credit transactions. The purpose of this requirement is to assist you in comparing the maximum rates that creditors charge, thereby furthering your understanding of the terms of consumer credit transactions and helping you to avoid the uninformed use of credit. NOTE: Creditors are prohibited only from granting consumer credit at rates higher than those specified above. A creditor may be willing to grant you credit at rates that are lower than those specified, depending on the amount, terms, collateral, and your creditworthiness.'

(4) A rate schedule filed and posted as required by this section is effective until changed in accordance with this subsection. A creditor wishing to change any of the maximum rates shown on a schedule previously filed and posted or to add or delete the prescribed categories or subcategories shall file with the Department of Consumer Affairs together with the required fee specified in subsection (7) and post as required by subsection (1) a revised schedule of maximum rates. The revised rate schedule is effective on the date issued by the department. The posting or changes in connection with seller credit cards and similar arrangements shall be made in accordance with subsection (1).

(5) A creditor has no obligation to print the maximum rate schedule in any public advertisement that mentions rates charged by that creditor.

(6) The Commission on Consumer Affairs shall promulgate a regulation pursuant to subsection (2) of Section 37-6-506 establishing the filing procedures for the format of the rate schedules prescribed by this section.

(7) Every creditor shall file at least one maximum rate schedule and pay at least one forty-dollar filing fee during each state fiscal year disclosing that creditor's existing maximum rates plus an additional forty dollars for each additional location. This filing and fee required of each creditor is due annually before the thirty-first day of January of each year. If this filing does not change any maximum rates previously filed, the creditor is not required to alter posted maximum rates. If any creditor has not filed a maximum rate schedule with the Department of Consumer Affairs by the thirty-first day of January of the year in which it is due, then on this date the filing is no longer effective and the maximum credit service charge that the creditor may impose on any credit extended after that date may not exceed eighteen percent a year until such time as the creditor files a revised maximum rate schedule that complies with this section. The Department of Consumer Affairs shall retain each fee to offset the cost of administering and enforcing this chapter and Chapter 3. This revenue may be applied to the cost of operations and any unexpended balance carries forward to succeeding fiscal years and must be used for the same purposes."

Loans, Department of Consumer Affairs no longer required to maintain a file for each creditor

SECTION 6. Section 37-3-305 of the 1976 Code is amended to read:

"Section 37-3-305. (1) Every creditor (Section 37-1-301(13)), other than an assignee of a credit obligation, making supervised or restricted consumer loans (Section 37-3-104) in this State shall on or before the effective date of this section, and in case of a creditor not making supervised consumer loans in this State on that date, on or before the date the creditor begins to make such loans in this State, file a rate schedule with the Department of Consumer Affairs and, except as otherwise provided in this section, post in one conspicuous place in every place of business, if any, in this State in which offers to make consumer loans are extended, a maximum rate schedule issued by the department which contains the items set forth in subsections (2), (3), and (4).

A creditor that has issued lender credit cards or similar arrangements (Section 37-1-301(16)) is not required to post a copy of the required rate schedule in any place of business which is authorized to honor such transactions except its central and branch offices other than a branch office that is a free-standing automatic teller machine; provided, that the creditor shall include a conspicuous statement of the maximum rate it intends to charge for these transactions in the initial disclosure statement required to be provided the debtor by the Federal Truth-In-Lending Act and notifies the debtor of any change in the maximum rate on or before the effective date of the change.

(2) The rate schedule required to be filed and posted by subsection (1) must contain a list of the maximum rate of loan finance charge (Section 37-3-109) stated as an annual percentage rate, determined in accordance with the Federal Truth-In-Lending Act and Federal Reserve Board Regulation Z, that the creditor intends to charge for consumer credit transactions in each of the following categories of credit:

(a) unsecured personal loans;
(b) secured personal loans other than those secured by real estate;
(c) real estate mortgage loans;
(d) open-end (revolving) credit;
(e) all other.

The creditor may include as many subcategories as it chooses under each of the specified categories, and may, at its option, include a series of rates for different dollar amounts and maturities. A creditor may omit

one or more of the categories from the rate schedule if the creditor does not make consumer credit transactions falling within the omitted categories.

If a variable rate is applicable to one or more categories or subcategories, the rate schedule must designate the rate as a variable rate and disclose the index for calculating changes in the rate and the cap or other limitation, if any, on any increases or decreases in the rate.

(3) The rate schedule that is filed by the creditor shall be reproduced by the department in at least fourteen-point type for posting as required by subsection (1). The terms 'Loan Finance Charge' and 'Annual Percentage Rate' will be printed in larger size type than the other terms in the posted rate schedule. The following statement shall be included in the posted rate schedule:

'Consumers: All supervised and restricted creditors making consumer loans in South Carolina are required by law to post a schedule showing the maximum rate of LOAN FINANCE CHARGES stated as ANNUAL PERCENTAGE RATES that the creditor intends to charge for various types of consumer credit transactions.

The purpose of this requirement is to assist you in comparing the maximum rates that creditors charge, thereby furthering your understanding of the terms of consumer credit transactions and helping you to avoid the uninformed use of credit.

NOTE: Creditors are prohibited only from granting consumer credit at rates higher than those specified above. A creditor may be willing to grant you credit at rates that are lower than those specified, depending on the amount, terms, collateral and your credit worthiness.'

(4) A rate schedule filed and posted as required by this section shall be effective until changed in accordance with this subsection. A creditor wishing to change any of the maximum rates shown on a schedule previously filed and posted or to add or delete the prescribed categories or subcategories shall file with the Department of Consumer Affairs together with the required fee specified in subsection (7) and shall post as required by subsection (1) a revised schedule of maximum rates. The revised rate schedule shall be effective on the date issued by the department. The posting or changes in connection with lender credit cards and similar arrangements shall be made in accordance with subsection (1).

(5) A creditor shall have no obligation to print the maximum rate schedule in any public advertisement that mentions rates charged by that creditor.

(6) The Commission on Consumer Affairs shall promulgate a regulation pursuant to subsection (2) of Section 37-6-506 establishing

the filing procedures for and the format of the rate schedules prescribed by this section.

(7) Every creditor shall file at least one maximum rate schedule and pay at least one forty-dollar filing fee during each state fiscal year disclosing that creditor's existing maximum rates plus an additional forty dollars for each additional location. This filing and fee required of each creditor is due annually before the thirty-first day of January of each year. If this filing does not change any maximum rates previously filed, the creditor is not required to alter posted maximum rates. If any creditor has not filed a maximum rate schedule with the Department of Consumer Affairs by the thirty-first day of January of the year in which it is due, then on this date the filing is no longer effective and the maximum credit service charge that the creditor may impose on any credit extended after that date may not exceed eighteen percent a year until such time as the creditor files a revised maximum rate schedule that complies with this section. The Department of Consumer Affairs shall retain each fee to offset the cost of administering and enforcing this chapter and Chapter 2. This revenue may be applied to the cost of operations and any unexpended balance carries forward to succeeding fiscal years and must be used for the same purposes.

(8) On loans with a cash advance (Section 37-1-301(30)) not exceeding six hundred dollars, a licensed lender may not post a rate which exceeds the maximum charges imposed in Section 34-29-140 as disclosed as an annual percentage rate or that rate filed and posted pursuant to this section, whichever is less."

Remedies and penalties, scope expanded to transactions covered by the Consumer Protection Code

SECTION 7. Section 37-5-102 of the 1976 Code is amended to read:

"Section 37-5-102. This part applies to actions or other proceedings to enforce rights arising from consumer credit sales, consumer leases, consumer loans, and consumer rental-purchase agreements; and, in addition, to extortionate extensions of credit (Section 37-5-107) and other transactions governed by this title."

Administration, applies to a person who is subject to this title or action by the administrator

SECTION 8. Section 37-6-102 of the 1976 Code is amended to read:

"Section 37-6-102. This part applies to persons in this State who:

(1) make or solicit consumer credit sales, consumer leases, consumer loans, and consumer rental-purchase agreements;

(2) directly collect payments from or enforce rights against debtors arising from sales, leases, loans, or agreements specified in item (1), wherever they are made; or

(3) are subject to this title or action by the administrator."

Administration, Administrative Procedures Act governs all administrative action taken pursuant to Chapter 6

SECTION 9. Section 37-6-107 of the 1976 Code is amended to read:

"Section 37-6-107. Except as otherwise provided, the Administrative Procedures Act applies to and governs all administrative action taken pursuant to this chapter or the Part on Supervised Loans (Part 5) of the chapter on Loans (Chapter 3)."

Administrative enforcement orders, Unfair Trade Practice Act violation subject to action by the administrator

SECTION 10. Section 37-6-108(D) of the 1976 Code is amended read:

"(D) For purposes of this section and Sections 37-6-117 and 37-6-118, a violation of the South Carolina Unfair Trade Practices Act arising out of the production, promotion, or sale of consumer goods, services, or interests in land is considered a violation of this title subject to action by the administrator."

Injunctions against violations of title

SECTION 11. Section 37-6-110 of the 1976 Code is amended to read:

"Section 37-6-110. The administrator may bring a civil action to restrain any person from violating this title and for other appropriate relief including, but not limited to, the following: to prevent a person from using or employing practices prohibited by this title, to reform contracts to conform to this title, and to rescind contracts into which a person has induced a consumer to enter by conduct violating this title, even though a consumer is not a party to the action. An action under this

section may be joined with an action under the provisions on civil actions by the administrator (Section 37-6-113)."

Civil actions by the administrator

SECTION 12. Section 37-6-113(A) of the 1976 Code is amended to read:

"(A) After demand, the administrator may bring a civil action against a creditor or a person subject to this title to recover actual damages sustained and excess charges paid by one or more consumers who have a right to recover explicitly granted by this title. In a civil action pursuant to this subsection, penalties must not be recovered by the administrator. The court shall order amounts recovered pursuant to this subsection to be paid to each consumer or set off against his obligation. A consumer's action, except a class action, takes precedence over a prior or subsequent action by the administrator with respect to the claim of that consumer. A consumer's class action takes precedence over a subsequent action by the administrator with respect to claims common to both actions, but the administrator may intervene. An administrator's action on behalf of a class of consumers takes precedence over a consumer's subsequent class action with respect to claims common to both actions. Whenever an action takes precedence over another action pursuant to this subsection, the latter action may be stayed to the extent appropriate while the precedent action is pending and dismissed if the precedent action is dismissed with prejudice or results in a final judgment granting or denying the claim asserted in the precedent action. A defense available to a respondent in a civil action brought by a consumer under this title is available to him in a civil action brought pursuant to this subsection."

Consumers remedies not affected

SECTION 13. Section 37-6-115 of the 1976 Code is amended to read:

"Section 37-6-115. The grant of powers to the administrator in this chapter does not affect remedies available to consumers under this title or under other principles of law or equity."

Investigation of unfair trade practice in consumer transactions, contested case hearing procedure

SECTION 14. Section 37-6-118(3) of the 1976 Code is amended to read:

"(3) A person aggrieved by an order of the administrator may request a contested case hearing before the Administrative Law Court in accordance with the court's rules of procedure. If the person fails to request a contested case hearing within the time provided in the court's rules of procedure, the administrative order becomes final and the department may bring an action to enforce the order pursuant to Chapter 23, Title 1."

Time effective

SECTION 15. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 5th day of June, 2016.

No. 245

(R283, H5089)

AN ACT TO AMEND SECTION 56-19-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TERMS AND THEIR DEFINITIONS REGARDING THE PROTECTION OF TITLES TO AND INTEREST IN MOTOR VEHICLES, SO AS TO ADD ADDITIONAL TERMS AND THEIR DEFINITIONS TO THIS SECTION; AND TO AMEND SECTION 56-19-265, AS AMENDED, RELATING TO LIENS RECORDED AGAINST MOTOR VEHICLES AND MOBILE HOMES, SO AS TO PROVIDE THAT A LIEN OR ENCUMBRANCE ON A MOTOR VEHICLE OR TITLED MOBILE HOME MUST BE NOTED ON THE PRINTED TITLE OR ELECTRONICALLY THROUGH THE DEPARTMENT OF MOTOR VEHICLES' ELECTRONIC TITLE AND LIEN SYSTEM, TO PROVIDE THAT THE TRANSMITTAL MUST BE DONE

ELECTRONICALLY FOR BUSINESS ENTITIES, TO MAKE TECHNICAL CHANGES, TO PROVIDE THAT BUSINESS ENTITIES ARE SUBJECT TO CERTAIN FEES, TO PROVIDE THAT THE TRANSMITTAL AND RETRIEVAL OF DATA FEES ARE "OFFICIAL FEES", TO PROVIDE THAT CERTAIN BUSINESSES AND COMMERCIAL LIENHOLDERS MUST UTILIZE THE ELECTRONIC LIEN SYSTEM TO TRANSMIT AND RECEIVE ELECTRONIC LIEN INFORMATION, TO PROVIDE THE EFFECTIVE DATE AND LAPSE DATE FOR CERTAIN LIENS, TO PROVIDE THAT THE DEPARTMENT SHALL PUBLISH FORMS FOR THE PURPOSE OF FILING A LIEN CONTINUATION STATEMENT, AND TO PROVIDE THE PROCESS FOR FILING A LIEN CONTINUATION STATEMENT AND THE PERIOD FOR WHICH THE LIEN REMAINS IN EFFECT.

Be it enacted by the General Assembly of the State of South Carolina:

Definitions

SECTION 1. Section 56-19-10 of the 1976 Code, as last amended by Act 317 of 2008, is further amended by adding the following appropriately numbered items:

"( ) 'Commercial truck' or 'commercial motor vehicle (CMV)' as defined by the Federal Motor Carrier Safety Administration (FMCSA) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater;

(b) has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater;

(c) is designed to transport sixteen or more passengers, including the driver; or

(d) is of any size and is used in the transportation of hazardous materials as that term is defined in 49 C.F.R. Section 390.5.

( ) 'Motor home' means a vehicular unit designed to provide temporary living quarters built into an integral part of or permanently

attached to a self-propelled motor vehicle chassis or van which unit contains permanently installed independent life support systems other than low voltage meeting the American National Standards Institute (ANSI) A119.2 Standard for Recreational Vehicles and provides at least four of the following facilities: cooking with onboard power source; gas or electric refrigerator; toilet with exterior evacuation; heating or air conditioning with onboard power source separate from the vehicle engine; a potable water supply system including a faucet, sink, and water tank with an exterior service connection; or separate 110-125 volt electric power supply. For purposes of this definition, a passenger-carrying automobile, truck, or van without permanently installed independent life support systems, including at least four of the indicated facilities, does not constitute a motor home.

( ) 'Permanently installed' means built into or attached as an integral part of a chassis or van and designed not to be removed except for repair or replacement. A system which is readily removable or held in place by clamps or tie downs is not permanently installed.

( ) 'Low voltage' means twenty-four volts or less.

( ) 'Special mobile equipment' means every vehicle, with or without motive power, not designed or used primarily for the transportation of persons or pay-load property and incidentally operated or moved over the highways, including farm tractors, road construction and maintenance machinery, ditch-digging apparatus, well-boring apparatus, truck cranes or mobile shovel cranes, and similar vehicles; this enumeration is deemed partial and does not operate to exclude other vehicles which are within the general terms of this definition."

Liens recorded against motor vehicles and mobile homes

SECTION 2. Section 56-19-265 of the 1976 Code, as last amended by Act 201 of 2014, is further amended to read:

"Section 56-19-265. (A) Any liens or encumbrances on a motor vehicle or titled mobile home must be noted on the printed title or electronically through the Department of Motor Vehicles' Electronic Title and Lien System. The department shall transmit the lien to the first lienholder and notify the first lienholder of additional liens. This transmittal must be done electronically for business entities or by paper certificate for nonbusiness entities (persons purchasing vehicles for personal use from persons selling vehicles they have used primarily for personal use). Lien recordings and subsequent lien satisfactions may be electronically transmitted to the department and shall include the name

and address of the person satisfying the lien. Electronic transmission of liens and lien satisfaction does not require a certificate of title until the last lien is satisfied and a clear certificate of title is issued to the owner of the motor vehicle or mobile home. The owner has the option to retain the electronic copy of the title with the department once all liens are satisfied. When a motor vehicle or mobile home is subject to an electronic lien, the certificate of title for the motor vehicle or mobile home is considered to be physically held by the lienholder for purposes of compliance with state or federal odometer disclosure requirements, and a duly certified copy of the department's electronic record of the lien is admissible in any civil, criminal, or administrative proceeding in this State as evidence of the existence of the lien. The lienholder shall have the option to receive a paper certificate of title and to receive notices of subsequent liens and satisfaction of liens by way of the United States Postal Service. Business entities are subject to fees contained in subsection (D).

(B) The department is authorized to convene a working group chaired by the director of the department or his designee for the purpose of assisting in the development of program specifications governing the transmission of electronic lien information between lienholders and the department, and maximize the use of the program by various lien stakeholders. The working group will be composed of members of the lienholder community, representing applicable industries. The director is authorized to appoint members of the working group to ensure that all stakeholders are represented. The working group will be a standing group convened on a regular basis until all specifications have been developed. The department also is charged with promulgating regulations pursuant to the specifications and standards for lien recording and releasing developed by the working group.

(C) All entities submitting lien information electronically under this program are required to comply with all regulations.

(D) The department is authorized to collect a transaction fee from commercial entities who either transmit or retrieve data from the department pursuant to this section. The fee must not exceed five dollars for each transaction and must be agreed to as part of the program specifications developed by the working group. These fees must be placed by the State Treasurer into a special restricted account to be used by the department to defray the expenses of this program.

(E) Commercial entities and lenders who either transmit or retrieve data from the department pursuant to this section, notwithstanding Sections 37-2-202 and 37-3-202, may collect transaction fees from owners of the vehicles or mobile homes not to exceed a fee of five dollars

for each transaction which must be agreed to as part of the program specifications developed by the working group. All fees charged by the department to any party as to a titled motor vehicle, motor home, or mobile home for purposes of transmittal or retrieval of this data is an 'official fee' as referenced in Sections 37-2-202 and 37-3-202.

(F) All businesses and commercial lienholders who are regularly engaged in the business or practice of selling motor vehicles as dealers licensed under Chapter 15 of this title or in the business or practice of financing motor vehicles shall utilize the electronic lien system to transmit and receive electronic lien information as described by subsection (A). The department shall maintain contact information on its website for service providers providing an electronic interface between the department, lienholders and sellers of motor vehicles. The department may establish procedures to ensure businesses comply with use of the electronic lien system and to deal with valid exceptions as determined by the department.

(G) Any lien upon a vehicle titled by the State, except upon vehicles defined as motor homes, mobile homes, special mobile equipment, or commercial trucks, shall be deemed effective for a period of twelve years from the date the lien was perfected. The effectiveness of the lien lapses at the end of this twelve-year period unless a continuation statement is filed pursuant to this subsection by the entity existing on the current title as lienholder using the application process acceptable by the Department of Motor Vehicles. The department shall publish forms for the purpose of filing a continuation statement. The lienholder shall not make application for lien continuation until no more than six months prior to lien expiration. Upon a timely filing of a continuation statement in accordance with this subsection, the lien will be effective for a period of two additional years from the date of the filing of the continuation statement. The responsibility of lien continuation lies with the lender. The twelve-year effective lien period refers to the age of the lien, not the age of the vehicle."

Time effective

SECTION 3. This act takes effect on February 1, 2017. However, this act's implementation shall be one hundred eighty days after its effective date.

Ratified the 2nd day of June, 2016.

Approved the 5th day of June, 2016.

No. 246

(R284, H5118)

AN ACT TO AMEND SECTION 56-2-105, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ISSUANCE OF GOLF CART DECALS, THE REGISTRATION OF GOLF CARTS, AND THE OPERATION OF GOLF CARTS ALONG THE STATE'S HIGHWAYS, SO AS TO MAKE TECHNICAL CHANGES, TO DELETE AN OBSOLETE PROVISION, TO PROVIDE THAT CERTAIN MUNICIPALITIES AND COUNTIES THAT HAVE BARRIER ISLANDS WITHIN THEIR JURISDICTIONS MAY ADOPT ORDINANCES THAT ALLOW GOLF CARTS TO BE OPERATED AT NIGHT, AND TO PROVIDE THAT THE ORDINANCES SHALL EXPIRE ON JANUARY 1, 2021.

Be it enacted by the General Assembly of the State of South Carolina:

Golf cart operation

SECTION 1. Section 56-2-105 of the 1976 Code, as last amended by Act 86 of 2015, is further amended to read:

"Section 56-2-105. (A) For the purposes of this section, 'gated community' means any homeowners' community with at least one access controlled ingress and egress which includes the presence of a guard house, a mechanical barrier, or another method of controlled conveyance.

(B) An individual or business owner of a vehicle commonly known as a golf cart may obtain a permit decal and registration from the Department of Motor Vehicles upon presenting proof of ownership and liability insurance for the golf cart and upon payment of a five dollar fee.

(C) During daylight hours only:

(1) A permitted golf cart may be operated within four miles of the address on the registration certificate and only on a secondary highway

or street for which the posted speed limit is thirty-five miles an hour or less.

(2) A permitted golf cart may be operated within four miles of a point of ingress and egress to a gated community and only on a secondary highway or street for which the posted speed limit is thirty-five miles an hour or less.

(3) Within four miles of the registration holder's address, and while traveling along a secondary highway or street for which the posted speed limit is thirty-five miles an hour or less, a permitted golf cart may cross a highway or street at an intersection where the highway has a posted speed limit of more than thirty-five miles an hour.

(4) A permitted golf cart may be operated along a secondary highway or street for which the posted speed limit is thirty-five miles an hour or less on an island not accessible by a bridge designed for use by automobiles.

(D) A person operating a permitted golf cart must be at least sixteen years of age and hold a valid driver's license. The operator of a permitted golf cart being operated on a highway or street must have in his possession:

(1) the registration certificate issued by the department;

(2) proof of liability insurance for the golf cart; and

(3) his driver's license.

(E) A golf cart permit must be replaced with a new permit every five years, or at the time the permit holder changes his address.

(F)(1) A political subdivision may, on designated streets or roads within the political subdivision's jurisdiction, reduce the area in which a permitted golf cart may operate from four miles to no less than two miles.

(2) A political subdivision may, on primary highways, secondary highways, streets, or roads within the political subdivision's jurisdiction, create separate golf cart paths on the shoulder of its primary highways, secondary highways, streets and roads for the purpose of golf cart transportation, if:

(a) the political subdivision obtains the necessary approvals, if any, to create the golf cart paths; and

(b) the golf cart path is:

(i) separated from the traffic lanes by a hard concrete curb;

(ii) separated from the traffic lanes by parking spaces; or

(iii) separated from the traffic lanes by a distance of four feet or more.

(3) In a county with a population of no less than one hundred fifty thousand and no more than two hundred fifty thousand persons:

(a) if a municipality has jurisdiction over a barrier island, the municipality may enact an ordinance allowing for the operation of a golf cart at night on designated portions of the barrier island within the municipality, provided the golf cart is equipped with working headlights and rear lights; or

(b) if a barrier island is not within the jurisdiction of a municipality, the county in which the barrier island is located may enact an ordinance allowing for the operation of a golf cart at night on designated portions of the county, provided the golf cart is equipped with working headlights and rear lights.

If a municipality or county enacts an ordinance allowing golf carts to operate at night on a barrier island, the requirements of subsection (C), other than operation in daylight hours only, shall still apply to all permitted golf carts.

(4) A political subdivision may not reduce or otherwise amend the other restrictions placed on the operation of a permitted golf cart contained in this section.

(G) The provisions of this section that restrict the use of a golf cart to certain streets, certain hours, and certain distances shall not apply to a golf cart used by a public safety agency in connection with the performance of its duties."

Sunset provision

SECTION 2. Any municipal or county ordinance enacted pursuant to Section 56-2-105(F)(3) shall expire on January 1, 2021.

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 6th day of June, 2016.

No. 247

(R285, H5193)

AN ACT TO AMEND SECTION 44-130-40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO OPIOID ANTIDOTES, SO AS TO ALLOW PHARMACISTS TO DISPENSE OPIOID ANTIDOTES PURSUANT TO A JOINT WRITTEN PROTOCOL ISSUED BY THE BOARD OF MEDICAL EXAMINERS AND BOARD OF PHARMACY AND TO ESTABLISH PROTOCOL REQUIREMENTS, TO PROHIBIT PHARMACISTS FROM DELEGATING THE DISPENSING OF AN OPIOID ANTIDOTE TO PHARMACY INTERNS AND TECHNICIANS, TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO STUDY CERTAIN ISSUES RELATED TO OPIOID ADDICTION AND TO PROVIDE A REPORT, AND FOR OTHER PURPOSES.

Be it enacted by the General Assembly of the State of South Carolina:

Prescription of an opioid antidote

SECTION 1. Section 44-130-40 of the 1976 Code, as added by Act 54 of 2015, is amended to read:

"Section 44-130-40. (A) A pharmacist acting in good faith and exercising reasonable care as a pharmacist may dispense an opioid antidote pursuant to a written prescription or standing order by a prescriber.

(B)(1) A pharmacist acting in good faith and exercising reasonable care as a pharmacist may dispense an opioid antidote pursuant to a written joint protocol issued by the Board of Medical Examiners and the Board of Pharmacy.

(2) Not later than six months after passage of this act, the Board of Medical Examiners and the Board of Pharmacy must issue a written joint protocol to authorize a pharmacist to dispense an opioid antidote without a patient-specific written order or prescription to a person at risk of experiencing an opioid-related overdose or to a caregiver of such a person.

(3) The protocol must address, at a minimum, the following:

(a) the information that the pharmacist must provide to a person at risk or to a caregiver including, but not limited to, the information required by Section 44-130-30(B)(1);

(b) the documentation that the pharmacist must maintain regarding the dispensing of the opioid antidote and confirming that the required information was provided to the person at risk or to the caregiver;

(c) notification of the person's designated physician or primary care provider that an opioid antidote has been dispensed to that person;

(d) any education or training requirements that the Board of Medical Examiners and the Board of Pharmacy determine to be necessary for a pharmacist to dispense an opioid antidote pursuant to the joint protocol;

(e) guidelines for determining whether an individual is in a position to assist another individual during an overdose and thus may function as a caregiver; and

(f) any other provisions determined by the Board of the Medical Examiners and the Board of Pharmacy to be necessary or appropriate for inclusion in the protocol, including any reporting requirements.

(4) A pharmacist may not delegate the dispensing of an opioid antidote pursuant to this subsection to a pharmacy intern or a pharmacy technician.

(5)(a) All records required by this subsection must be maintained in the pharmacy for a period of at least ten years from the date that the opioid antidote was last dispensed.

(b) All documentation, records, and copies required by this subsection may be stored electronically.

(6) A pharmacist dispensing an opioid antidote pursuant to this subsection must maintain a current copy of the protocol at the pharmacy where the opioid antidote is dispensed.

(7) The Board of Medical Examiners and the Board of Pharmacy may appoint an advisory committee of healthcare professionals licensed in this State to advise and assist in the development of the joint protocol for their consideration.

(8) For purposes of this subsection, 'caregiver' means a person who is not at risk of an opioid overdose but who, in the judgment of the pharmacist, may be in a position to assist another individual during an overdose and who has received patient overdose information as required by the joint protocol.

(C) A pharmacist dispensing an opioid antidote in accordance with the provisions of this section is not as a result of an act or omission subject to civil or criminal liability or to professional disciplinary action.

(D) The Veterans Equal Access Amendment to the Military Construction and Veterans Affairs Appropriations passed by the United States Congress provides that: 'Notwithstanding any other provision of law, the Secretary of Veterans Affairs shall authorize physicians and other health care providers employed by the Department of Veterans Affairs to provide recommendations and opinions to veterans who are residents of states with state marijuana programs regarding the participation of veterans in such state marijuana programs.' The Department of Health and Environmental Control is directed to study: (1) the possibility that a person experiencing an opioid-related overdose would be decreased if access to cannabis was legally permitted; and (2) the extent to which states have latitude by federal law for a Veterans Affairs' physician licensed in the State of South Carolina to provide a written certification that a veteran would benefit from the use of marijuana for medicinal purposes rather than being prescribed opioids. DHEC shall provide the General Assembly a report on the findings by January 1, 2017."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 5th day of June, 2016.

No. 248

(R286, H5245)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 61-4-736 SO AS TO PROVIDE THAT A MANUFACTURER OF WINE, VINTNER, WINERY, AN IMPORTER, OR RETAILER MAY OFFER OR SPONSOR CERTAIN COUPONS AND REBATES TO A CONSUMER FOR THE PURCHASE OF WINE, TO PROVIDE THAT A WHOLESALER IS PROHIBITED FROM

PARTICIPATING IN THE PROCUREMENT, REDEMPTION, OR OTHER COSTS ASSOCIATED FOR ANY COUPON OR REBATE FOR WINE, AND TO PROVIDE THAT A WINERY, WINE MANUFACTURER, VINTNER, IMPORTER, OR WHOLESALER IS PROHIBITED FROM OFFERING PAPER INSTANT REDEEMABLE COUPONS AND SCANBACK COUPONS FOR WINE IN THIS STATE; AND BY ADDING SECTION 61-4-945 SO AS TO PROVIDE THAT A MANUFACTURER, BREWER, IMPORTER, OR RETAILER MAY OFFER OR SPONSOR CERTAIN COUPONS AND REBATES TO A CONSUMER FOR THE PURCHASE OF BEER, TO PROVIDE THAT A WHOLESALER IS PROHIBITED FROM PARTICIPATING IN THE PROCUREMENT, REDEMPTION, OR OTHER COSTS ASSOCIATED FOR ANY COUPON OR REBATE FOR BEER, AND TO PROVIDE THAT A BEER MANUFACTURER OR WHOLESALER IS PROHIBITED FROM OFFERING PAPER INSTANT REDEEMABLE COUPONS AND SCANBACK COUPONS FOR BEER IN THIS STATE.

Be it enacted by the General Assembly of the State of South Carolina:

Coupons and rebates for the purchase of wine

SECTION 1. Article 7, Chapter 4, Title 61 of the 1976 Code is amended by adding:

"Section 61-4-736. A manufacturer of wine, vintner, winery, an importer, or retailer may offer or sponsor coupons and rebates to a consumer for the purchase of wine. Coupons and rebates include, but are not limited to, retailer instant redeemable coupons, mail-in rebates, and coupons and rebates offered or redeemed through any electronic means. Manufacturer, winery, vintner, and importer coupons must be made available upon request to a licensed retailer. A wholesaler is prohibited from participating in the procurement, redemption, or other costs associated for any coupon or rebate for wine offered or sponsored by a manufacturer, winery, vintner, importer, or retailer. A winery, wine manufacturer, vintner, importer, or wholesaler is prohibited from offering or participating in the procurement, redemption, or other costs associated with paper instant redeemable coupons and scanback coupons for wine in this State."

Coupons and rebates for the purchase of beer

SECTION 2. Article 9, Chapter 4, Title 61 of the 1976 Code is amended by adding:

"Section 61-4-945. A manufacturer, brewer, importer, or retailer may offer or sponsor coupons and rebates to a consumer for the purchase of beer. Coupons and rebates include, but are not limited to, retailer instant redeemable coupons, mail-in rebates, and coupons and rebates offered or redeemed through any electronic means. Manufacturer, brewer, and importer coupons and rebates must be made available upon request to a licensed retailer. A wholesaler is prohibited from participating in the procurement, redemption, or other costs associated for any coupon or rebate for beer offered or sponsored by a manufacturer, brewer, importer, or retailer. A beer manufacturer or wholesaler is prohibited from offering or participating in the procurement, redemption, or other costs associated with paper instant redeemable coupons and scanback coupons for beer in this State."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 5th day of June, 2016.

No. 249

(R208, H5011)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 4-10-980 SO AS TO PROVIDE FOR THE REIMPOSITION OF THE LOCAL OPTION TOURISM DEVELOPMENT FEE.

Be it enacted by the General Assembly of the State of South Carolina:

Reimposition of local option tourism development fee

SECTION 1. Article 9, Chapter 10, Title 4 of the 1976 Code is amended by adding:

"Section 4-10-980. The fee authorized in this article may be renewed and imposed within a municipality in the same manner as authorized by this article for the initial imposition of the fee. If the fee is reimposed pursuant to Section 4-10-930(A)(2), the referendum on the question of reimposition of the fee must not be held earlier than within the calendar year which is two years before the calendar year in which the fee then in effect is scheduled to terminate. Notwithstanding Section 4-10-930(D) and (E), any reimposition of the fee is effective immediately upon the termination of the fee previously imposed. Revenues from the reimposition must be expended for the same purposes as set forth in this article, and the provisions of Section 4-10-970(A)(2) apply immediately upon reimposition."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 24th day of May, 2016.

Vetoed by the Governor -- 5/26/2016.
Veto overridden by House -- 6/1/2016.
Veto overridden by Senate -- 6/1/2016.

No. 250

(R282, H5078)

AN ACT TO AMEND SECTION 4-10-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO VARIOUS LOCAL SALES AND USE TAXES, SO AS TO DEFINE "GENERAL ELECTION"; TO AMEND SECTION 4-10-330, RELATING TO THE CAPITAL PROJECTS SALES TAX ACT, SO AS TO PROVIDE THAT THE TAX MUST TERMINATE ON APRIL THIRTIETH OF AN ODD- OR EVEN-NUMBERED YEAR AND TO SPECIFY CERTAIN REFERENDUM PUBLICATION

REQUIREMENTS; AND TO AMEND SECTION 4-10-340, AS AMENDED, RELATING TO THE CAPITAL PROJECTS SALES TAX ACT, SO AS TO PROVIDE THAT THE TAX MUST TERMINATE ON APRIL THIRTIETH OF AN ODD- OR EVEN-NUMBERED YEAR.

Be it enacted by the General Assembly of the State of South Carolina:

Definition

SECTION 1. Section 4-10-10 of the 1976 Code, as added by Act 317 of 1990, is amended by adding an appropriately numbered item to read:

"( ) 'General election' means the Tuesday following the first Monday in November in any year."

Conforming change

SECTION 2. Section 4-10-330(A)(2) of the 1976 Code, as last amended by Act 49 of 2009, is further amended to read:

"(2) the maximum time, in two-year increments not to exceed eight years from the date of imposition, or in the case of a reimposed tax, a period ending on April thirtieth, not to exceed seven years, for which the tax may be imposed;"

Conforming change

SECTION 3. Section 4-10-340(A) of the 1976 Code, as last amended by Act 49 of 2009, is further amended to read:

"(A) If the sales and use tax is approved in the referendum, the tax is imposed on the first of May following the date of the referendum. If the reimposition of an existing sales and use tax imposed pursuant to this article is approved in the referendum, the new tax is imposed immediately following the termination of the earlier imposed tax and the reimposed tax terminates on the applicable thirtieth of April, not to exceed seven years from the date of reimposition. If the certification is not timely made to the Department of Revenue, the imposition is postponed for twelve months."

Referendum publication requirement

SECTION 4. Section 4-10-330(C) of the 1976 Code, as last amended by Act 243 of 2014, is further amended to read:

"(C)(1) Upon receipt of the ordinance, the county election commission must conduct a referendum on the question of imposing the sales and use tax in the area of the county that is to be subject to the tax. The referendum for imposition or reimposition of the tax must be held at the time of the general election. Subject to item (2), two weeks before the referendum the election commission must publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of projects and the cost of the projects. If the proposed question includes the use of sales taxes to defray debt service on bonds issued to pay the costs of any project, the notice must include a statement indicating that principal amount of the bonds proposed to be issued for the purpose and, if the issuance of the bonds is to be approved as part of the referendum, stating that the referendum includes the authorization of the issuance of bonds in that amount. This notice is in lieu of any other notice otherwise required by law.

(2) If the referendum on the question of imposing sales and use tax is conducted in an odd-numbered year, and it is the only matter being considered at the general election, then six weeks before the referendum, the election commission must publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of projects and the cost of the projects."

Time effective

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 6th day of June, 2016.

No. 251

(R250, H3313)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-43-222 SO AS TO PROVIDE THAT FOR PURPOSES OF CALCULATING ROLL-BACK TAX DUE ON A PARCEL OF REAL PROPERTY CHANGED FROM AGRICULTURAL TO COMMERCIAL OR RESIDENTIAL USE THE VALUE USED FOR PLATTED GREEN SPACE FOR CONSERVATION OR OPEN SPACE USE OF THE PARCEL, THE VALUE MUST BE BASED ON THE GREEN SPACE FOR CONSERVATION OR OPEN SPACE USE IF SUCH USE IS TEN PERCENT OR MORE OF THE PARCEL, AND TO PROVIDE OTHER QUALIFICATIONS; TO AMEND SECTION 12-43-220, AS AMENDED, RELATING TO CLASSES OF PROPERTY AND APPLICABLE ASSESSMENT RATIOS FOR PURPOSES OF IMPOSITION OF THE PROPERTY TAX, SO AS TO MAKE A CONFORMING AMENDMENT, TO PROVIDE THAT AFTER A PARCEL OF REAL PROPERTY HAS UNDERGONE AN ASSESSABLE TRANSFER OF INTEREST, DELINQUENT PROPERTY TAX AND PENALTIES ASSESSED BECAUSE THE PROPERTY WAS IMPROPERLY CLASSIFIED AS OWNER-OCCUPIED RESIDENTIAL PROPERTY WHILE OWNED BY THE TRANSFEROR ARE SOLELY A PERSONAL LIABILITY OF THE TRANSFEROR AND DO NOT CONSTITUTE A LIEN ON THE PROPERTY AND ARE NOT ENFORCEABLE AGAINST THE PROPERTY AFTER THE ASSESSABLE TRANSFER OF INTEREST IF THE TRANSFEREE IS A BONA FIDE PURCHASER FOR VALUE WITHOUT NOTICE, AND TO PROVIDE THAT ROLL-BACK TAXES MUST NOT BE APPLIED SOLELY BECAUSE THE OWNER OF THE PROPERTY FAILS TO APPLY FOR AN AGRICULTURAL ASSESSMENT SO LONG AS THE ACTUAL USE OF THE PROPERTY REMAINS AGRICULTURAL, AND TO PROVIDE THAT IF THE PROPERTY ASSESSMENT IS CHANGED FROM AGRICULTURAL OR THE PROPERTY IS ASSESSED ROLL-BACK TAXES, THE PROPERTY MUST CONTINUE TO BE ASSESSED AS AGRICULTURAL AND THE ROLL-BACK TAXES MAY NOT BE APPLIED UNTIL THE FINAL APPEAL DATE; AND BY ADDING SECTION 12-43-370 SO AS TO AUTHORIZE A COUNTY TO ALLOW A TAXPAYER

TO ELECT TO RECEIVE HIS PROPERTY TAX BILL AND RECEIPT IN ELECTRONIC FORM, AND TO PROVIDE ADMINISTRATIVE REQUIREMENTS.

Be it enacted by the General Assembly of the State of South Carolina:

Roll-back tax for open space

SECTION 1. Article 3, Chapter 43, Title 12 of the 1976 Code is amended by adding:

"Section 12-43-222. (A) Notwithstanding the provisions of Section 12-43-220(d)(4), the property tax value, as defined in Section 12-37-3135, of that portion of a parcel of real property changed from agricultural use for purposes of residential or commercial development that is designated on the recorded development plat of the parcel as 'green space for conservation' or 'open space' if it equals ten percent or more of the area included within the outermost boundaries of the residential or commercial development must be valued according to its new 'green space for conservation' or 'open space' use for all purposes in calculating roll-back tax due on the parcel. As used in this section only, and without regard to any other definitions for those terms in state law or regulations, 'green space for conservation' and 'open space' have the meaning provided for those terms by the United States Environmental Protection Agency. The county assessor shall value the designated 'green space for conservation' or 'open space' in the manner that other property dedicated to that use is valued and that value must be used in the calculation of roll-back tax on the parcel pursuant to Section 12-43-220(d)(4). Appeals from the valuation of the 'green space for conservation' or 'open space' may be taken in the manner provided by law for appeals of value of real property appraised by county assessors.

(B) If the platted 'green space for conservation' or 'open space' is converted to another use in five property tax years or less since the provisions of this section were applied to the property, then the owner of property at the time of its conversion is liable for the roll-back taxes as if this section was not effective. For purposes of this subsection, if the transfer of property causes the change in use, then the transferor is deemed to be the owner of the property at the time of the conversion, and the taxes must be paid at the time of the closing.

(C) This section only applies when the local jurisdiction requires the designation of 'green space for conservation' or 'open space' as a condition to develop residential or commercial property."

Conforming change

SECTION 2. Section 12-43-220(d)(4) of the 1976 Code is amended to read:

"(4) Except as provided pursuant to Section 12-43-222, when real property which is in agricultural use and is being valued, assessed, and taxed under the provisions of this article, is applied to a use other than agricultural, it is subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment authorized hereunder and the taxes that would have been paid or payable had the real property been valued, assessed, and taxed as other real property in the taxing district, in the current tax year (the year of change in use) and each of the five tax years immediately preceding in which the real property was valued, assessed, and taxed as herein provided. If in the tax year in which a change in use of the real property occurs the real property was not valued, assessed, and taxed under this article, then the real property is subject to roll-back taxes for each of the five tax years immediately preceding in which the real property was valued, assessed, and taxed hereunder. In determining the amounts of the roll-back taxes chargeable on real property which has undergone a change in use, the assessor shall for each of the roll-back tax years involved ascertain:

(A) the fair market value without consideration of the standing timber of such real property under the valuation standard applicable to other real property in the same classification;

(B) the amount of the real property assessment for the particular tax year by multiplying such fair market value by the appropriate assessment ratio provided in this article;

(C) the amount of the additional assessment on the real property for the particular tax year by deducting the amount of the actual assessment on the real property for that year from the amount of the real property assessment determined under (B) of this section;

(D) the amount of the roll-back for that tax year by multiplying the amount of the additional assessment determined under (C) of this section by the property tax rate of the taxing district applicable for that tax year."

Applicability of roll-back tax for open space

SECTION 3. The provisions of SECTIONS 1 and 2 of this act apply for eligible real property changed from agricultural use valuation after 2015.

Liability for property tax penalties

SECTION 4. Section 12-43-220(c)(2)(vii) of the 1976 Code is amended to read:

"(vii)(A) If a person signs the certification, obtains the four percent assessment ratio, and is thereafter found not eligible, or thereafter loses eligibility and fails to notify the assessor within six months, a penalty is imposed equal to one hundred percent of the tax paid, plus interest on that amount at the rate of one-half of one percent a month, but in no case less than thirty dollars nor more than the current year's taxes. This penalty and any interest are considered ad valorem taxes due on the property for purposes of collection and enforcement.

(B) If property has undergone an assessable transfer of interest as provided pursuant to Section 12-37-3150 and the transferee is a bona fide purchaser for value without notice, penalties assessed pursuant to subsubitem (vii)(A) and the additional property taxes and late payment penalties are solely the personal liability of the transferor and do not constitute a lien on and are not enforceable against the property in the hands of the transferee. The provisions of this subsubitem (vii)(B) making the additional taxes and penalties assessed pursuant to subsubitem (vii)(A) the sole personal liability of the transferor also apply to transfers required as a result of a property settlement pursuant to a divorce or other disputed marital matters where required by written agreement of the parties or a court order unless the agreement or court order requires otherwise, and additionally apply to trust distributions unless the trust instrument requires otherwise."

Electronic property tax bill and receipt

SECTION 5. Article 3, Chapter 43, Title 12 of the 1976 Code is amended by adding:

"Section 12-43-370. (A) A county may allow a taxpayer to elect to receive his property tax bill and receipt in electronic form, and if the taxpayer makes the election, the county shall email the property tax bill

and receipt each year unless the taxpayer elects to no longer obtain his bill and receipt electronically. The date the property tax bill or receipt is sent electronically is considered the date the bill or receipt is mailed. Each county may determine to which classes of property this section applies. The county shall maintain a record of the taxpayer's election to participate and retain the date of the electronic transmission of the property tax bill or receipt as proof they were sent. This section does not apply to delinquent notices.

(B) Each county electing to utilize the provisions of this section shall create an application process to allow a taxpayer to submit his email address to the county. A county electing to utilize the provisions of this section shall advertise the application process for two weeks in a newspaper printed and circulated in the county and may publish the application process on the county's website or on the property tax bill."

Roll-back tax applicability

SECTION 6. Section 12-43-220(d)(3) of the 1976 Code is amended to read:

"(3)(A) Agricultural real property does not come within the provisions of this section unless the owners of the real property or their agents make a written application therefor on or before the first penalty date for taxes due for the first tax year in which the special assessment is claimed. The application for the special assessment must be made to the assessor of the county in which the agricultural real property is located, on forms provided by the county and approved by the department and a failure to apply constitutes a waiver of the special assessment for that year. The governing body may extend the time for filing upon a showing satisfactory to it that the person had reasonable cause for not filing on or before the first penalty date. No additional annual filing is required while the use of the property remains bona fide agricultural and the ownership remains the same. The owner shall notify the assessor within six months of a change in use. For failure to notify the assessor of a change in use, in addition to any other penalties provided by law, a penalty of ten percent and interest at the rate of one-half of one percent a month must be paid on the difference between the amount that was paid and the amount that should have been paid, but not less than thirty dollars nor more than the current year's taxes.

(B) Roll-back taxes authorized pursuant to item (d)(4) must not be applied solely because the owner of the property fails to make written application for an agricultural assessment so long as the actual use of the

property remains agricultural. If the property assessment is changed from agricultural or the property is assessed roll-back taxes, the owner may appeal, and if an appeal is made, the property must continue to be assessed as agricultural and the roll-back taxes may not be applied until the final appeal date."

Applicability of liability for property tax penalties

SECTION 7. Section 12-43-220(c)(2)(vii) of the 1976 Code, as amended by this act, applies prospectively and also retroactively to all property tax years open for the assessment of delinquent property taxes and penalties, including penalties assessed pursuant to Section 12-43-220(c)(2)(vii) of the 1976 Code, as of that date. No interest is due on any refunds issued pursuant to the retroactive provisions of this section.

Time effective

SECTION 8. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 7th day of June, 2016.

No. 252

(R260, H4145)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 13-1-2030 SO AS TO CREATE THE "COORDINATING COUNCIL FOR WORKFORCE DEVELOPMENT" TO MEET CERTAIN CURRENT AND FUTURE WORKFORCE NEEDS, TO PROVIDE FOR THE MEMBERS OF THE COORDINATING COUNCIL, AND TO ESTABLISH THE DUTIES OF THE COUNCIL.

Be it enacted by the General Assembly of the State of South Carolina:

"Coordinating Council of Workforce Development" created

SECTION 1. Chapter 1, Title 13 of the 1976 Code is amended by adding:

"Section 13-1-2030. (A) There is established the 'Coordinating Council of Workforce Development' which is created to engage in discussions, collaboration, and information sharing concerning the state's ability to prepare and train workers to meet current and future workforce needs. The coordinating council shall be comprised of the following members:

(1) the Secretary of the Department of Commerce or his designee;

(2) the State Superintendent of Education or his designee;

(3) the Executive Director of the State Board for Technical and Comprehensive Education or his designee;

(4) the Executive Director of the Department of Employment and Workforce or his designee;

(5) the Executive Director of the Commission on Higher Education or his designee;

(6) the president or provost of a research university who shall be selected by the presidents of the research universities;

(7) the president or provost of a four-year college or university who shall be selected by the presidents of the four-year universities;

(8) the president of a technical college who shall be appointed by the Chairman of the State Board for Technical and Comprehensive Education;

(9) a person appointed by the Superintendent of Education who has particularized expertise regarding Chapter 59, Title 59, the South Carolina Education and Economic Development Act; and

(10) a representative from the business community appointed by the President of the South Carolina Chamber of Commerce.

(B)(1) The coordinating council shall:

(a) develop and implement procedures for sharing information and coordinating efforts among stakeholders to prepare the state's current and emerging workforce to meet the needs of the state's economy. The primary workforce focus of the council shall be on persons over age twenty-one;

(b) make recommendations to the General Assembly concerning matters related to workforce development that exceed the council members' agencies' scope of authority to implement and legislation is required;

(c) recommend, to the General Assembly, programs intended to increase student access to and incentivize workforce training within state training programs or through programs offered by businesses through scholarships, grants, loans, tax credits, or other programs documented to be effective in addressing current and future workforce needs;

(d) develop a method for identifying and addressing long-term workforce needs;

(e) conduct an ongoing inventory of existing workforce programs to identify duplications among and within the programs and identify ineffective programs. The council may make recommendations concerning the appropriate actions necessary to eliminate duplication, improvements to ineffective programs so that the programs can achieve the desired result, or the elimination of programs that no longer meet workforce needs; and

(f) submit an annual progress report to the Governor and the General Assembly, by July first of each fiscal year, concerning the actions taken by the council during the previous fiscal year, and any recommendations for legislation or agency action. The council may submit additional reports on an ongoing basis as deemed necessary by the council chairman.

(2) The coordinating council may create subcommittees or advisory groups comprised of community or state or local government stakeholders to assist the council in carrying out the council's duties as contained in item (1).

(C) The Secretary of the Department of Commerce or his designee to the coordinating council shall be the coordinating council's chairman.

(D) The Commission on Higher Education, the Department of Commerce, and the State Board for Technical and Comprehensive Education shall provide staff for the coordinating council."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 8th day of June, 2016.

No. 253

(R270, H4877)

AN ACT TO AMEND SECTION 63-3-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FAMILY COURT JUDGES ELECTED FROM EACH JUDICIAL CIRCUIT, SO AS TO ADD TWO ADDITIONAL FAMILY COURT JUDGES WHO SHALL BE AT LARGE AND MUST BE ELECTED WITHOUT REGARD TO THEIR COUNTY OR CIRCUIT OF RESIDENCE.

Be it enacted by the General Assembly of the State of South Carolina:

Family Court judges, two additional at-large judgeships created

SECTION 1. Section 63-3-40 of the 1976 Code, as last amended by Act 241 of 2012, is further amended to read:

"Section 63-3-40. (A) The General Assembly shall elect a number of family court judges from each judicial circuit as follows:

First Circuit	Three Judges
Second Circuit	Two Judges
Third Circuit	Three Judges
Fourth Circuit	Three Judges
Fifth Circuit	Four Judges
Sixth Circuit	Two Judges
Seventh Circuit	Three Judges
Eighth Circuit	Three Judges
Ninth Circuit	Six Judges
Tenth Circuit	Three Judges
Eleventh Circuit	Three Judges
Twelfth Circuit	Three Judges
Thirteenth Circuit	Six Judges
Fourteenth Circuit	Three Judges
Fifteenth Circuit	Three Judges
Sixteenth Circuit	Two Judges

(B) In the following judicial circuits at least one family court judge must be a resident of each county in the circuit: fifth, seventh, tenth, twelfth, thirteenth, fifteenth, and sixteenth. In those judicial circuits made up of three or more counties, at least one family court judge must be a resident of one of the counties which does not have the largest

population in the circuit. In the ninth circuit, both counties in the circuit must have at least two resident family court judges.

(C) No county in the sixth circuit shall have more than one resident family court judge.

(D) In addition to the judges authorized by this section, there must be eight additional family court judges elected by the General Assembly from the State at large for terms of office of six years. These additional judges must be elected without regard to county or circuit of residence. Each office of the at-large judges is a separate office and is assigned numerical designations of Seat No. 1 through Seat No. 8, respectively."

Judicial Merit Selection Commission to begin screening

SECTION 2. The Judicial Merit Selection Commission shall begin the process of nominating candidates for the judicial offices authorized by the provisions of SECTION 1, and the General Assembly then shall elect these judges from the nominees of the commission.

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 7th day of June, 2016.

No. 254

(R280, H5034)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-21-4320 SO AS TO REQUIRE THE DEPARTMENT OF REVENUE TO ESTABLISH AN INFORMATIONAL CHARITABLE BINGO WEBPAGE ON ITS WEBSITE; TO AMEND SECTION 12-21-3940, RELATING TO APPLICATIONS FOR A BINGO LICENSE BY NONPROFIT ORGANIZATIONS AND PROMOTERS, SO AS TO EXTEND THE TIME BY WHICH THE DEPARTMENT MUST RESPOND; TO AMEND SECTION 12-21-3990, RELATING TO THE MANNER OF PLAYING BINGO, SO AS TO PROVIDE THE

MANNER IN WHICH CERTAIN DEVICES MUST BE OPERATED; TO AMEND SECTION 12-21-4000, RELATING TO PROCEDURES APPLICABLE TO THE CONDUCT OF BINGO, SO AS TO INCREASE THE ALLOWANCE FOR PROMOTIONS; TO AMEND SECTION 12-21-4005, RELATING TO THE OPERATION OF BINGO GAMES, SO AS TO EXCLUDE CERTAIN RAFFLES; TO AMEND SECTION 12-21-4090, RELATING TO BINGO CHECKING AND SAVINGS ACCOUNTS, SO AS TO ALLOW THE PROMOTER TO MAKE CERTAIN CONTRIBUTIONS, TO REQUIRE THAT ALL EXPENSES RELATED TO THE BINGO OPERATION MUST BE PAID FROM THE OPERATIONS BINGO ACCOUNT, AND TO ALLOW FOR ELECTRONIC PAYMENTS; TO AMEND SECTION 12-21-4190, RELATING TO THE DISTRIBUTION OF BINGO REVENUES, SO AS TO INCREASE THE PERCENTAGE THAT IS DISTRIBUTED TO CHARITY; AND TO AMEND SECTION 12-21-4200, RELATING TO THE DISBURSEMENT OF BINGO REVENUES, SO AS TO ENSURE A DISBURSEMENT TO THE DEPARTMENT OF PARKS, RECREATION AND TOURISM.

Be it enacted by the General Assembly of the State of South Carolina:

Bingo webpage

SECTION 1. Article 24, Chapter 21, Title 12 of the 1976 Code is amended by adding:

"Section 12-21-4320. (A) The department shall establish a bingo webpage on its own website, for the purpose of serving as a clearinghouse for information and access to the Bingo Tax Act and its implementation and regulation. The link also must contain access to information pertaining to licenses, the manner in which to file complaints, and clarifying issues the department finds in connection with violations of the Bingo Tax Act.

(B) In addition to the purposes set forth in subsection (A), the webpage also must include a process for submitting questions to the bingo division of the department."

Bingo license response

SECTION 2. Section 12-21-3940(B) of the 1976 Code is amended to read:

"(B) Upon application for a license, the department has forty-five days to approve or reject the application based on the requirements of this article."

Bingo devices

SECTION 3. Section 12-21-3990(A)(6) of the 1976 Code is amended to read:

"(6) All devices, including the master-board, used to show what numbers have been called during a game must not be intentionally changed, obstructed, or turned off by the promoter until the winners are verified."

Bingo promotions

SECTION 4. Section 12-21-4000(15) of the 1976 Code is amended to read:

"(15) The house may hold promotions of special events during a session offering players prizes other than from the play of bingo not to exceed two hundred dollars in cash or merchandise for each session. This amount is not to be paid out of the bingo account and is not included in total payouts for a session. There is no additional charge to players to participate in a special promotion. The promotion must not require any consideration for participation."

Bingo games excludes raffles

SECTION 5. Section 12-21-4005 of the 1976 Code is amended to read:

"Section 12-21-4005. The operation of the bingo games excludes machines and lottery games, including video poker lottery games, prohibited by Sections 12-21-2710, 16-19-40, and 16-19-50. The operation of the bingo games also excludes raffles as defined in Section 33-57-110."

Promoter contribution to bingo account, expenses paid from operations account

SECTION 6. Section 12-21-4090(C) and (D) of the 1976 Code is amended to read:

"(C) An organization receiving an annual license to conduct bingo shall establish and maintain one regular checking account designated the 'bingo account' and also may maintain an interest-bearing savings account designated the 'bingo savings account'. All funds derived from the conduct of bingo, less the amount awarded as cash prizes, must be deposited in the bingo account. Other funds may not be deposited in the bingo account, unless there is a deficit, and then both the organization and promoter shall deposit a loan equal to fifty percent of the deficit. If the organization is unable to make the fifty percent contribution, the promoter may deposit one hundred percent of the deficit which the balance must be, at the election of the promoter and with the consent of the nonprofit organization, carried as either a loan or a charitable donation to the organization from the promoter. Each loan to an organization from the promoter must be authorized in writing by a duly authorized officer of the licensed nonprofit organization. The promoter only may have recourse to these loans from the funds in the charitable bingo account. Each loan deposited into the bingo checking account must be accounted for on the quarterly financial reports filed with the department. Detailed information substantiating these loans must be maintained by the organization. Deposits must be made no later than the next business day following the day of the bingo occasion on which the receipts were obtained. All accounts must be maintained in a financial institution in this State.

(D) All expenses related to the charitable bingo operation must be paid from the operations bingo account. Funds from the bingo account must be withdrawn by preprinted, consecutively numbered checks or withdrawal slips, jointly signed by a properly authorized representative of the licensed nonprofit organization and promoter and made payable to a person or organization or by electronic methods or recurring online payments. Electronic payments must be authorized by a duly authorized representative of the licensed nonprofit organization and promoter in writing. Checks must be imprinted with the words 'Bingo Account' and must contain the organization's bingo license number on the face of the check. There also must be noted on the face of the check or withdrawal slip the nature of the payment made. No check or slip may be made

payable to 'cash', 'bearer', or a fictitious payee. All checks, including voided checks and slips, must be kept and accounted for."

Distribution of bingo revenues

SECTION 7. Section 12-21-4190(B) of the 1976 Code is amended to read:

"(B) The revenue retained must be distributed as follows:

(1) twenty-eight percent of the revenue must be distributed to the sponsoring charity for which the bingo cards were purchased. The department shall make the distribution to the sponsoring charity by the last day of the next month following the month the revenue was collected. Distributions pursuant to this subsection must be reduced by any delinquent debts as defined in the Setoff Debt Collection Act;

(2) seventy-two percent pursuant to Section 12-21-4200."

Disbursement of bingo revenues to the Department of Parks, Recreation and Tourism

SECTION 8. Section 12-21-4200(2) and (3) of the 1976 Code is amended to read:

"(2) Twenty and eight-tenths percent of the annual revenue derived from the provisions of Section 12-21-4190(2), or two and one-half million dollars each fiscal year, whichever is greater, must be deposited by the State Treasurer in a separate fund for the Department of Parks, Recreation and Tourism entitled the Parks and Recreation Development Fund. Interest earned by this fund must be added to it and credited to its various accounts in the same proportion that the annual allocation to each account bears to the total annual distribution to the fund. Unexpended amounts in the various fund accounts must be carried forward to succeeding fiscal years except as provided in Section 51-23-30. Fund proceeds must be distributed as provided in Chapter 23 of Title 51.

(3) Subject to the distribution in item (2), seventy-two and fifteen one-hundredths percent of the annual revenue derived from the provisions of Section 12-21-4190(2) must be deposited with the State Treasurer and credited to the general fund, except that the first one hundred thirty-one thousand of such revenues each year must be transferred to the Commission on Minority Affairs."

Time effective

SECTION 9. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 7th day of June, 2016.

No. 255

(R212, S227)

AN ACT TO AMEND SECTION 12-10-88, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REMISSION OF REDEVELOPMENT FEES TO A REDEVELOPMENT AUTHORITY, SO AS TO EXTEND THE END DATE FOR REMISSIONS FROM JANUARY 1, 2017, TO JANUARY 1, 2021, AND TO PROHIBIT A REDEVELOPMENT AUTHORITY FROM RECEIVING MORE IN REMISSIONS THAN IT DID IN FISCAL YEAR 2014-2015.

Be it enacted by the General Assembly of the State of South Carolina:

Redevelopment fees

SECTION 1. Section 12-10-88(C) of the 1976 Code is amended to read:

"(C) Redevelopment fees may be remitted to the applicable redevelopment authority for a period beginning with the date that the applicable redevelopment authority first submits the information described in subsection (B) to the department and ending fifteen years later or January 1, 2021, whichever occurs last. If the redevelopment authority fails to provide the department with the required statement within the requisite time limits, no redevelopment fees must be remitted for that quarter. Notwithstanding subsection (A), the redevelopment fee remitted by the department in any fiscal year may not exceed the amount remitted in Fiscal Year 2014-2015."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 7th day of June, 2016.

No. 256

(R218, S427)

AN ACT TO AMEND SECTION 12-6-3360, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE JOB TAX CREDIT, SO AS TO ADD AN ESTABLISHMENT ENGAGED IN AN ACTIVITY OR ACTIVITIES LISTED UNDER SECTOR 4881, SUBSECTOR 488190 TO THE DEFINITION OF A "QUALIFYING SERVICE-RELATED FACILITY", TO ALLOW A TAXPAYER OPERATING AN AGRICULTURAL PACKAGING OPERATION TO CLAIM THE CREDIT, TO ALLOW CERTAIN AGRICULTURAL OPERATIONS TO CLAIM SEASONAL WORKERS AS A CERTAIN FRACTION OF A FULL-TIME JOB, AND TO DEFINE "AGRICULTURAL PACKAGING"; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO EXEMPTIONS FROM THE STATE SALES TAX, SO AS TO EXEMPT MACHINES USED IN AGRICULTURAL PACKAGING; AND BY ADDING SECTION 13-1-1780 SO AS TO REQUIRE THE DEPARTMENT OF COMMERCE AND THE COORDINATING COUNCIL TO CONSIDER AGRICULTURAL BUSINESSES IN AWARDING ECONOMIC DEVELOPMENT BENEFITS.

Be it enacted by the General Assembly of the State of South Carolina:

Jobs tax credit eligibility for air transportation services

SECTION 1. Section 12-6-3360(M)(13)(a) of the 1976 Code is amended to read:

"(a) an establishment engaged in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 62, subsectors 621, 622, and 623, or Sector 4881, subsector 488190; or"

Jobs tax credit eligibility for agricultural packaging

SECTION 2. Section 12-6-3360(A) of the 1976 Code is amended to read:

"(A) Taxpayers that operate manufacturing, tourism, processing, agricultural packaging, warehousing, distribution, research and development, corporate office, qualifying service-related facilities, agribusiness operations, extraordinary retail establishment, and qualifying technology intensive facilities, and banks as defined pursuant to this title are allowed an annual jobs tax credit as provided in this section. In addition, taxpayers that operate retail facilities and service-related industries qualify for an annual jobs tax credit in counties designated as 'Tier IV'. As used in this section, 'corporate office' includes general contractors licensed by the South Carolina Department of Labor, Licensing and Regulation. Credits pursuant to this section may be claimed against income taxes imposed by Section 12-6-510 or 12-6-530, bank taxes imposed pursuant to Chapter 11 of this title, and insurance premium taxes imposed pursuant to Chapter 7, Title 38, and are limited in use to fifty percent of the taxpayer's South Carolina income tax, bank tax, or insurance premium tax liability. In computing a tax payable by a taxpayer pursuant to Section 38-7-90, the credit allowable pursuant to this section must be treated as a premium tax paid pursuant to Section 38-7-20."

Jobs tax credit eligibility for seasonal workers of agricultural packaging and agribusiness

SECTION 3. Section 12-6-3360(M)(4) of the 1976 Code is amended to read:

"(4) 'Full-time' means a job requiring a minimum of thirty-five hours of an employee's time a week for the entire normal year of company operations or a job requiring a minimum of thirty-five hours of an employee's time for a week for a year in which the employee was hired initially for or transferred to the South Carolina facility. For the purposes of this section, two half-time jobs are considered one full-time job. A

'half-time job' is a job requiring a minimum of twenty hours of an employee's time a week for the entire normal year of the company's operations or a job requiring a minimum of twenty hours of an employee's time a week for a year in which the employee was hired initially for or transferred to the South Carolina facility. For agricultural packaging and agribusiness operations, seasonal workers may be considered a full-time employee; however, a seasonal employee only counts as a fraction of a full-time worker, with the numerator being the number of hours worked a week multiplied by the number of weeks worked, and the denominator being the number one thousand eight hundred twenty."

Definition

SECTION 4. Section 12-6-3360(M) of the 1976 Code is amended by adding an appropriately numbered item to read:

"( ) 'Agricultural packaging' means the technology of enclosing or protecting or preserving agricultural products for distribution, storage, sale, and use. Packaging also refers to the process of design, evaluation, and production of packages used for agricultural products. Packaging can be described as a coordinated system of preparing agricultural goods for transport, warehousing, logistics, sale, and end use."

Sales tax exemption for agricultural packaging machines

SECTION 5. A. Section 12-36-2120(17) of the 1976 Code is amended to read:

"(17) machines used in manufacturing, processing, agricultural packaging, recycling, compounding, mining, or quarrying tangible personal property for sale. 'Machines' include the parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of the machines and which (a) are necessary to the operation of the machines and are customarily so used, or (b) are necessary to comply with the order of an agency of the United States or of this State for the prevention or abatement of pollution of air, water, or noise that is caused or threatened by any machine used as provided in this section. This exemption does not include automobiles or trucks. As used in this item 'recycling' means a process by which materials that otherwise would become solid waste are collected, separated, or processed and reused, or returned to use in the form of raw materials or

products, including composting, for sale. In applying this exemption to machines used in recycling, the following percentage of the gross proceeds of sale, or sales price of, machines used in recycling are exempt from the taxes imposed by this chapter:

Fiscal Year of Sale	Percentage
Fiscal year 1997-98	fifty percent
After June 30, 1998	one hundred percent;"

B. This section takes effect July 1, 2016.

Agricultural businesses considered for economic development awards

SECTION 6. Article 11, Chapter 1, Title 13 of the 1976 Code is amended by adding:

"Section 13-1-1780. In awarding benefits for economic development projects, including awards from the Governor's Closing Fund, the Department of Commerce and the coordinating council must consider agricultural businesses. The Department of Commerce and the coordinating council must consider the number of jobs created, including full-time, part-time, and seasonal jobs, and the total investment made, including the cost of the real property."

Time effective

SECTION 7. Except where specified otherwise, this act takes effect upon approval by the Governor. SECTION 1 applies to tax years beginning after 2015.

Ratified the 2nd day of June, 2016.

Approved the 8th day of June, 2016.

No. 257

(R219, S454)

AN ACT TO AMEND SECTION 50-9-650, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ISSUANCE OF ANNUAL INDIVIDUAL ANTLERLESS DEER TAGS, SO AS TO REVISE THE PROCEDURE WHEREBY THE DEPARTMENT OF NATURAL RESOURCES ISSUES AND CHARGES A PERSON FOR THE PRIVILEGE OF HUNTING AND TAKING DEER IN THIS STATE; TO AMEND SECTION 50-9-920, AS AMENDED, RELATING TO THE COLLECTION AND DISPOSITION OF REVENUES GENERATED FROM THE SALE OF HUNTING AND FISHING LICENSES, PERMITS, AND TAGS, SO AS TO SUBSTITUTE THE TERM "ANTLERLESS DEER QUOTA PERMIT" FOR THE TERM "DEER QUOTA PROGRAM PERMIT", AND TO PROVIDE FOR THE DISTRIBUTION OF REVENUES COLLECTED FROM THE SALE OF NONRESIDENT ANTLERED DEER TAGS AND RESIDENT ANTLER RESTRICTION INDIVIDUAL ANTLERED DEER TAGS; BY ADDING SECTION 50-11-315 SO AS TO PROVIDE BAG LIMITS FOR ANTLERED DEER AND DEER TAKEN WITH A DEER QUOTA PROGRAM PERMIT, AND TO PROVIDE A PENALTY FOR A VIOLATION OF THIS SECTION; BY ADDING SECTION 50-11-320 SO AS TO PROVIDE THE PROCEDURE WHEREBY THE DEPARTMENT OF NATURAL RESOURCES ISSUES TAGS FOR THE HUNTING AND TAKING OF DEER, TO REGULATE THE HUNTING AND TAKING OF DEER, AND TO PROVIDE PENALTIES; TO AMEND SECTION 50-11-390, AS AMENDED, RELATING TO THE DEPARTMENT OF NATURAL RESOURCES' REGULATION OF GAME ZONES, SO AS TO PROVIDE THAT THE DEPARTMENT MAY PROMULGATE REGULATIONS FOR THE TAKING OF ANTLERLESS DEER DURING CERTAIN PERIODS OF TIME, TO PROVIDE FOR THE ESTABLISHMENT OF ANTLERLESS DAYS, AND TO PROVIDE FOR THE REGULATION OF THE DEER QUOTA PROGRAM; TO REPEAL SECTION 50-11-335 RELATING TO BAG LIMITS ESTABLISHED FOR ANTLERED DEER; AND TO PROVIDE THAT THE DEPARTMENT OF NATURAL RESOURCES SHALL PROVIDE THE GENERAL ASSEMBLY A

REPORT ON THE STATUS OF THE STATE'S WHITE-TAILED DEER POPULATION.

Be it enacted by the General Assembly of the State of South Carolina:

Deer hunting

SECTION 1. Section 50-9-650 of the 1976 Code, as added by Act 233 of 2010, is amended to read:

"Section 50-9-650. (A)(1) For the privilege of hunting and taking deer on property with a Deer Quota Program permit, a person must obtain the required hunting license, any other required permits, and have access and authorization to utilize Deer Quota Program tags for the property on which the person is hunting.

(2) A landowner or lessee may apply to the Deer Quota Program for a permit at a cost of fifty dollars per land tract application. The applicant may request a quota for antlerless deer, antlered deer, or both antlered and antlerless deer. The department shall determine an appropriate number of Deer Quota Program tags for antlered and antlerless deer to be issued under each permit, and there is no cost for these tags.

(B)(1) For the privilege of hunting and taking deer on property without a Deer Quota Program permit, a person must obtain the required hunting license, any other required permits, and a set of individual deer tags from the department issued in the person's name.

(2)(a) With the purchase of a South Carolina hunting license and a big game permit, a resident shall be issued eight date-specific individual antlerless deer tags which are valid only on specified days and three unrestricted individual antlered deer tags. Persons under the age of sixteen, lifetime, and gratis licensees may receive these tags upon request to the department. Residents, including persons under the age of sixteen, lifetime, and gratis licensees also may purchase:

(i) two antler restriction individual antlered deer tags valid for deer with a minimum of four points on one antler or a minimum twelve-inch inside antler spread for five dollars per tag; and

(ii) additional individual antlerless deer tags for five dollars per tag.

(b) Fees for nonresident deer tags are as follows:

(i) fifty dollars for the first antlered deer tag and twenty dollars for each additional antlered deer tag up to a maximum of four tags; two of which must be an antler restriction individual antlered deer

tag valid only for deer with a minimum of four points on one antler or a minimum twelve-inch inside antler spread; and

(ii) ten dollars per individual antlerless deer tag."

Deer hunting

SECTION 2. Section 50-9-920(B)(6) of the 1976 Code, as last amended by Act 94 of 2013, is further amended to read:

"(6) Deer Quota Program permit shall be exclusively used to administer the Deer Quota Program and for deer management and research;"

Deer hunting

SECTION 3. Section 50-9-920(B)(7) of the 1976 Code, as last amended by Act 94 of 2013, is further amended to read:

"(7) individual antlerless and nonresident antlered deer tags shall be used as follows:

(a) eighty percent to administer the tag program, deer management, and research; and

(b) the remaining twenty percent for law enforcement;"

Coyote management program

SECTION 4. Section 50-9-920(B) of the 1976 Code, as last amended by Act 94 of 2013, is further amended by adding an appropriately numbered item at the end:

"( ) resident antler restriction individual antlered deer tag shall be used to administer the Coyote Management Program."

Deer hunting

SECTION 5. Article 3, Chapter 11, Title 50 of the 1976 Code is amended by adding:

"Section 50-11-315. (A) The bag limit for antlered deer taken with individual antlered deer tags is five per year for all seasons combined of which two have antler restrictions with a minimum of four points on one

antler or a minimum twelve-inch inside antler spread. No more than two antlered deer may be taken daily. For the purpose of this section:

(1) a point is a projection that is at least one inch long and longer than wide at some location at least one inch from the tip of the projection; and

(2) inside antler spread is measured at a right angle to the center line of the skull at its widest point between the main beams. No more than two antlerless deer may be taken daily with individual tags.

(B) The bag limit for deer taken on property with a Deer Quota Program permit shall be set by the department.

(C) It is unlawful to take more than the legal limit of deer. A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not less than fifty dollars nor more than five hundred dollars or imprisoned for not more than thirty days. Each animal over the limit is a separate offense."

Deer hunting

SECTION 6. Article 3, Chapter 11, Title 50 of the 1976 Code is amended by adding:

"Section 50-11-320. (A) The department will issue tags for the hunting and taking of deer.

(1) Antlered deer tags issued to individuals are valid statewide as prescribed by the department except on property with a Deer Quota Program permit for antlered deer.

(2) Antlerless deer tags issued to individuals are valid statewide as prescribed by the department except on property with a Deer Quota Program permit for antlerless deer.

(3) Deer Quota Program tags are valid only on properties for which they are issued.

(B)(1) Deer taken pursuant to individual deer tags, during any season regardless of weapon, must be tagged with a valid individual deer tag. Each tag must be attached to the deer as prescribed by the department before the animal is moved from the point of kill.

(2) Deer taken pursuant to Deer Quota Program tags must be tagged with a valid Deer Quota Program tag and reported to the department as prescribed. Each tag must be attached to the deer as prescribed by the department before the animal is moved from the point of kill.

(C) It is unlawful for an individual:

(1) to harvest or attempt to harvest a deer on property with a Deer Quota Program permit without having access and authorization to utilize Deer Quota Program tags for the property on which the person is hunting;

(2) to harvest or attempt to harvest a deer on property without a Deer Quota Program permit unless the person possesses a set of individual deer tags issued in the person's name;

(3) to possess, move, or transport an untagged deer which was harvested by hunting in South Carolina;

(4) to use or attempt to use more than one set of deer tags or tags issued in another person's name to harvest a deer; and

(5) to alter a deer tag for fraudulent or unlawful purposes.

(D) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not less than fifty dollars nor more than five hundred dollars or imprisoned for not more than thirty days."

Deer hunting

SECTION 7. Section 50-11-390 of the 1976 Code, as last amended by Act 233 of 2010, is further amended to read:

"Section 50-11-390. (A)(1) The department may promulgate regulations to permit the taking of antlerless deer between September fifteenth and January first.

(2) The department must establish a minimum number of antlerless days as follows:

(a) three days in Game Zone 1;

(b) eight days in Game Zones 2, 3, and 4.

(B) In all game zones, the department may issue individual tags for antlerless deer which must be used as prescribed by the department. These tags are valid statewide, except on property receiving a Deer Quota Program permit for antlerless deer pursuant to subsection (C), and must be possessed and used only by the individual to whom they are issued.

(C) In all game zones, the department may issue Deer Quota Program permits to landowners or lessees. The department will determine the appropriate number of Deer Quota Program tags, and issue the tags for the permitted property.

(D) Deer taken pursuant to a Deer Quota Program permit must be tagged with a valid Deer Quota Program tag and reported to the department as prescribed. Each tag must be attached to the deer as

prescribed by the department before the animal is moved from the point of kill.

(E) The department may suspend the taking of deer or revoke any Deer Quota Program permit when environmental conditions or other factors warrant.

(F) It is unlawful to take, possess, or transport deer, except as permitted by this section. A person violating the provisions of this section or the provisions for taking deer established by the department is guilty of a misdemeanor and, upon conviction, must be fined not less than fifty and not more than five hundred dollars or imprisoned not more than thirty days."

Repeal

SECTION 8. Section 50-11-335 of the 1976 Code is repealed.

White-tailed deer population study

SECTION 9. The department shall provide a report of a four-year study by July 1, 2022, to the Chairman of the Senate Fish, Game and Forestry Committee and the Chairman of the House Agriculture, Natural Resources and Environmental Affairs Committee. The report will include, but will not be limited to, the status of the white-tailed deer population and a review of the tagging program.

Time effective

SECTION 10. This act takes effect on July 1, 2017.

Ratified the 2nd day of June, 2016.

Approved the 8th day of June, 2016.

No. 258

(R220, S484)

AN ACT TO AMEND SECTION 59-10-310, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ESTABLISHMENT OF ELEMENTARY SCHOOL FOOD

SERVICE MEALS AND COMPETITIVE FOOD REQUIREMENTS, SO AS TO PROVIDE SCHOOL SERVICE MEALS AND COMPETITIVE FOODS PROVIDED IN KINDERGARTEN THROUGH TWELFTH GRADE DURING THE ACADEMIC SCHOOL YEAR MUST MEET AND MAY EXCEED NUTRITIONAL REQUIREMENTS ESTABLISHED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE, TO PROVIDE SCHOOL DISTRICTS MAY ADOPT MORE RESTRICTIVE POLICIES, TO PROVIDE THESE MORE RESTRICTIVE POLICIES MAY NOT RESTRICT THE FOOD PARENTS OR GUARDIANS PROVIDE FOR STUDENT CONSUMPTION AT SCHOOL, TO EXEMPT SCHOOL FUNDRAISERS FROM THESE REQUIREMENTS, AND TO CLARIFY THAT THIS SECTION DOES NOT RESTRICT OR PROHIBIT THE STATE DEPARTMENT OF EDUCATION FROM ESTABLISHING POLICIES REGARDING SCHOOL FUNDRAISERS AUTHORIZED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE; AND TO AMEND SECTION 59-10-330, RELATING TO THE COORDINATED SCHOOL HEALTH ADVISORY COUNCIL AND THE DEVELOPMENT OF HEALTH WELLNESS PLANS, SO AS TO PROVIDE SCHOOL HEALTH IMPROVEMENT PLANS MUST REPORT COMPLIANCE WITH THE REQUIREMENTS OF SECTION 59-10-310.

Be it enacted by the General Assembly of the State of South Carolina:

USDA nutrition requirements applied through twelfth grade, district policies, exemptions

SECTION 1. Section 59-10-310 of the 1976 Code, as added by Act 102 of 2005, is amended to read:

"Section 59-10-310. (A) In an effort to promote optimal healthy eating patterns and academic success, the State Board of Education by policy shall establish requirements for all school food service meals and competitive foods provided in kindergarten through twelfth grade during the academic school year, which must meet or may exceed, the nutritional requirements established by the United States Department of Agriculture Food and Nutrition Service. The nutritional requirements must be continuously updated to reflect the current United States Department of Agriculture Food and Nutrition Service standards. A

school district board of trustees may adopt a more restrictive policy. This policy does not restrict the food that a parent or guardian may provide for student consumption at school.

(B) School fundraisers must be exempted from the requirements in this section; however, nothing in this section shall restrict or prohibit the department from establishing policy with regard to school fundraisers, as authorized by the United States Department of Agriculture."

School health improvement plan compliance reporting

SECTION 2. Section 59-10-330(B) of the 1976 Code, as added by Act 102 of 2005, is amended to read:

"(B) Each district, in collaboration with the CSHAC, shall develop a school health improvement plan that addresses strategies for improving student nutrition, health, and physical activity and includes the district's wellness policy. The school health improvement plan must report compliance with the requirements contained in Section 59-10-310. The district health improvement plan goals and progress toward those goals must be included in the district's strategic plan required pursuant to Section 59-20-60."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 5th day of June, 2016.

No. 259

(R222, S685)

AN ACT TO AMEND SECTION 40-22-2, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PURPOSE OF CHAPTER 22, TITLE 40 CONCERNING THE REGULATION OF ENGINEERS AND SURVEYORS, SO AS TO PROVIDE THAT THE PRACTICE OF THE PROFESSION OF ENGINEERING AND SURVEYING IS SUBJECT TO

REGULATION BY THIS STATE; TO AMEND SECTION 40-22-10, RELATING TO THE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS, SO AS TO PROVIDE ADDITIONAL QUALIFICATIONS; TO AMEND SECTION 40-22-20, RELATING TO DEFINITIONS, SO AS TO ADD, REDEFINE, AND DELETE DEFINITIONS; TO AMEND SECTION 40-22-50, RELATING TO DUTIES OF THE BOARD, SO AS TO PROVIDE THE BOARD SHALL MAINTAIN AND UPDATE, RATHER THAN ANNUALLY PREPARE, A ROSTER OF INFORMATION CONCERNING PROFESSIONAL ENGINEERS AND SURVEYORS; TO AMEND SECTION 40-22-60, RELATING TO THE DUTY OF THE BOARD TO PROMULGATE CERTAIN REGULATIONS, SO AS TO UPDATE A CROSS REFERENCE AND TO PROVIDE ADDITIONAL DUTIES WITH RESPECT TO PROVIDING ADVICE AND RECOMMENDATIONS CONCERNING STATUTORY REVISIONS TO THE DEPARTMENT OF LABOR, LICENSING AND REGULATION; TO AMEND SECTION 40-22-75, RELATING TO EMERGENCY WAIVERS OF LICENSE REQUIREMENTS, SO AS TO LIMIT APPLICATION OF THESE WAIVERS TO DECLARED NATIONAL OR STATE EMERGENCIES AND TO LIMIT THEIR DURATION TO NINETY DAYS; TO AMEND SECTION 40-22-110, RELATING TO THE AUTOMATIC SUSPENSION OF THE LICENSES OF MENTALLY INCOMPETENT PERSONS, SO AS TO DELETE A REDUNDANCY; TO AMEND SECTION 40-22-220, RELATING TO ELIGIBILITY REQUIREMENTS FOR LICENSURE AS AN ENGINEER, SO AS TO REVISE EDUCATION REQUIREMENTS; TO AMEND SECTION 40-22-222, RELATING TO LICENSURE OF EXISTING ENGINEERS, SO AS TO ADD AN OPTIONAL ACCREDITATION SOURCE FOR AN EDUCATION REQUIREMENT; TO AMEND SECTION 40-22-225, RELATING TO ELIGIBILITY REQUIREMENTS FOR SURVEYOR LICENSURE, SO AS TO REVISE THE REQUIREMENTS; TO AMEND SECTION 40-22-230, RELATING TO APPLICATION REQUIREMENTS, SO AS TO REVISE THE REQUIREMENTS; TO AMEND SECTION 40-22-250, RELATING TO CERTIFICATES OF AUTHORIZATION TO PRACTICE AS A FIRM, SO AS TO REVISE REQUIREMENTS FOR THESE CERTIFICATES AND TO PROVIDE REQUIREMENTS THROUGH WHICH LICENSEES MAY MAINTAIN BRANCH OFFICES; TO AMEND

SECTION 40-22-260, RELATING TO TEMPORARY LICENSES, SO AS TO REVISE CIRCUMSTANCES IN WHICH THE DEPARTMENT MAY GRANT TEMPORARY LICENSES TO OUT-OF-STATE FIRMS, AND TO PROVIDE REQUIREMENTS FOR SUBMISSION OF PLANS PRODUCED AND SUBMITTED FOR PERMITTING BY PERSONS HOLDING TEMPORARY CERTIFICATES OF AUTHORIZATION; TO AMEND SECTION 40-22-270, RELATING TO SEALS OF LICENSEES, SO AS TO PROVIDE SEALS AND SIGNATURES OF LICENSEES ON DOCUMENTS CONSTITUTE CERTIFICATION THAT THE DOCUMENTS WERE PREPARED BY THE LICENSEE OR UNDER HIS DIRECT SUPERVISION, AMONG OTHER THINGS; TO AMEND SECTION 40-22-280, AS AMENDED, RELATING TO EXCEPTIONS FROM THE APPLICABILITY OF THE CHAPTER, SO AS TO MODIFY THE EXEMPTIONS; AND TO AMEND SECTION 40-22-290, RELATING TO "TIER A" SURVEYING, SO AS TO EXEMPT THE CREATION OF NONTECHNICAL MAPS.

Be it enacted by the General Assembly of the State of South Carolina:

Practice act purpose revised

SECTION 1. Section 40-22-2 of the 1976 Code is amended to read:

"Section 40-22-2. In order to safeguard life, health, and property and to promote the public welfare, the practice of the profession of engineering and surveying in this State is subject to regulation. It is the policy of this State and the purpose of this chapter to encourage the development of professional engineers and surveyors in this State and to promote the accountability for engineering practice and surveying practice in a global economy. The State recognizes the need for qualified engineers and surveyors to support the local and global economy and, to that end, encourages efforts to increase access to accredited education, the examinations, and the experience necessary and appropriate to protect the health, safety, and welfare of South Carolina citizens and to support licensure as the basis of accountability."

Board membership qualifications revised, obsolete provisions removed

SECTION 2. Section 40-22-10 of the 1976 Code is amended to read:

"Section 40-22-10. (A) There is created the South Carolina State Board of Registration for Professional Engineers and Surveyors under the administration of the Department of Labor, Licensing and Regulation. The purpose of the board is to protect the health, safety, and welfare of the public by ensuring that only properly qualified and competent engineers and surveyors are licensed to practice, by promoting technical competency and ethical standards consistent with the Rules of Professional Conduct applicable to engineers and surveyors, and by appropriately disciplining those found in violation of laws governing engineering and surveying.

(B) The board shall consist of eight members appointed by the Governor, recommendations for appointment may be made by any individual or group, including the South Carolina Council of Engineering and Surveying Societies. Five members must be professional engineers, at least two of whom must be actively engaged in the practice of engineering; two members must be professional surveyors, at least one of whom must be actively engaged in the practice of surveying; and one member must be from the general public appointed in accordance with Section 40-22-40. Professional engineer and professional surveyor members must be selected from a list of qualified candidates submitted to the Governor by the South Carolina Council of Engineering and Surveying Societies. Members of the board shall serve for terms of five years and until their successors are appointed and qualify. No more than two engineers' terms shall expire in any calendar year; no more than one surveyor's term shall expire in any calendar year. In the event of a vacancy, the Governor shall appoint a person to fill the vacancy for the unexpired portion of the term.

(C)(1) Each engineering member of the board must:

(a) be a citizen of the United States and a resident of this State;

(b) be licensed in this State;

(c) have been engaged in the practice of engineering in this State for at least twelve years; and

(d) must have been in responsible charge of important engineering work for at least five years, which may include teaching engineering.

(2) Each surveyor member of the board must:

(a) be a citizen of the United States and a resident of this State;

(b) be licensed in this State;

(c) have been engaged in the practice of surveying in this State for at least twelve years; and

(d) have been in responsible charge of important surveying work for at least five years, which may include teaching surveying in an academic setting.

(3) The public member of the board must be a citizen of the United States and a resident of this State for at least twelve consecutive years.

(D) Board members must be compensated for their services at the usual rate for mileage, subsistence, and per diem as provided by law for members of state boards, committees, and commissions and may be reimbursed for actual and necessary expenses incurred in connection with and as a result of their work as members of the board.

(E) The Governor may remove a member of the board pursuant to Section 1-3-240. Vacancies on the board must be filled for the unexpired portion of the term in the manner of the original appointment.

(F)(1) The board shall elect or appoint annually a chairman, a vice chairman, and a secretary.

(2) The board shall meet at least two times a year and at other times upon the call of the chairman or a majority of the board.

(3) A simple majority of the members of the board eligible to vote constitutes a quorum; however, if there is a vacancy on the board, a majority of the members serving constitutes a quorum.

(4) A board member is required to attend meetings or to provide proper notice and justification of inability to do so. Unexcused absences from meetings may result in removal from the board as provided for in Section 1-3-240.

(G) Neither the board nor any of its members, agents, or department employees are liable for acts performed in good faith during the course of their official duties."

Definitions revised

SECTION 3. Section 40-22-20 of the 1976 Code is amended to read:

"Section 40-22-20. As used in this chapter:

(1) 'ABET' means the Accreditation Board for Engineering and Technology. 'EAC' means the Engineering Accreditation Commission of ABET. 'TAC' or 'ETAC' means the Engineering Technology Accreditation Commission of ABET.

(2) 'Approved engineering curriculum' means an engineering program of four or more years determined by the board to be substantially equivalent to that of an EAC/ABET accredited curriculum or the NCEES Engineering Education Standard.

(3) 'Board' means the South Carolina State Board of Registration for Professional Engineers and Surveyors created pursuant to this chapter.

(4) 'Branch office' means a place of business separate from the principal place of business where engineering services or surveying services are provided. A specific project or construction site office is not a branch office. Nothing contained in this chapter prevents a professional engineer or professional surveyor from undertaking an engineering project or a surveying project anywhere in the State.

(5) 'Current certificate of registration' means a license to practice which has not expired or has not been revoked and which has not been suspended or otherwise restricted by the board.

(6) 'Department' means the Department of Labor, Licensing and Regulation.

(7) 'Design coordination' includes the review and coordination of those technical submissions prepared by others, including as appropriate and without limitation, consulting engineers, architects, landscape architects, surveyors, and other professionals working under the direction of the engineer.

(8) 'Direct responsibility', 'direct supervisory control', 'direct supervision', and 'responsible charge' means that there is a clear-cut personal connection to the project or employee supervised, marked by firsthand knowledge and direct control and assumption of professional responsibility for the work.

(9) 'Emeritus engineer' or 'emeritus surveyor' means a professional engineer or surveyor who has been registered for fifteen consecutive years or longer and who is sixty-five years of age or older and who has retired from active practice.

(10) 'Engaged in practice' means holding one's self out to the public as being qualified and available to perform engineering or surveying services.

(11) 'Engineer' means a professional engineer as defined in this section.

(12) 'Engineering surveys' means all minor survey activities required to support the sound conception, planning, design, construction, maintenance, operation, and investigation of engineered projects but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, and easements and the independent surveys or resurveys of general land masses.

(13) 'Engineer-in-training' means a person who has qualified for and passed the NCEES Fundamentals of Engineering examination as provided in this chapter and is entitled to receive a certificate as an engineer-in-training.

(14) 'Ethics' means conduct that conforms to professional standards of conduct.

(15) 'Firm' means a business entity functioning as a sole proprietorship, partnership, limited liability partnership, professional association, professional corporation, business corporation, limited liability company, joint venture, or other legally constituted organization which practices or offers to practice engineering or surveying, or both.

(16) 'Fraud or deceit' means intentional deception to secure gain, through attempts deliberately to conceal, mislead, or misrepresent the truth in a manner that others might take some action in reliance or an act which provides incorrect, false, or misleading information on which others might rely.

(17) 'GIS' means geographic information systems.

(18) 'Good character' refers to a person of good moral character and one who has not been convicted of a violent crime, as defined in Section 16-1-60, or a crime of moral turpitude.

(19) 'Gross negligence' means an act or course of action, or inaction, which denotes a lack of reasonable care and a conscious disregard or indifference to the rights, safety, or welfare of others and which does or could result in financial loss, injury, or damage to life or property.

(20) 'Incompetence' means the practice of engineering or surveying by a licensee determined to be either incapable of exercising ordinary care and diligence or lacking the ability and skill necessary to properly perform the duties undertaken.

(21) 'Licensed' means authorized by this board, pursuant to the statutory powers delegated by the State to this board, to engage in the practice of engineering, or surveying, or engineering and surveying, as evidenced by the board's certificate issued to the registered license holder.

(22) 'Misconduct' means the violation of a provision of this chapter or of a regulation promulgated by the board pursuant to this chapter.

(23) 'NCEES examination' means those written or electronic tests developed and administered by the National Council of Examiners for Engineering and Surveying for the purpose of providing one indication of competency to practice engineering.

(24) 'Person' means an individual human being, firm, partnership, or corporation.

(25) 'Practice of engineering' means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as commissioning, consultation, investigation, expert

technical testimony, evaluation, design and design coordination of engineering works and systems, design for development and use of land and water, performing engineering surveys and studies, and the review of construction for the purpose of monitoring compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems projects, and industrial or consumer products or equipment of control systems, chemical, communications, mechanical, electrical, environmental, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property, and including such other professional services as may be necessary to the planning, progress, and completion of any engineering services. The mere execution, as a contractor, of work designed by a professional engineer or supervision of the construction of such work as a foreman or superintendent is not considered the practice of engineering. A person must be construed to practice or offer to practice engineering, within the meaning and intent of this chapter who:

(a) practices any branch of the profession or discipline of engineering;

(b) by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is licensed under this chapter; or

(c) holds himself out as able to perform or does perform any engineering service or work or any other professional service designated by the practitioner or which is recognized as engineering.

(26) 'Practice of TIER A surveying' means providing professional services including, but not limited to, consultation investigation, testimony evaluation, expert technical testimony, planning, mapping, assembling, and interpreting reliable scientific measurements and information relative to the location, size, shape, or physical features of the earth, the space above the earth, or part of the earth, and utilization and development of these facts and interpretation into an orderly survey map, site plan, report, description, or project. The practice of TIER A surveying consists of three separate disciplines: land surveying, photogrammetry, and geographic information systems. A surveyor may be licensed in one or more of the disciplines and practice is restricted to only the discipline or disciplines for which the land surveyor is licensed. The practice of TIER A surveying does not include the use of geographic information systems to create maps pursuant to Section 40-22-290, analyze data, or create reports. The scope of the individual disciplines are identified as follows:

(a) Land surveyor:

(1) locates, relocates, establishes, reestablishes, lays out, or retraces any property line or boundary of any tract of land or any road, right-of-way, easement, alignment, or elevation of any fixed works embraced within the practice of land surveying, or makes any survey for the subdivision of land;

(2) determines, by the use of principles of land surveying, the position for any survey monument or reference point; or sets, resets, or replaces such monument or reference; determines the topographic configuration or contour of the earth's surface with terrestrial measurements; conducts hydrographic surveys;

(3) conducts geodetic surveying which includes surveying for determination of geographic position in an international three-dimensional coordinate system, where the curvature of the earth must be taken into account when determining directions and distances; geodetic surveying includes the use of terrestrial measurements of angles and distances, as well as measured ranges to artificial satellites.

(b) A photogrammetric surveyor determines the configuration or contour of the earth's surface or the position of fixed objects on the earth's surface by applying the principles of mathematics on remotely sensed data, such as photogrammetry.

(c) A geographic information systems surveyor creates, prepares, or modifies electronic or computerized data including land information systems and geographic information systems relative to the performance of the activities described in subitems (a) and (b).

(d) An individual licensed only as a geodetic surveyor before July 1, 2004, determines the geographic position in an international three-dimensional coordinate system, where the curvature of the earth must be taken into account when determining directions and distances; geodetic surveying includes the use of terrestrial measurements of angles and distances, as well as measured ranges to artificial satellites. A geodetic surveyor is not authorized to perform the other services a land boundary surveyor is authorized to perform.

(27) 'Practice of TIER B land surveying' includes all rights and privileges of TIER A surveying discipline defined in item (26)(a); and in addition to these rights and privileges, TIER B land surveying includes, for subdivisions, preparing and furnishing subdivision plans for sedimentation and erosion control and storm drainage systems, if the systems do not require the structural design of system components and are restricted to the use, where relevant, of any standards prescribed by local, state, or federal authorities. Regulations defining the scope of the

additional powers granted to TIER B land surveyors must be promulgated by the board.

(28) 'Private practice firm' means a firm as defined herein through which the practice of engineering or surveying would require a certificate of authorization as described in this chapter.

(29) 'Private practitioner' means a person who individually holds himself out to the general public as able to perform, or who individually does perform, the independent practice of engineering or surveying.

(30) 'Professional engineer' means a license holder who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as defined in this section as attested by his license and registration as a professional engineer in this State.

(31) 'Professional surveyor' means a licensee who is qualified to practice any discipline of TIER A or TIER B surveying in this State, as defined in this section and as attested by his license and registration as a TIER A or TIER B professional surveyor in this State.

(32) 'Professions of architecture, landscape architecture, and geology' mean those specified professions as defined by the laws of this State and applicable regulations.

(33) 'Registered' means the engineer or surveyor is licensed and registered in the State.

(34) 'Resident professional engineer' or 'resident professional surveyor', with respect to principal office and branch office requirements, means a licensed practitioner who spends a majority of each normal workday in the principal or branch office.

(35) 'Retired from active practice' means not engaging or offering to engage in the practice of engineering or surveying as defined in this section.

(36) 'Surveyor-in-training' means a person who has qualified for and passed the NCEES Fundamentals of Surveying examination as provided in this chapter and is entitled to receive a certificate as a surveyor-in-training."

Licensee roster, daily updates required

SECTION 4. Section 40-22-50(D) of the 1976 Code is amended to read:

"(D) The board shall maintain a daily updated roster or supplements to the roster containing:

(1) the current names and places of business of all professional engineers and all professional surveyors; and

(2) a listing of each business entity that holds a valid certificate of authorization to practice engineering, surveying, or both, in this State."

Board powers, input to department concerning statutory revisions allowed

SECTION 5. Section 40-22-60 of the 1976 Code is amended to read:

"Section 40-22-60. (A) The board may adopt rules governing its proceedings and may promulgate regulations necessary to carry out the provisions of this chapter. The board shall adopt and have an official seal.

(B) The board may promulgate regulations defining the requirements for licensure for each of the surveying disciplines enumerated in Section 40-22-20(26) and (27).

(C) The board may advise and recommend action to the department in the development of statutory revisions, and such other matters as the department may request in regard to the administration of this chapter."

Emergency licensure waivers not to exceed ninety days

SECTION 6. Section 40-22-75 of the 1976 Code is amended to read:

"Section 40-22-75. The board may waive all licensing and credentialing requirements of this chapter during a declared national or state public emergency, not to exceed ninety days. The board shall establish the conditions as may be appropriate to enable engineers properly licensed in other jurisdictions having like standards as those currently in effect in this State or jurisdictions that meet the NCEES Model Law standards to render services in the geographic areas identified in the order declaring the emergency."

Automatic license suspension when adjudged mentally incompetent

SECTION 7. Section 40-22-110(B) of the 1976 Code is amended to read:

"(B) The license of a person adjudged mentally incompetent is considered automatically suspended until the person is adjudged as being

restored to mental competency by a court of competent jurisdiction or in any other manner provided by law."

Engineers-in-training and professional engineers, licensure requirements revised

SECTION 8. Section 40-22-220 of the 1976 Code is amended to read:

"Section 40-22-220. (A) A person having the necessary qualifications prescribed in this chapter to entitle him to registration is eligible for licensure. A person must be certified as an engineer-in-training as a prerequisite to licensure.

(B) To be eligible for certification as an engineer-in-training, an applicant must be of good character and reputation and be able to communicate effectively in the English language. The minimum evidence satisfactory to the board that an applicant is qualified for certification as an engineer-in-training is:

(1) graduation from an EAC/ABET accredited engineering curriculum of four or more years and passing NCEES Fundamentals of Engineering examinations required by the board;

(2) graduation in a bachelor's degree program, completion of an engineering curriculum found to be substantially equivalent to an engineering curriculum accredited by EAC/ABET, and passing the NCEES Fundamentals of Engineering examination;

(3) graduation in a bachelor's degree program, completion of an engineering curriculum found to meet the NCEES Engineering Education Standard, and passing the NCEES Fundamentals of Engineering examination; or

(4) graduation in a TAC/ABET accredited engineering technology curriculum of four or more years from a school or college approved by the board as being in satisfactory standing, and passing the NCEES Fundamentals of Engineering examination required by the board.

(C) To be eligible for licensure and registration as a professional engineer, an applicant must be of good character and reputation and be able to communicate effectively in the English language. When the evidence presented in the application does not appear conclusive to the board or does not warrant the issuing of a license, the applicant may be required to present further evidence for consideration by the board. The applicant also shall meet the requirements of the other pertinent sections of this chapter. The minimum evidence satisfactory to the board that an applicant is qualified for licensure as a professional engineer is:

(1)(a) graduation in an EAC/ABET accredited engineering curriculum of four or more years from a school or college approved by the board as being in satisfactory standing;

(b) a specific record after graduation of four or more years of progressive experience in engineering work, supervised by a licensed engineer and of a character satisfactory to the board, indicating that the applicant is competent to practice engineering; and

(c) passing an NCEES examination required by the board; or

(2)(a) graduation in a bachelor's degree program and completion of an engineering curriculum found to be substantially equivalent to an engineering curriculum accredited by EAC/ABET;

(b) a specific record after graduation of four or more years of progressive experience in engineering work supervised by a licensed engineer or of a character satisfactory to the board, indicating that the applicant is competent to practice engineering; and

(c) passing the NCEES examination required by the board; or

(3)(a) graduation from a bachelor's degree program;

(b) completion of an engineering curriculum that meets the NCEES Engineering Education Standard;

(c) accrual of a specific record after graduation of four or more years of progressive experience in engineering work:

(i) supervised by a licensed engineer or of a character satisfactory to the board; and

(ii) indicating that the applicant is competent to practice engineering, and passing NCEES examinations required by the board; or

(4) if not needed to satisfy education requirements, a:

(a) master's degree in engineering from a school or college approved by the board as being in satisfactory standing may count as one year of experience upon approval by the board; and

(b) doctoral degree in engineering from a school or college approved by the board as being in satisfactory standing may count as a maximum of two years of experience upon approval by the board.

(D) The board shall admit the following individuals to an examination on the Principles and Practice of Engineering and must license a person who passes the exam as a professional engineer if he is otherwise qualified:

(1) an engineer-in-training with a bachelor's degree in engineering accredited by EAC/ABET and with a specific record after graduation of four or more years of progressive experience in engineering work supervised by a licensed engineer or of a character satisfactory to the board, indicating that the applicant is competent to practice engineering;

(2) an engineer-in-training with:

(a) a bachelor's degree from a school or college approved by the board as being in satisfactory standing then earns a master's degree in engineering from a school or college that offers an EAC/ABET accredited undergraduate degree in the same field of study, and establishes a specific record after the master's degree of three or more years of progressive experience in engineering work supervised by a licensed engineer or of a character satisfactory to the board, indicating that the applicant is competent to practice engineering;

(b) a master's degree in engineering from an EAC/M-ABET accredited program, establishes a specific record after graduation of three or more years of progressive experience in engineering work supervised by a licensed engineer or of a character satisfactory to the board, indicating that the applicant is competent to practice engineering; or

(c) a non-EAC/ABET bachelor's degree, evaluated and approved by the board's education consultant, and holding a Master of Engineering or Master of Science in Engineering from a school or college that offers an EAC/ABET accredited undergraduate degree in the same field of study and establishes a specific record after graduation of four or more years of progressive experience in engineering work supervised by a licensed engineer or progressive experience in engineering work of a character satisfactory to the board, indicating that the applicant is competent to practice engineering;

(3) an engineer-in-training with an earned doctoral degree in engineering acceptable to the board and with a specific record after the doctoral degree of two or more years of progressive experience in engineering work supervised by a licensed engineer or of a character satisfactory to the board, indicating that the applicant is competent to practice engineering; or

(4) a person who has earned a doctoral degree in engineering that is acceptable to the board and with a specific record after the doctoral degree of two or more years of progressive experience in engineering work supervised by a licensed engineer or of a character satisfactory to the board, indicating that the applicant is competent to practice engineering."

Licensure of existing engineers, requirements revised

SECTION 9. Section 40-22-222(A) and (B) of the 1976 Code is amended to read:

"(A) Through June 30, 2020, individuals who have graduated in an ETAC/ABET or TAC/ABET engineering technology curriculum of four or more years and who have a specific record after graduation of eight or more years of experience in engineering work of a character satisfactory to the board, who are of good character and reputation, who can communicate effectively in the English language may take the NCEES Principles of Practice and the Fundamentals of Engineering examinations and become an associate engineer licensed for Category B practice. An associate engineer licensed for Category B practice as of July 1, 2006, may continue to practice under the conditions provided for in Regulation 49-202(B) or an identical successor regulation. As of July 1, 2020, Category B licensure ceases to exist.

(B) Through June 30, 2020, individuals who have graduated in a bachelor's ETAC/ABET or TAC/ABET accredited curriculum and who have successfully passed the NCEES Principles of Practice and Fundamentals of Engineering examinations, and who have completed eight or more years of qualifying experience as an engineer and who are otherwise qualified for licensure, may present their credentials for evaluation by a committee of Professional Engineers licensed in this State composed of no less than three practicing engineers, a member or former member of the board, and a professor of engineering. Applicants for licensure under this subsection must demonstrate sufficient rigor in their scope or depth of qualifying experience, such that the committee can determine that they can meet established standards of engineering practice. Only applicants who are approved under the review process may be licensed as professional engineers. Absent a showing of a change or qualifications to correct deficiencies identified in the review process, no application may be reviewed by the committee more than twice."

Surveyor licensure requirements revised

SECTION 10. Section 40-22-225 of the 1976 Code is amended to read:

"Section 40-22-225. (A) A person having the necessary qualifications prescribed in this chapter to entitle him for a license is eligible for licensure.

(B) To be eligible for certification as a surveyor-in-training, an applicant must be of good character and reputation and be able to communicate effectively in the English language. When the evidence presented in the application does not appear to the board conclusive nor warranting the issuing of a certificate of registration, the applicant may

be required to present further evidence for the consideration of the board. The applicant also must meet the requirements of the other pertinent sections of this chapter. The minimum evidence satisfactory to the board that an applicant is qualified for certification as a surveyor-in-training is graduation from a school or college of four or more years with a board-approved degree or an ABET commission accredited curriculum in a related field, including not less than twelve semester hours or the equivalent in quarter hours of discipline-specific courses satisfactory to the board in each of the disciplines described in Section 40-22-20(26) for which the applicant is requesting licensure and has passed the NCEES Fundamentals of Surveying examination as prescribed by the board.

(C) To be eligible for licensure and registration as a professional surveyor TIER A, an applicant must be of good character and reputation and be able to communicate effectively in the English language. When the evidence presented in the application does not appear to the board conclusive or does not warrant the issuing of a certificate of registration, the applicant may be required to present further evidence for the consideration of the board. The applicant also must meet the requirements of the other pertinent sections of this chapter. The minimum evidence satisfactory to the board that an applicant is qualified for licensure as a TIER A Professional Surveyor is graduation from a school or college of four or more years with a board-approved degree, an ABET commission accredited curriculum in a related field, including completed discipline-specific courses of not less than twelve semester hours or the equivalent in quarter hours satisfactory to the board in each of the disciplines described in Section 40-22-20(26) for which the applicant is requesting licensure, a specific record of four or more years of progressive practical experience of a character satisfactory to the board and performed under a practicing registered professional surveyor, and passing the NCEES Fundamentals of Surveying examination and the Principles and Practice of Surveying examination in the discipline for which the applicant is requesting licensure.

(D) To be eligible for licensure and registration as a professional land surveyor TIER B, an applicant must be of good character and reputation and be able to communicate effectively in the English language. The minimum evidence satisfactory to the board that an applicant is qualified for licensure as a TIER B Professional Land Surveyor is graduation from a school or college of four or more years with a board-approved degree, including in the curriculum not less than fifteen semester hours or the equivalent in quarter hours of surveying, mapping, hydraulics, and hydrology courses satisfactory to the board, or a bachelor of engineering

technology degree in an ABET commission accredited curriculum of surveying or engineering technology, including in the curriculum not less than twelve semester hours or the equivalent in quarter hours of surveying, mapping, hydraulics, and hydrology courses satisfactory to the board, a specific record of four or more years of progressive practical experience of a character satisfactory to the board and performed under a practicing registered surveyor, and passing the NCEES Surveyor-in-Training Fundamentals of Surveying examination and the NCEES Principles and Practice of Surveying examination.

(E) An applicant shall take state-specific examinations the board considers necessary to establish that the applicant's qualifications satisfy the requirements of this chapter and regulations promulgated pursuant to this chapter."

Engineering licensure application requirements revised

SECTION 11. Section 40-22-230 of the 1976 Code is amended to read:

"Section 40-22-230. (A) Applications for licensure must be on forms prescribed and furnished by the board and must contain statements made under oath showing the applicant's education and a detailed summary of his technical work.

(1) The application for engineering licensure must contain no fewer than five references of whom three or more are licensed engineers having personal knowledge of the applicant's engineering experience, or other references approved by the board. In addition, the application must contain references to verify each employment period. The board shall solicit comments from references furnished; these comments must be confidential and privileged information for use only by the board.

(2) The application for surveying licensure must contain no fewer than five references of whom three or more must be licensed surveyors having personal knowledge of the applicant's surveying experience, or other references approved by the board. In addition, the application must contain references to verify each employment period. The board shall solicit comments from references furnished; these comments must be confidential and privileged information for use only by the board.

(B) Required examinations must be held at the time and place the board determines. Examinations must be given for the purpose of determining the qualifications of applicants for licensure separately in engineering and surveying.

(C) A person who holds a certificate of registration to engage in the practice of engineering or surveying issued on comparable qualifications from a state, territory, or possession of the United States, or of a foreign country, must be given comity consideration. The applicant is required to take such examinations as the board considers necessary to establish that his qualifications meet the requirements of this chapter and the regulations promulgated by the board; however, a surveying applicant must pass an examination including questions of law, procedures, and practices pertaining to the practice of surveying in this State.

(D)(1) A candidate who has failed an examination may apply for reexamination after payment of applicable examination fees and after a period of time determined by the board, but:

(a) no earlier than three months following the date of the failed examination; and

(b) no more than three times in one calendar year.

(2) A candidate for licensure who has failed the same topical examination two times shall provide evidence satisfactory to the board that the candidate has taken additional undergraduate college courses, attended seminars, or accomplished self-study to enhance his prospects for passing the exam. The board may refuse further examination until the candidate provides acceptable evidence. A candidate who has failed three times must submit a new application.

(E) The board shall issue a certificate of registration upon payment of the registration fee to an applicant who has satisfactorily met all the requirements of this chapter. In the case of a professional surveyor, the certificate authorizes the practice of TIER A or TIER B surveying as applicable. A certificate of registration must state the full name of the licensee and have a license number.

(F) The issuance of a certificate of registration by the board is prima facie evidence that the person is licensed and is entitled to all the rights and privileges of a professional engineer or of a professional surveyor while the license remains unrevoked or unexpired.

(G) The board, for sufficient reason, may reissue a certificate of registration to a person whose license has been revoked if a majority of the members of the board vote in favor of reissuance. A new certificate of registration to replace a revoked license or a certificate which has become lost, destroyed, or mutilated may be issued, subject to the rules of the board, and a charge to be determined by the board in regulation must be made for the issuance."

Engineering firm and surveying firm authorizations, requirements revised, branch office requirements

SECTION 12. Section 40-22-250 of the 1976 Code is amended to read:

"Section 40-22-250. (A) The practice of or offer to practice professional engineering or surveying through a firm is permitted only through entities holding a valid certificate of authorization issued by the board. For the purposes of this section a certificate of authorization is also required for a firm practicing in this State under a fictitious name. However, when an individual is practicing engineering or surveying in his name as individually licensed, that person is not required to obtain a certificate of authorization.

(B) The practice or offer to practice of engineering and surveying by individual professional engineers or professional surveyors licensed under this chapter through a firm offering engineering services or surveying services to the public is permitted, provided:

(1) one or more of the corporate officers, one or more of the principal owners, or a full-time licensed employee are designated as being responsible for the professional services regulated by this board and are licensed under this chapter;

(2) all personnel of the firm who act on behalf of the firm as professional engineers or surveyors in this State are licensed under this chapter; and

(3) the firm has been issued a certificate of authorization by the board as required by this section.

(C) Before the issuance of a certificate of authorization, the board must be in receipt of the firm's appropriate documentation issued by the Secretary of State.

(D) A firm desiring a certificate of authorization shall file with the board an application on forms provided by the board accompanied by the registration fee as provided in regulation. Each certificate of authorization must be renewed biennially beginning April 1, 2009. A renewal form provided by the board must be completed and submitted with the biennial registration fee, the fee being an amount as provided in regulation.

(E) Disciplinary action against a firm must be administered in the same manner and on the same grounds as disciplinary action against an individual. No firm is relieved of responsibility for conduct or acts of its agents, officers, or employees by reason of its compliance with this section, and an individual practicing engineering or surveying is not

relieved of responsibility for professional services performed by reason of his employment or relationship with the firm.

(F) A professional engineer and a professional surveyor engaged in practice through firms may maintain branch offices in addition to a principal place of business. A principal place of business as well as each branch office providing services in this State must have a resident professional engineer in responsible charge of engineering work or a resident professional surveyor in responsible charge of the field and office surveying work provided. A professional engineer must supervise the engineering activities of each branch office and a professional surveyor must supervise the surveying activities of each branch office. The resident professional engineer or resident professional surveyor is considered in residence in only one place of business at a given time.

(G) Nothing in this section may be construed to prohibit firms from joining together to offer engineering or surveying services to the public, if each separate entity providing the services in this State otherwise meets the requirements of this section. For firms practicing as a professional corporation under the laws of this State, the joint practice of engineering or surveying or both with the professions of architecture, landscape architecture, and geology is specifically approved by the board.

(H) If the requirements of this section are met, the board shall issue a certificate of authorization to the firm, and the firm may contract for and collect fees for professional engineering and/or surveying services. The board, however, may refuse to issue a certificate or suspend or revoke an existing certificate for due cause. A person or firm aggrieved by an adverse determination of the board may file an appeal as provided for in this chapter.

(I) Nothing in this section may be construed to mean that a firm may practice or offer to practice engineering or surveying without meeting individual licensure."

Temporary engineering licensure for one project, requirements revised

SECTION 13. Section 40-22-260 of the 1976 Code is amended to read:

"Section 40-22-260. (A) Upon application to and approval by the board and payment of the fee provided in regulation, the board shall grant a temporary license for engineering work on one specified project in this State for a period not to exceed one year to an engineer who has

recently become a resident of this State, or is a nonresident having no established place of business in this State, who meets the qualification requirements for licensure in this State and who holds a valid license to practice in another state. An engineer may not renew a temporary certificate at its expiration date and may not apply for temporary licensure in connection with more than one specific project in any three-year period.

(B) Upon application to and approval by the board and payment of the fee provided in regulation, the board shall grant a temporary certificate of authorization to a firm subject to the following:

(1) This temporary certificate of authorization must be for work on one specified project in this State for a period of not more than one year.

(2) This temporary certificate may be granted to an out-of-state firm if one or more of the corporate officers, one or more of the principal owners, or a full-time licensed employee is designated as responsible for the professional services regulated by the board and are licensed by the board.

(3) The approval of a temporary certificate of authorization constitutes appointment of the Secretary of State as an agent of the applicant for service of process in an action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to the practice of engineering.

(4) Plans produced and submitted for permitting under a registrant's temporary license or certificate of authorization shall be sealed with the registrant's home state seal. A temporary certificate of authorization may be indicated by notation on plans submitted for permitting. This notation must include the temporary certificate of authorization number, date of expiration, and address of the firm. A copy of the letter of the board approving the temporary license or the certificate of authorization must be attached to the plans."

Significance of licensee seals and signatures on various documents

SECTION 14. Section 40-22-270 of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

"( ) The seal and signature of a licensee certifies that the document was prepared by the licensee or his agent. For prototypical documents, the seal and signature of a licensee indicates that he has sufficiently reviewed the document and is able to fully coordinate and assume responsibility for application of the plans."

Exclusions from applicability of chapter revised

SECTION 15. Section 40-22-280 of the 1976 Code, as last amended by Act 157 of 2014, is further amended to read:

"Section 40-22-280. (A) This chapter may not be construed to prevent or to affect:

(1) the practice of any other regulated profession or trade where the practice of the profession or trade may legitimately overlap the professions regulated by this chapter;

(2) the work of an employee or other subordinate of a person holding a certificate of registration under this chapter;

(3) the engineering work of full-time, non-temporary employees of the government of the United States officially performing their duties for their employer on federal lands within this State, in the practice of engineering for the government, and where specified by federal statute;

(4) the surveying work of full-time, non-temporary employees of the government of the United States officially performing their duties for their employer on lands within this State, in the practice of surveying for the government, and where specified by federal statute;

(5) the work or practice of a full-time, non-temporary employee of a public utility, a telephone utility, or an electrical utility by rendering to the employing company engineering service in connection with its facilities which are subject to regulation, supervision, and control in order to safeguard life, health, and property by the Public Service Commission of this State, so long as the person is actually and exclusively employed. Engineering work not related to the exemption in this item where the safety of the public is directly involved must be accomplished by or under the responsible charge of a professional engineer;

(6) the work or practice of a full-time, non-temporary employee of an electric cooperative, when rendering to the employing cooperative engineering service in connection with its facilities which are subject to regulations and inspections of the Rural Electric Administration, if the person is actually and exclusively employed. Engineering work not related to the exemption in this item where the safety of the public is directly involved must be accomplished by or under the responsible charge of a professional engineer;

(7) the work or practice of a full-time, non-temporary employee of a state authority which is licensed by and subject to the safety regulations of the Federal Energy Regulatory Commission and which

sells and distributes electric power to consumers, so long as the person is actually and exclusively employed. Engineering work not related to the exemption in this item where the safety of the public is directly involved must be accomplished by or under the responsible charge of a registered professional engineer;

(8) the work of a general contractor, specialty contractor, or material supplier in the preparation and use of shop drawings or other graphic descriptions used to detail or illustrate a portion of the work required to construct the project in accordance with plans and specifications prepared under the requirements of this chapter;

(9) the work or practice of a person rendering engineering services to a corporation that operates in South Carolina under a production certificate issued by the Federal Aviation Authority, provided that the general business of the corporation does not consist, either wholly or in part, of the rendering of engineering services to the general public. For purposes of this section, 'engineering services' means design, construction, and maintenance of airplanes and airplane manufacturing equipment; and

(10) the activities of full-time employees of a manufacturing company or other personnel under the direct supervision and control of the manufacturing company, or a subsidiary of the manufacturing company, on or in connection with activities related to the research, development, design, fabrication, production, assembly, integration, installation, or service of products manufactured by the manufacturing company. This exemption does not apply to activities where the seal of a professional engineer is expressly required by statute, regulation, or building code, or to engineering services offered to the public. For the purposes of this item, 'manufacturing company' means a company that produces or assembles tangible personal property and 'other personnel' includes individuals employed by a staffing company working for the manufacturing company.

(B) If drawings and specifications are signed by the authors with the true title of their occupations, this chapter does not apply to the preparation of plans and specifications for:

(1) farm buildings not designed or used for human occupancy;

(2) buildings and structures not requiring a permit by the authority having jurisdiction, except that buildings and structures classified as assembly, business, educational, factory and industrial, high hazard, institutional, mercantile, storage, and utility occupancies or uses in the International Code Series, as adopted by the State of South Carolina, regardless of size or area, are not exempt from the provisions of this chapter;

(3) one- and two-family dwellings in compliance with the prescriptive requirements of the International Residential Code, as adopted by the State of South Carolina. All other buildings and structures classified as residential occupancies or uses in the International Code Series and that are beyond the scope of the International Residential Code are not exempt from the provisions of this chapter; and

(4) alterations to a building to which this chapter does not apply, if the alterations do not result in a change which would otherwise place the building under the application of this chapter.

(C) This subsection may not be construed to prejudice a law, ordinance, regulation, or other directive enacted by another political body or a requirement by a contracting authority which would otherwise require preparation of plans and specifications under the responsible charge of a professional engineer or professional surveyor."

Tier A surveying practice exclusions

SECTION 16. Section 40-22-290(1) of the 1976 Code is amended to read:

"(1) the creation of nontechnical maps:

(a) prepared by private firms or government agencies for use as guides to motorists, boaters, aviators, or pedestrians;

(b) prepared for publication in a gazetteer or atlas as an education tool or reference publication;

(c) prepared for or by educational institutions for use in the curriculum of any course of study or academic research;

(d) produced by any broadcast or print media firm as an illustrative guide to the geographic location of any event;

(e) prepared by lay persons for conversational or illustrative purposes, including advertising material and use guides;"

Time effective

SECTION 17. This act takes effect upon approval of the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 260

(R226, S908)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "SOUTH CAROLINA UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT" BY ADDING PART 10 TO ARTICLE 2, TITLE 62 SO AS TO ESTABLISH A FRAMEWORK BY WHICH INTERNET USERS HAVE THE POWER TO PLAN FOR THE MANAGEMENT AND DISPOSITION OF DIGITAL ASSETS UPON DEATH OR INCAPACITATION; TO DEFINE NECESSARY TERMS; TO SET FORTH THE APPLICABILITY OF THE ACT TO FIDUCIARIES, PERSONAL REPRESENTATIVES, CONSERVATORS, TRUSTEES, AND OTHER PARTIES; TO PROVIDE THAT THE ACT DOES NOT APPLY TO A DIGITAL ASSET OF AN EMPLOYER THAT IS USED BY AN EMPLOYEE IN THE ORDINARY COURSE OF BUSINESS; AND TO REQUIRE THAT THE PROVISIONS OF THIS ACT BE APPLIED AND CONSTRUED SO AS TO PROMOTE UNIFORMITY OF LAW AMONG THE STATES.

Be it enacted by the General Assembly of the State of South Carolina:

Citation

SECTION 1. This act may be cited as the "South Carolina Uniform Fiduciary Access to Digital Assets Act".

Uniform Fiduciary Access to Digital Assets Act

SECTION 2. Article 2, Title 62 of the 1976 Code is amended by adding:

"Part 10

Uniform Fiduciary Access to Digital Assets

Section 62-2-1010. As used in this part:

(1) 'Account' means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives,

or stores a digital asset of the user or provides goods or services to the user.

(2) 'Agent' means an attorney-in-fact granted authority under a durable or nondurable power of attorney.

(3) 'Carries' means engages in the transmission of an electronic communication.

(4) 'Catalogue of electronic communications' means information that identifies each person with whom a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(5) 'Conservator' means a person appointed by a court to manage the estate of a living individual. The term includes a limited conservator.

(6) 'Content of an electronic communication' means information concerning the substance or meaning of the communication that:

(a) has been sent or received by a user;

(b) is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public; and

(c) is not readily accessible to the public.

(7) 'Court' has the meaning specified in Section 62-1-201(5).

(8) 'Custodian' means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

(9) 'Designated recipient' means a person chosen by a user using an online tool to administer digital assets of the user.

(10) 'Digital asset' means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(11) 'Electronic' means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) 'Electronic communication' has the meaning as specified in 18 U.S.C. Section 2510(12), as amended.

(13) 'Electronic-communication service' means a custodian that provides to a user the ability to send or receive an electronic communication.

(14) 'Fiduciary' means an original, additional, or successor personal representative, conservator, agent, or trustee.

(15) 'Information' means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

(16) 'Online tool' means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service

agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(17) 'Person' means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality, or other legal entity.

(18) 'Personal representative' has the meaning specified in Section 62-1-201(33).

(19) 'Power of attorney' means a record that grants an agent authority to act in the place of a principal.

(20) 'Principal' means an individual who grants authority to an agent in a power of attorney.

(21) 'Protected person' has the meaning specified in Section 62-5-101(3). The term includes an individual for whom an application for the appointment of a conservator is pending.

(22) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) 'Remote-computing service' means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. Section 2510(14), as amended.

(24) 'Terms-of-service agreement' means an agreement that controls the relationship between a user and a custodian.

(25) 'Trustee' has the meaning specified in Section 62-7-103(19). The term includes a successor trustee.

(26) 'User' means a person who has an account with a custodian.

(27) 'Will' has the meaning specified in Section 62-1-201(52).

Section 62-2-1015. (A) This part applies to a:

(1) fiduciary acting under a will or power of attorney executed before, on, or after the effective date of this act;

(2) personal representative acting for a decedent who died before, on, or after the effective date of this act;

(3) conservatorship proceeding, commenced before, on, or after the effective date of this act; and

(4) trustee acting under a trust created before, on, or after the effective date of this act.

(B) This part applies to a custodian if the user resides in this State or resided in this State at the time of the user's death.

(C) This part does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

Section 62-2-1020. (A) A user may use an online tool to direct the custodian to disclose or not to disclose to a designated recipient some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(B) If a user has not used an online tool to give direction under subsection (A) or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(C) A user's direction under subsection (A) or (B) overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

Section 62-2-1025. (A) This part does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(B) This part does not give a fiduciary or a designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

(C) A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under Section 62-2-1020.

Section 62-2-1030. (A) When disclosing digital assets of a user under this part, the custodian may at its sole discretion:

(1) grant a fiduciary or designated recipient full access to the user's account;

(2) grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(3) provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(B) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this part.

(C) A custodian need not disclose under this part a digital asset deleted by a user.

(D) If a user directs or a fiduciary requests a custodian to disclose under this part some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

(1) a subset limited by date of the user's digital assets;

(2) all of the user's digital assets to the fiduciary or designated recipient;

(3) none of the user's digital assets; or

(4) all of the user's digital assets to the court for review in camera.

Section 62-2-1035. If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user;

(3) a certified copy of the letter of appointment of the representative or a small estate affidavit or court order;

(4) unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications; and

(5) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) evidence linking the account to the user; or

(c) a finding by the court that:

(i) the user had a specific account with the custodian, identifiable by the information specified in subitem (a);

(ii) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. Section 2701, et seq., as amended, 47 U.S.C. Section 222, as amended, or other applicable law;

(iii) unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

(iv) disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

Section 62-2-1040. Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the representative gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the death certificate of the user;

(3) a certified copy of the letter of appointment of the representative or a small estate affidavit or court order; and

(4) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) evidence linking the account to the user;

(c) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(d) a finding by the court that:

(i) the user had a specific account with the custodian, identifiable by the information specified in subitem (a); or

(ii) disclosure of the user's digital assets is reasonably necessary for administration of the estate.

Section 62-2-1045. To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) an original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

(3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(b) evidence linking the account to the principal.

Section 62-2-1050. Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) an original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

(3) a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(b) evidence linking the account to the principal.

Section 62-2-1055. Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

Section 62-2-1060. Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the trust instrument or a certification of the trust under Section 62-7-1013 which includes consent to disclosure of the content of electronic communications to the trustee;

(3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(b) evidence linking the account to the trust.

Section 62-2-1065. Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the trust instrument or a certification of the trust under Section 62-7-1013;

(3) a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(b) evidence linking the account to the trust.

Section 62-2-1070. (A) After an opportunity for a hearing under Article 5 of this title, the court may grant a conservator access to the digital assets of a protected person.

(B) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the court order that gives the conservator authority over the digital assets of the protected person; and

(3) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or

(b) evidence linking the account to the protected person.

(C) A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this section must be

accompanied by a certified copy of the court order giving the conservator authority over the protected person's property.

Section 62-2-1075. (A) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including the:

(1) duty of care;

(2) duty of loyalty; and

(3) duty of confidentiality.

(B) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

(1) except as otherwise provided in Section 62-2-1020, is subject to the applicable terms of service;

(2) in the case of a fiduciary, is subject to other applicable law, including copyright law;

(3) is limited by the scope of the fiduciary's duties; and

(4) may not be used to impersonate the user.

(C) A fiduciary with authority over the property of a decedent, protected person, principal, or settlor has the right to access any digital asset in which the decedent, protected person, principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(D) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including this state's law on unauthorized computer access.

(E) A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal, or settlor:

(1) has the right to access the property and any digital asset stored in it; and

(2) is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including this state's law regarding unauthorized computer access.

(F) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(G) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:

(1) if the user is deceased, a certified copy of the death certificate of the user;

(2) a certified copy of the letter of appointment of the representative or a small estate affidavit or court order, power of attorney, or trust giving the fiduciary authority over the account; and

(3) if requested by the custodian:

(a) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) evidence linking the account to the user; or

(c) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subitem (a).

Section 62-2-1080. (A) Not later than sixty days after receipt of the information required under Sections 62-2-1035 through 62-2-1075, a custodian shall comply with a request under this part from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(B) An order under subsection (A) directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. Section 2702, as amended.

(C) A custodian may notify the user that a request for disclosure or to terminate an account was made under this part.

(D) A custodian may deny a request under this part from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(E) This part does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this part to obtain a court order which:

(1) specifies that an account belongs to the protected person or principal;

(2) specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and

(3) contains a finding required by law other than this part.

(F) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this part.

Section 62-2-1085. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 62-2-1090. This uniform act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b)."

Severability

SECTION 3. The provisions of this act are severable. If any section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of the act, the General Assembly hereby declaring that it would have passed each and every section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, items, subitems, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

No. 261

(R299, H3682)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 4 TO TITLE 39 SO AS TO ENACT THE "BAD FAITH ASSERTION OF PATENT INFRINGEMENT ACT", TO PROVIDE THAT BAD FAITH ASSERTIONS OF PATENT INFRINGEMENTS ARE PROHIBITED, TO DEFINE TERMS, TO PROVIDE FOR A

PRIVATE CAUSE OF ACTION IN STATE COURTS BY A RECIPIENT OF A BAD FAITH ASSERTION TO PATENT INFRINGEMENT, TO PROVIDE THAT ENFORCEMENT ACTIONS MAY BE BROUGHT BY THE ATTORNEY GENERAL AND WILFUL AND KNOWING VIOLATIONS MAY RESULT IN CIVIL PENALTIES OF NOT MORE THAN FIFTY THOUSAND DOLLARS FOR EACH VIOLATION, TO PROVIDE FOR THE FACTORS THAT A COURT MAY CONSIDER WHEN MAKING A BAD FAITH DETERMINATION, AND TO PROVIDE EXCEPTIONS.

Be it enacted by the General Assembly of the State of South Carolina:

Intent of the General Assembly

SECTION 1. It is the intent of the General Assembly to encourage research, development, and innovation. Doing so provides jobs for South Carolina's residents and boosts the economy of the State. Patents encourage research, development, and innovation. Holders of patents have legitimate rights to protect and enforce their patents. It is not the intent of the General Assembly to interfere with the good faith enforcement of patents or good faith patent litigation. The assertion of infringement claims made in bad faith is conduct that hurts South Carolina's businesses and citizens. Businesses must use funds to respond to these threats of bad faith assertions of patent infringement and those funds are no longer available to invest, to produce new products, to expand, or to hire new workers. This harms the citizens and the economy of South Carolina. Through the provisions of this narrowly focused chapter, the General Assembly, in order to protect South Carolina's businesses, citizens, and economy, seeks to facilitate the efficient and prompt resolution of the conduct of persons asserting bad faith patent infringement claims and not to interfere with legitimate patent infringement claims.

Bad Faith Assertion of Patent Infringement Act

SECTION 2. Title 39 of the 1976 Code is amended by adding:

"CHAPTER 4

Abusive Assertions Relating to Intellectual Property

Section 39-4-100. This act shall be known as the 'Bad Faith Assertion of Patent Infringement Act'.

Section 39-4-101. For purposes of this chapter:

(1) 'Affiliate' means a business establishment, a business, or other legal entity that wholly or substantially owns, is wholly or substantially owned by, or is under common ownership with another entity.

(2) 'Affiliated person' means a person under common ownership or control of an intended recipient.

(3) 'Intended recipient' means a person who purchases, rents, leases, or otherwise obtains a product or service in the commercial market that is not for resale in the ordinary business and that is, or later becomes, the subject of a patent infringement allegation.

(4) 'Manufacturer' means a person, a business establishment, a business, or other legal entity engaged in a business to design, formulate, produce, create, make, construct, assemble, or rebuild products or goods, or components thereof.

(5) 'Person' means any natural person, partnership, corporation, company, trust, business entity or association, and any agent, employee, partner, officer, director, member, associate, or trustee thereof.

Section 39-4-120. (A) It is a violation of this chapter for a person, in connection with the assertion of a United States patent, to send, or cause any person to send, any written or electronic communication that states that the intended recipient or any affiliated person is infringing or has infringed a patent and bears liability or owes compensation to another person, if:

(1) the communication falsely threatens litigation if compensation is not paid or the infringement issue is not otherwise resolved and there is a consistent pattern of such threats having been issued and no litigation having been filed;

(2) the communication falsely states that litigation has been filed against the intended recipient or any affiliated person; or

(3) the assertions contained in the communication lack a reasonable basis in fact or law because:

(a) the person asserting the patent is not a person, or does not represent a person, with the current right to license the patent to, or to enforce the patent against, the intended recipient or any affiliated person;

(b) the communication seeks compensation for a patent that has been held to be invalid or unenforceable in a final, unappealable or unappealed judicial or administrative decision;

(c) the communication seeks compensation on account of activities undertaken after the patent has expired;

(d) the content of the communication fails to include such information necessary to inform an intended recipient or any affiliated person about the patent assertion by failing to include any one of the following:

(i) the identity of the person asserting a right to license the patent to, or enforce the patent against, the intended recipient or any affiliated person;

(ii) the patent number issued by the United States Patent and Trademark Office alleged to have been infringed; or

(iii) the factual allegations concerning the specific areas in which the intended recipient or affiliated person's products, services, or technology infringed the patent or are covered by the claims in the patent;

(e) the communication lacks the information described in subitem (d), the intended recipient requests the information, and the person fails to provide the information within a reasonable period of time;

(f) before sending the communication, the person failed to conduct an analysis comparing the claims in the patent to the intended recipient's products, services, and technology, or the analysis was done but does not identify specific areas in which the products, services, and technology are covered by the claims in the patent;

(g) the person in the communication demands payment of a license fee or response within an unreasonably short period of time;

(h) the person in the communication offers to license the patent for an amount that is not based on a reasonable estimate of the value of the license; or

(i) the communication's claim or assertion relies on an interpretation of the patent that was disclaimed during prosecution and the person making the claim or assertion knows or should have known about the disclaimer, or would have known about the disclaimer if the person reviewed the patent's prosecution history.

(B) Nothing in this section shall be construed to be a violation of this chapter for any person who owns or has the right to license or enforce a patent to:

(1) advise others of that ownership or right of license or enforcement;

(2) communicate to others that a patent is available for license or sale;

(3) notify another of the infringement of the patent; or

(4) seek compensation on account of past or present infringement, or for a license to the patent, provided that the person is not acting in bad faith.

(C) The provisions of this chapter shall not apply to any written or electronic communication sent by:

(1) any owner of a patent who is using the patent in connection with substantial research, development, production, manufacturing, processing or delivery of products or materials;

(2) a manufacturer or its affiliate;

(3) any institution of higher education as that term is defined in Section 101 of the Higher Education Act of 1963 (20 U.S.C. 1001);

(4) any technology transfer organization whose primary purpose is to facilitate the commercialization of technology developed by an institution of higher education; or

(5) any person or business entity seeking a claim for relief arising under 35 U.S.C. Section 271(e)(2).

Section 39-4-130. (A) The Attorney General has the same authority under this chapter as provided in Chapter 5, Title 39, to make rules, conduct civil investigations, enter into assurances of discontinuance, and bring civil actions, which include actions for injunctive relief or civil penalties.

(B) For purposes of this chapter, if a court finds that a person wilfully violated the provisions of this chapter, and the person committing the violation knew or should have known that its conduct was a violation of this chapter, the Attorney General, upon motion to the court, may recover on behalf of the State a civil penalty not to exceed fifty thousand dollars for each violation.

(C) Upon motion by the Attorney General and a finding by the court that the Attorney General has established a reasonable likelihood that a person has violated Section 39-4-120, the court may require the person to post a bond in an amount equal to an amount reasonably likely to be recovered pursuant to subsection (A), conditioned upon payment of any amounts finally determined to be due to the Attorney General. A hearing must be held if either party so requests. A bond ordered pursuant to this chapter shall not exceed two hundred fifty thousand dollars. The court may waive the bond requirement if it finds the person has available assets equal to the amount of the proposed bond or for other good cause shown.

(D) This chapter shall not be construed to limit the rights and remedies available to the State or to any person under any other law and

shall not alter or restrict the Attorney General's authority with regard to conduct involving assertions of patent infringement.

Section 39-4-140. (A) An intended recipient that is aggrieved by a violation of Section 39-4-120 may assert a cause of action under the provisions of Section 39-5-140 in the circuit court where venue is proper. A court may award remedies provided in Chapter 5, Title 39 to an aggrieved intended recipient that prevails in an action brought pursuant to this chapter.

(B) An intended recipient may assert a violation of this chapter as a defense in any litigation alleging patent infringement and, if a court finds that a person has made a bad faith assertion of patent infringement, the court may award remedies to the recipient as if the recipient had brought an action pursuant to subsection (A).

(C) Upon motion by an intended recipient and a finding by the court that an intended recipient has established a reasonable likelihood that a person has violated Section 39-4-120, the court may require the person to post a bond in an amount equal to an amount reasonably likely to be recovered pursuant to subsection (A), conditioned upon payment of any amounts finally determined to be due to the recipient. A hearing must be held if either party so requests. A bond ordered pursuant to this chapter shall not exceed two hundred fifty thousand dollars. The court may waive the bond requirement if it finds the person has available assets equal to the amount of the proposed bond or for other good cause shown.

Section 39-4-150. The provisions of this chapter are repealed as of July 1, 2021, unless and until the General Assembly reauthorizes the provisions by joint resolution. A vote on the reauthorization may occur within two years preceding the date of repeal."

Time effective

SECTION 3. This act takes effect July 1, 2016.

Ratified the 6th day of June, 2016.

Approved the 9th day of June, 2016.

No. 262

(R300, H4090)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40-29-55 SO AS TO PROVIDE FOR THE PERIODIC ADJUSTMENT OF CERTAIN MONETARY REQUIREMENTS IN A CERTAIN MANNER, TO PROVIDE THE DEPARTMENT OF CONSUMER AFFAIRS TIMELY SHALL PUBLISH NOTICE OF SUCH CHANGES IN THE STATE REGISTER, TO PROVIDE PEOPLE WHO RELY ON CURRENT PUBLISHED DOLLAR AMOUNTS AT THE TIME TRANSACTIONS OCCUR MAY NOT BE CONSIDERED TO VIOLATE THE PROVISIONS OF CHAPTER 29, TITLE 40 WHEN DOLLAR AMOUNTS SUBSEQUENTLY CHANGE; BY ADDING SECTION 40-29-145 SO AS TO PROVIDE HOLD ORDERS THAT MAY BE PLACED ON PROPERTY IN THE POSSESSION OF PAWNBROKERS WHO SUSPECT THE PROPERTY HAS BEEN MISAPPROPRIATED OR STOLEN, AND TO PROVIDE RELATED REQUIREMENTS CONCERNING REQUIREMENTS AND SPECIFICATIONS OF THESE ORDERS AND PROPERTY ON WHICH HOLD ORDERS ARE PLACED; BY ADDING SECTION 40-29-155 SO AS TO PROVIDE AGGRIEVED PARTIES ARE ENTITLED TO CONTESTED CASE HEARINGS BEFORE THE ADMINISTRATIVE LAW COURT FOR FINAL ADMINISTRATIVE ORDERS, ABSENT WHICH THE DEPARTMENT MAY BRING ACTIONS TO ENFORCE ITS ORDERS; TO AMEND SECTION 40-39-10, RELATING TO DEFINITIONS CONCERNING THE REGULATION OF PAWNBROKERS BY THE DEPARTMENT, SO AS TO REVISE THE DEFINITION OF "PLEDGED GOODS" SPECIFICALLY TO EXCLUDE CERTAIN VEHICLES; TO AMEND SECTION 40-39-20, RELATING TO CERTIFICATES OF AUTHORITY REQUIRED OF PAWN BROKERS, SO AS TO CLARIFY CHARACTERISTICS THAT NECESSITATE CERTIFICATES OF AUTHORITY, TO REVISE REQUIREMENTS CONCERNING BACKGROUND CHECKS REQUIRED FOR CERTIFICATES OF AUTHORITY, TO PROVIDE PAWNBROKERS SHALL COMPLY WITH THESE REQUIREMENTS BEFORE HIRING EMPLOYEES, TO PROVIDE APPLICANTS FOR EMPLOYMENT SHALL PAY

THE ACTUAL COSTS OF THESE BACKGROUND CHECKS, TO PROVIDE FINANCIAL RESPONSIBILITY AND OTHER CRITERIA REQUIRED FOR CERTIFICATES OF AUTHORITY, AND TO PROVIDE A REBUTTABLE PRESUMPTION OF MEETING THESE CRITERIA IN CERTAIN CIRCUMSTANCES; TO AMEND SECTION 40-39-30, RELATING TO THE REQUIREMENT OF CERTIFICATE OF AUTHORITY FOR EACH BUSINESS LOCATION OF A PAWNBROKER, SO AS TO PROVIDE PAWNBROKERS MAY NOT RETAIN PLEDGED GOODS IN LOCATIONS NOT DESIGNATED IN HIS CERTIFICATE OF AUTHORITY WITHOUT FIRST PROVIDING CERTAIN NOTICE TO THE DEPARTMENT, AND TO PROVIDE A PAWNBROKER CONSPICUOUSLY SHALL POST THE HOURS OF OPERATION AND ANY CLOSURE AT EACH LOCATION; TO AMEND SECTION 40-39-40, RELATING TO THE PROHIBITION ON UNAUTHORIZED FEES, SO AS TO PROVIDE A PAWNBROKER THAT COLLECTS SUCH UNAUTHORIZED FEES MAY NOT COLLECT, RECEIVE, OR RETAIN ANY INTEREST OR CHARGES ON THE LOAN IN VIOLATION OF THIS CHAPTER AND HAS NO RIGHT TO POSSESS THE PLEDGED GOODS; TO AMEND SECTION 40-39-50, RELATING TO BONDS AND OTHER EVIDENCE OF FINANCIAL RESPONSIBILITY REQUIRED FOR CERTIFICATES OF AUTHORITY, SO AS TO REVISE AND DELETE SOME EXISTING REQUIREMENTS AND TO PROVIDE PAWNBROKERS SHALL PROVIDE CERTAIN NOTICE OF OCCURRENCES THAT MAY AFFECT PLEDGED GOODS WITHIN TWENTY-ONE CALENDAR DAYS AFTER THE OCCURRENCE; TO AMEND SECTION 40-39-70, RELATING TO PAWNBROKER RECORD KEEPING REQUIREMENTS, SO AS TO REQUIRE CERTAIN VERIFICATION OF PLEDGORS' OR SELLERS' IDENTITIES, AND TO PROVIDE PAWN AND PURCHASE TRANSACTIONS MUST BE PERFORMED BY THE OWNER OF THE PROPERTY, OR HIS AUTHORIZED AGENT, WHOSE IDENTITY AND AGENCY RELATIONSHIP MUST BE VERIFIED BY THE PAWNBROKER; TO AMEND SECTION 40-39-80, RELATING TO THE ISSUANCE OF A MEMORANDUM OR NOTE AT THE TIME OF PAWNING AND PLEDGING, SO AS TO CHARACTERIZE THE MEMORANDUM OR NOTE AS A "PAWN TICKET" AND TO

SATISFY RELATED REQUIREMENTS, AMONG OTHER THINGS; TO AMEND SECTION 40-39-100, RELATING TO PERMISSIBLE CHARGES ON LOANS BY PAWNBROKERS, SO AS TO REVISE THE MAXIMUM PERMISSIBLE AMOUNT; TO AMEND SECTION 40-39-120, RELATING TO RENEWALS OF A CERTIFICATE OF AUTHORITY, SO AS TO PROVIDE PENALTIES FOR FAILING TO TIMELY RENEW, AND TO PROVIDE REQUIREMENTS FOR PAWN SHOPS THAT MUST CLOSE BECAUSE OF THE SURRENDER OR REVOCATION OF THEIR CERTIFICATE OF AUTHORITY; TO AMEND SECTION 40-39-140, RELATING TO PLEDGED OR PAWNED PROPERTY OWNED BY THIRD PARTIES, SO AS TO PROVIDE CIRCUMSTANCES IN WHICH PAWNBROKERS MUST RETURN SUCH PROPERTY TO THE THIRD PARTIES, TO PROVIDE MONETARY PENALTIES AGAINST PLEDGORS AND SELLERS OF SUCH LEASED PROPERTY, AND TO PROVIDE PAWNBROKERS ARE NOT LIABLE TO SUCH PLEDGORS AND SELLERS FOR SUCH RETURNED PROPERTY; AND TO AMEND SECTION 40-39-150, RELATING TO FINES AND PENALTIES FOR VIOLATIONS, SO AS TO TRANSFER THE AUTHORITY TO ORDER CERTAIN EQUITABLE RELIEF FROM THE ADMINISTRATIVE LAW COURT TO THE DEPARTMENT; AND TO PROVIDE COUNTIES AND MUNICIPALITIES MAY ENACT ORDINANCES THAT COMPLY WITH, BUT THAT ARE NOT MORE RESTRICTIVE THAN, THE PROVISIONS OF THIS ACT, AND TO PROVIDE EXCEPTIONS, AMONG OTHER THINGS.

Be it enacted by the General Assembly of the State of South Carolina:

Period dollar amount adjustments

SECTION 1. Chapter 39, Title 40 of the 1976 Code is amended by adding:

"Section 40-39-55. (A) Effective July 1, 2021, and each fifth July first thereafter, the dollar amounts in Section 40-39-50(A)(1) and the dollar amounts concerning loans in Section 40-39-100 must be adjusted by the department to reflect the percentage change for the five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(B) The administrator shall publish a notice in the State Register of the changes in dollar amounts before May first of each year in which dollar amounts are to change. A person must not be considered to violate the provisions of this chapter with respect to a transaction otherwise complying with those provisions if he relies on dollar amounts appearing in the last notice of the administrator announcing the dollar amounts current at that time.

(C) The dollar amounts may not change more than ten percent for each adjustment period.

(D) The dollar amounts in Section 40-39-50(A)(1) and Section 40-39-100(C) are subject to change in accordance with this section."

Hold orders

SECTION 2. Chapter 39, Title 40 of the 1976 Code is amended by adding:

"Section 40-39-145. (A)(1) When an appropriate law enforcement official has probable cause to believe that property in the possession of a pawnbroker is misappropriated or stolen, he may place a written hold order on the property. The written hold order must impose a holding period not to exceed ninety days unless extended by court order. The appropriate law enforcement official may rescind, in writing, any hold order. An appropriate law enforcement official may place only one hold order on the property at any given time.

(2) A hold order must specify:

(a) the name and address of the pawnbroker;

(b) the name, title, and identification number of the representative of the appropriate law enforcement official or the court placing the hold order;

(c) the name and address of the appropriate law enforcement official or court to which such representative is attached and the number, if any, assigned to the claim regarding the property;

(d) a complete description of the property to be held, including model number and serial number if applicable;

(e) the name of the person reporting the property to be misappropriated or stolen, unless otherwise prohibited by law;

(f) the mailing address of the pawnbroker where the property is held; and

(g) the expiration date of the holding period.

(3) The pawnbroker or his representative must sign and date a copy of the hold order as evidence of receipt of the hold order and the beginning of the ninety-day holding period.

(4)(a) Except as provided in subitem (b), a pawnbroker may not release or dispose of property subject to a hold order except pursuant to a court order, a written release from the appropriate law enforcement official, or the expiration of the holding period of the hold order.

(b) While a hold order is in effect, the pawnbroker shall, upon request, release the property subject to the hold order to the custody of the appropriate law enforcement official for use in a criminal investigation. The release of the property to the custody of the appropriate law enforcement official is not considered a waiver or release of the pawnbroker's property rights or interest in the property. Upon completion of the criminal proceeding, the property must be returned to the pawnbroker unless the court orders another disposition, in which case the court additionally shall order the conveying customer to pay restitution to the pawnbroker in the amount received by the conveying customer for the property together with reasonable attorney's fees and costs.

(B) Upon the expiration of the holding period, the pawnbroker shall notify, in writing, the appropriate law enforcement official by certified mail, return receipt requested, that the holding period has expired. If, on the tenth day after the written notice has been received by the appropriate law enforcement official, the pawnbroker has not received from a court an extension of the hold order on the property and the property is not the subject of a proceeding under this subsection, title to the property shall vest in and be deemed conveyed by operation of law to the pawnbroker, free of any liability for claims but subject to any restrictions contained in the pawn transaction contract and subject to this chapter."

Contested case hearings

SECTION 3. Chapter 39, Title 40 of the 1976 Code is amended by adding:

"Section 40-39-155. A person aggrieved by the final administrative order may request a contested case hearing before the Administrative Law Court pursuant to the court's rules of procedure. If the person fails to timely request a contested case hearing, the department may bring an action to enforce its order pursuant to Chapter 23, Title 1."

Definition

SECTION 4. Section 40-39-10(3) of the 1976 Code is amended to read:

"(3) 'Pledged goods' means tangible personal property other than vehicles as defined in Section 56-3-20(1) required to be registered and licensed pursuant to Title 56, choses in action, title, securities, or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with a pawn transaction."

Certificate of authority requirements

SECTION 5. Section 40-39-20 of the 1976 Code is amended to read:

"Section 40-39-20. (A)(1) All pawnbrokers conducting business in this State are under the authority of and regulated by the Department of Consumer Affairs, the administrator of which has the authority to promulgate regulations as he considers necessary to carry out the conditions and intent of this chapter.

(2) No person may carry on the business of a pawnbroker in any location, whether or not the person has an office, facility, agent, or other physical presence in this State, without first having obtained a certificate of authority for each location from the Department of Consumer Affairs.

(B) Upon receipt of the application for the certificate of authority, the Department of Consumer Affairs shall notify the law enforcement agency having jurisdiction where the applicant intends to do business. The law enforcement agency may make its recommendation on the issuance of the certificate of authority.

(C)(1) Before issuance of a certificate of authority, a criminal history background check must be conducted for all owners, partners, members, officers, directors, employees and other persons occupying a similar status or otherwise directly or indirectly controlling the pawnshop. The applicant pawnbroker is responsible for either:

(a) conducting, documenting, and attesting that a national criminal records check has been completed for each person; or

(b) submitting consent from each person to a national criminal records check and a set of fingerprints in a form acceptable to the administrator. Using the information supplied by the administrator to SLED, the applicant must undergo a national criminal records check, supported by fingerprints, by the Federal Bureau of Investigation. The results of these criminal records checks must be reported to the

administrator. The administrator shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines.

(2) A pawnbroker shall comply with the requirements of item (1) before hiring an employee.

(3) The applicant pawnbroker shall pay actual costs associated with the criminal history background checks required in this section.

(D)(1) Upon the filing of an application for a certificate of authority, if the administrator concludes that the financial responsibility and experience of the applicant and its employees, members, partners, officers, and directors, if applicable, command the confidence of the community and warrants belief that the business may be operated honestly, fairly, and efficiently according to the purposes of this chapter and in accordance with all applicable state and federal laws, it shall issue a certificate of authority. If the administrator does not reach this conclusion, he shall refuse to issue the certificate of authority to the applicant and shall notify the applicant of the denial.

(2) A rebuttable presumption of the financial responsibility and experience necessary to meet the standard in item (1) is created when the person seeking the certificate of authority complies with the provisions contained in Section 40-39-50(A).

(E) A person convicted of a felony may not be issued a certificate of authority to carry on the business of a pawnbroker or in any manner engage in the business of a pawnbroker, except that any person who is in the business of a pawnbroker on July 1, 1988, and who has been convicted of a felony before this date may be issued a certificate of authority and upon receiving it may continue in the business of a pawnbroker but if this person is convicted of a felony on or after July 1, 1988, he may not thereafter be issued a certificate of authority or carry on the business of a pawnbroker after the date of this subsequent felony conviction."

Location of retained pledged goods, operation hours postings

SECTION 6. Section 40-39-30 of the 1976 Code is amended to read:

"Section 40-39-30. (A) No person may carry on the business of a pawnbroker in any location other than the one designated in his certificate of authority, under penalty of administrative fine, revocation of his certificate of authority, or other action by the administrator pursuant to regulation or criminal prosecution as set out in this chapter.

(B) No pawnbroker may retain pledged goods in a location other than the location designated in the certificate of authority without first filing a notification with the department. A request made pursuant to this subsection must be on a form prescribed by the department.

(C) A pawnbroker conspicuously shall post the hours of operation and any closure at each location."

Violative pawn transaction ramifications

SECTION 7. Section 40-39-40 of the 1976 Code is amended to read:

"Section 40-39-40. (A) No pawnbroker may charge or collect any fees, costs, or assessments of any kind or nature other than those specifically allowed under this chapter.

(B) A person who makes a pawn transaction in violation of this chapter:

(1) may not collect, receive, or retain any interest or charges on the loan in violation of this chapter; and

(2) has no right to possess the pledged goods."

Bonding and insurance requirements, notice of potential threats to pawned goods

SECTION 8. Section 40-39-50 of the 1976 Code is amended to read:

"Section 40-39-50. (A) A person seeking a certificate of authority to carry on the business of a pawnbroker shall at the time of application for his certificate file with the Department of Consumer Affairs:

(1) a bond in favor of the department to be executed by the person granted the certificate by a surety company licensed to do business in this State in the penal sum of fifteen thousand dollars to be approved by the administrator. The bond must be conditioned for the faithful performance of the duties and obligations pertaining to the business so authorized; and

(2) proof of adequate insurance coverage for all pledged goods in the event of loss by fire, theft, burglary or otherwise, or liability to the pledgor.

(B) Within twenty-one calendar days after the occurrence of an event that may affect pledged goods, including, but not limited to, fire, theft, or judicial proceedings, a pawnbroker shall file a written notice on a form prescribed by the department describing the event and its expected impact upon the business."

Recordkeeping, identity verifications, only owners or their agents may pawn or sell

SECTION 9. Section 40-39-70 of the 1976 Code is amended to read:

"Section 40-39-70. (A) A pawnbroker shall keep a record, at the time of any loan or purchase, containing an account and description of the goods, articles, or things pawned, pledged, or purchased, the amount of money loaned thereon, the time of pledging them, the charges, or the rate of interest to be paid on the loan, and the name and residence of the person selling, pawning, or pledging the goods, articles, or things.

(B) Before a pledge or purchase, the pawnbroker shall verify the identity of the pledgor or seller by reviewing a state-issued or federally issued photographic identification card, including a United States military identification card, or a passport issued by the United States.

(C) A pawn or purchase transaction must be performed by the owner of the property, or his authorized agent, whose identity and agency relationship must be verified by the pawnbroker."

Pawn tickets, content requirements, executions, special circumstances

SECTION 10. Section 40-39-80 of the 1976 Code is amended to read:

"Section 40-39-80. (A) A pawnbroker, at the time of each loan or purchase, shall deliver to the person selling, pawning, or pledging any articles, at no charge, a memorandum signed by the pawnbroker and the person pawning or pledging any articles containing the substance of the entry required by Section 40-39-70. If the memorandum is lost, the pledgor may receive a duplicate upon payment of a fee not exceeding three dollars. The administrator may prescribe the form to be used.

(B)(1) The pawn ticket for a pledge or purchase transaction must satisfy the requirements of the Truth in Lending Act and Regulation Z, must identify whether the transaction is a pawn or purchase, and at a minimum must include:

(a) the name and address of the pledgor or seller;

(b) the date of birth of the pledgor or seller;

(c) the driver's license number or other state or federal government-issued photographic identification number of the pledgor or seller;

(d) the transaction date;

(e) the transaction maturity date;
(f) the amount financed or purchase price;
(g) the finance charge;
(h) the total of payments;
(i) the annual percentage rate;
(j) a statement of the pledgor or seller that the pledgor or seller is the lawful owner of the pledged or sold property;
(k) the name and business address of the pawnbroker; and
(l) a complete and accurate description of the pledged or purchased goods including any applicable:
(i) brand name;
(ii) model number;
(iii) manufacturer's serial number, if issued by the manufacturer and not intentionally defaced, altered or removed;
(iv) size;
(v) color, as apparent to the untrained eye, not applicable to diamonds;
(vi) precious metal type, weight, and content, if known or indicated;
(vii) gemstone color and shape, as apparent to the untrained eye, and number of stones;
(viii) type of action, caliber or gauge, number of barrels, barrel length and finish if the item is a firearm; and
(ix) any other unique markings, numbers, names, or letters.

(2) In addition to the requirements of item (1), the pledgor or seller shall sign the form after the pawnbroker confirms positive identification of the pledgor or seller.

(3) Notwithstanding the provisions of subsection (B)(1)(i) through (ix), in the case of multiple items of a similar nature delivered together in one transaction which do not bear serial or model numbers and which do not include precious metals or gemstones, such as musical or video recordings, books, and hand tools, the description of the items is adequate if it contains the quantity of items and a description of the type of items delivered."

Interest rate limits revised

SECTION 11. Section 40-39-100 of the 1976 Code is amended to read:

"Section 40-39-100. (A) A pawnbroker may charge interest on loans not exceeding the following amounts:

(1) at the rate of two dollars and fifty cents per thirty-day period for each ten dollars loaned for the first fifty dollars loaned;

(2) at the rate of two dollars per thirty-day period for each ten dollars loaned on that portion of the loan exceeding fifty dollars but not exceeding one hundred dollars;

(3) at the rate of one dollar and fifty cents per thirty-day period for each ten dollars loaned on that portion of the loan exceeding one hundred dollars but not exceeding two hundred dollars;

(4) at the rate of one dollar per thirty-day period for each ten dollars loaned on that portion of the loan exceeding two hundred dollars but not exceeding one thousand dollars;

(5) at the rate of fifty cents per thirty-day period for each ten dollars loaned on that portion of the loan exceeding one thousand dollars but not exceeding the maximum amount in subsection (C).

(B) No pawnbroker may separate or divide a pawn transaction into two or more transactions for the purpose or with the effect of obtaining a total pawn interest rate in excess of that authorized for an amount financed equal to the total of the amounts financed in the resulting transactions.

(C) No pawnbroker may make a loan in excess of fifteen thousand dollars. Every pawnbroker shall post the rates in a form which is prescribed by the administrator. The following statement must be included in the posted rate schedule:

'Consumers: All pawnbrokers operating in South Carolina are required by law to post a schedule showing the maximum rate of LOAN FINANCE CHARGES stated as dollars for each ten dollars for each thirty-day period that the pawnbroker intends to charge for various types of pawn transactions. The purpose of this requirement is to assist you in comparing the maximum rates that pawnbrokers charge, thereby furthering your understanding of the terms of pawn transactions and helping you to avoid the uninformed use of credit.

NOTE: Pawnbrokers are prohibited only from granting credit at rates higher than those specified above. A pawnbroker may be willing to grant you credit at rates that are lower than those specified, depending on the amount, terms, collateral, and your credit worthiness.'"

Certificate of authority renewals, penalties for noncompliance, limited operations after lapses

SECTION 12. Section 40-39-120 of the 1976 Code is amended to read:

"Section 40-39-120. (A) A pawnbroker applying for a certificate of authority shall tender to the department a fee of two hundred seventy-five dollars plus all other applicable fees required by other agencies to process the application. The administrator may revoke any certificate of authority if the pawnbroker has violated this chapter or any regulation or order lawfully made pursuant to this chapter, or if facts or conditions exist which would clearly have justified the administrator in refusing to grant a certificate of authority had these facts or conditions been known to exist at the time the application for certificate of authority was made. The administrator may promulgate regulations for obtaining and revoking the certificate of authority. Certificates of authority must be renewed on a yearly basis. Applications for renewal must be accompanied by a renewal fee of two hundred seventy-five dollars.

(B) If a pawnbroker's certificate of authority is not renewed before June thirtieth, the administrator shall assess the pawnbroker in addition to the renewal in subsection (A). If a pawnbroker fails to renew his certificate of authority within thirty days after the date the certificate of authority expires or otherwise maintain a valid certificate of authority, the administrator shall require the pawnbroker to comply with the requirements for the initial issuance of a certificate of authority pursuant to this chapter, in addition to any assessment that has accrued.

(C) In the event of closure because of surrender or revocation of a certificate of authority, a pawnbroker shall, for the sole purpose of allowing a pledgor to redeem pledged goods, maintain usual business hours at the pawnshop for ninety days after the latest maturity date of a pawn transaction made at that pawnshop or transfer of pledged goods to a pawnbroker with a valid certificate of authority."

Third-party ownership of pledge and sold property, returns, pawnbroker remedies and liability exemption

SECTION 13. Section 40-39-140 of the 1976 Code is amended to read:

"Section 40-39-140. (A) No pawnbroker shall accept property from a pledgor or seller upon which there is evidence of ownership by a third party without first taking reasonable steps to ascertain its true ownership. Any such item accepted for pawn or purchased by a pawnbroker must be returned on demand without fee to the third party owner.

(B)(1) If property in the possession of a pawnbroker was leased to a pledgor or seller when the pledgor or seller pledged or sold the property to the pawnbroker, the pawnbroker shall return the property to the lessor

if the lessor provides the pawnbroker with evidence that the property was the lessor's property and was leased to the pledgor or seller at the time the property was pledged or sold to the pawnbroker. For the purposes of this section, a lease or other written agreement containing a matching item description shall be sufficient evidence of the lessor's ownership of the property.

(2) If property in the possession of a pawnbroker was leased to a pledgor or seller when the pledgor or seller pledged or sold the property to the pawnbroker and the pawnbroker returns the property to the lessor, the pledgor or seller must pay the pawnbroker:

(a) the amount financed, the finance fee for the pawn transaction, and any costs associated with collecting those amounts and fees, if the property was pledged to the pawnbroker; or

(b) the amount that the pawnbroker paid the seller and any costs associated with collecting that amount if the property was sold to the pawnbroker.

(3) A pawnbroker is not liable to the pledgor or seller of property that is recovered by a lessor under item (1) for returning the property to a lessor."

Administrative orders, contested case hearings, remedies

SECTION 14. Section 40-39-150 of the 1976 Code is amended to read:

"Section 40-39-150. (A) Upon finding that an action of a pawnbroker is in violation of the provisions of this chapter or of a law or regulation of this State or of the federal government or an agency of the state or federal government, the administrator may issue an administrative order requiring the pawnbroker to cease and desist from the action and may suspend, revoke, or refuse to issue a certificate of authority by order.

(B) The administrator also may issue an administrative order imposing administrative penalties of up to seven hundred fifty dollars for each offense upon persons violating any of the provisions of this chapter up to a maximum of fifteen thousand dollars for the same set of transactions or occurrences. Each violation constitutes a separate offense. In addition, a person violating the provisions of Sections 40-39-20 and 40-39-30 is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding one thousand dollars or by imprisonment for a term not exceeding sixty days, or both."

Effects on local government regulations, conflicts

SECTION 15. A county or municipality may enact ordinances that are in compliance with, but not more restrictive than the provisions of this act, except that local ordinances may not require the payment of a fee or tax related to a pawn transaction or purchase unless authorized pursuant to this chapter or restrict hours of operation other than between midnight and 6:00 a.m. An ordinance that conflicts with this act is void. This act does not affect the authority of a county or municipality to establish land use controls or require a pawnbroker to obtain a local occupational license.

Time effective

SECTION 16. This act takes effect upon approval by the Governor.

Ratified the 6th day of June, 2016.

Approved the 9th day of June, 2016.

No. 263

(R301, H4262)

AN ACT TO AMEND SECTION 63-13-820, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO REGISTRATION OF FAMILY CHILDCARE HOMES, SO AS TO REQUIRE A FINGERPRINT REVIEW OF CERTAIN PERSONS; TO AMEND SECTION 63-13-825, RELATING TO TRAINING FOR FAMILY CHILDCARE HOME OPERATORS AND EMPLOYEES, SO AS TO REQUIRE ADDITIONAL TRAINING; TO AMEND SECTION 63-13-830, RELATING TO STATEMENTS OF REGISTRATION FOR FAMILY CHILDCARE HOMES, SO AS TO PROVIDE ADDITIONAL AUTHORITY OF THE DEPARTMENT OF SOCIAL SERVICES AND RIGHTS OF FAMILY CHILDCARE HOMES; AND TO AMEND SECTION 63-13-850, RELATING TO APPEALS OF DECISIONS TO WITHDRAW A STATEMENT OF REGISTRATION OF A FAMILY CHILDCARE HOME, SO AS TO ALSO ADDRESS

APPEALS OF DECISIONS TO DENY AN APPLICATION FOR A STATEMENT OR RENEWAL OF REGISTRATION.

Be it enacted by the General Assembly of the State of South Carolina:

Family childcare homes, fingerprinting requirements

SECTION 1. Section 63-13-820(C) of the 1976 Code is amended to read:

"(C) A person applying to become a registered operator of a family childcare home under this section, a person fifteen years of age or older living in the family childcare home, and any person fifteen years of age or older who moves into the family childcare home after the initial application for registration is approved shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history. The fingerprint reviews required by this subsection are not required upon each renewal."

Family childcare home operators, educational requirements

SECTION 2. Section 63-13-825(A) of the 1976 Code, as added by Act 292 of 2010, is amended to read:

"(A) An operator of a family childcare home and any person employed by or who contracts with an operator of a family childcare home to provide direct childcare, annually shall complete and provide documentation to the Department of Social Services of a minimum of ten hours of training approved by the department."

Family childcare home applications

SECTION 3. Section 63-13-830(E) of the 1976 Code is amended to read:

"(E)(1) The department may deny an application for a statement of registration, deny an application for a renewal of registration, work with a family childcare home operator to resolve a concern, or withdraw a statement of registration if one or more of the following apply:

(a) the health or safety of any child in the facility is at risk;

(b) the family childcare home operator, in the operation of a family childcare home facility, previously enrolled or currently has enrolled children beyond the limits defined in this chapter;

(c) the operator fails to comply with the registration procedures provided in this chapter; or

(d) the operator fails to comply with the training requirements provided in Section 63-13-825(A).

(2) If a family childcare home has had its application for a statement or renewal of registration denied by the department or its statement of registration withdrawn by the department pursuant to this subsection, the family childcare home may elect to meet the requirements for licensure by demonstrating compliance with Article 3 of this chapter and the suggested standards developed by the department pursuant to Section 63-13-180.

(3) The department shall consider previous applications, the circumstances of prior inspections, or withdrawals of registration, by the department or the applicant, as factors to be considered in the application process; however, a prior concern does not prohibit the department from granting the family childcare home a statement or renewal of registration if the department is satisfied the concern has been resolved.

(4) If the operator fails to comply with the training requirements provided in Section 63-13-825(A) prior to the expiration of the registration or fails to timely renew the registration, the department shall place the operator on a corrective action plan."

Family childcare home statement of registration, appeals

SECTION 4. Section 63-13-850(A) of the 1976 Code is amended to read:

"(A) A registrant whose statement of registration has been withdrawn by the department or whose application for a statement or renewal of registration has been denied by the department must be given written notice of the withdrawal or denial by certified or registered mail. The notice must contain the reasons for the proposed action and must inform the registrant of the right to appeal the decision to the director or his designee in writing within thirty calendar days after the receipt of the notice. Upon receiving a written appeal, the director or his designee shall give the registrant reasonable notice and an opportunity for a prompt hearing before the director or his designee. On the basis of the evidence adduced at the hearing, the director or his designee shall make the final decision of the department as to whether the department shall withdraw

the statement of registration or deny the application for a statement or renewal of registration, as applicable. If no written appeal is made, the department shall withdraw a statement of registration or deny the application for a statement or renewal of registration as of the termination of the thirty-day period."

Time effective

SECTION 5. Section 63-13-825(A) of Article 7, Chapter 13, Title 63 takes effect July 1, 2017. The remaining provisions of this act take effect upon approval by the Governor.

Ratified the 6th day of June, 2016.

Approved the 9th day of June, 2016.

No. 264

(R303, H4387)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 23-1-245 SO AS TO PROVIDE THAT A LAW ENFORCEMENT AGENCY, DEPARTMENT, OR DIVISION MAY NOT REQUIRE A LAW ENFORCEMENT OFFICER TO ISSUE A SPECIFIC AMOUNT OR MEET A QUOTA FOR THE NUMBER OF CITATIONS ISSUED, TO PROVIDE THAT A LAW ENFORCEMENT AGENCY, DEPARTMENT, OR DIVISION MAY EVALUATE AN OFFICER'S PERFORMANCE BASED ON THE OFFICER'S POINTS OF CONTACT, TO ESTABLISH THAT AN OFFICER WHO ALLEGES A VIOLATION OF THE PROVISIONS OF THIS SECTION IS PROTECTED BY THE PROVISIONS CONTAINED IN CHAPTER 27 OF TITLE 8, AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

Law enforcement, quotas prohibited

SECTION 1. Chapter 1, Title 23 of the 1976 Code is amended by adding:

"Section 23-1-245. (A) A law enforcement agency, department, or division may not require a law enforcement officer employed by the agency, department, or division to issue a specific amount or meet a quota for the number of citations he issues during a designated period of time.

(B) Nothing in this section shall prohibit a law enforcement agency, department, or division from evaluating an officer's performance based on the officer's points of contact.

(C) An employee of a law enforcement agency, department, or division who files a report with an appropriate authority alleging a violation of the provisions contained in this section is protected by the provisions contained in Chapter 27, Title 8.

(D) As contained in this section:

(1) 'law enforcement agency, department, or division' includes, but is not limited to, municipal police departments, sheriff departments, the Highway Patrol, SLED, and other agencies that enforce state and local laws;

(2) 'quota' means a fixed or predetermined amount;

(3) 'points of contact' means a law enforcement officer's interaction with citizens and businesses within their jurisdictions and the law enforcement officer's involvement in community-oriented initiatives."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 6th day of June, 2016.

Approved the 9th day of June, 2016.

No. 265

(R304, H4521)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "TUCKER HIPPS TRANSPARENCY ACT" BY ADDING SECTION 59-101-210 SO AS TO PROVIDE THAT BEGINNING WITH THE 2016-2017 ACADEMIC YEAR, PUBLIC INSTITUTIONS OF HIGHER LEARNING, EXCLUDING TECHNICAL COLLEGES, SHALL MAINTAIN REPORTS OF ACTUAL FINDINGS OF CERTAIN MISCONDUCT BY MEMBERS OF FRATERNITIES AND SORORITIES FORMALLY ASSOCIATED WITH THE INSTITUTION, TO SPECIFY INFORMATION THAT MUST BE INCLUDED AND MUST BE EXCLUDED, TO PROVIDE REQUIREMENTS FOR UPDATING AND PRESERVING REPORTS, TO PROVIDE INSTITUTIONS SHALL MAKE THE REPORTS AVAILABLE TO THE PUBLIC AND ONLINE, TO PROVIDE MEMBERS OF THE PUBLIC MAY SEEK REDRESS FOR SUSPECTED VIOLATIONS UNDER THE FREEDOM OF INFORMATION ACT; AND TO PROVIDE SPECIFIC REQUIREMENTS FOR THE INITIAL REPORTS EACH INSTITUTION SHALL COMPILE AND MAKE AVAILABLE; AND TO PROVIDE THE ACT EXPIRES THREE YEARS AFTER ITS EFFECTIVE DATE ABSENT FURTHER ACTION BY THE GENERAL ASSEMBLY.

Be it enacted by the General Assembly of the State of South Carolina:

Citation

SECTION 1. This act must be known and may be cited as the "Tucker Hipps Transparency Act".

Institutional reports of certain violations, contents, availability, redress for violations

SECTION 2. Article 1, Chapter 101, Title 59 of the 1976 Code is amended by adding:

"Section 59-101-210. (A)(1) Beginning with the 2016-2017 academic year, a public institution of higher learning, excluding

technical colleges, shall maintain a report of actual findings of violations of the institution's Conduct of Student Organizations by fraternity and sorority organizations formally affiliated with the institution.

(2) The report of actual findings of violations of the Conduct of Student Organizations is required for offenses involving:

(a) alcohol;

(b) drugs;

(c) sexual assault;

(d) physical assault; and

(e) hazing.

(3) The report of actual findings of violations must contain:

(a) the name of the organization;

(b) when the organization was charged with misconduct;

(c) the dates on which the citation was issued or the event occurred;

(d) the date the investigation was initiated;

(e) a general description of the incident, the charges, findings, and sanctions placed on the organization; and

(f) the date on which the matter was resolved.

(4) The report must include no personal identifying information of the individual members and shall be subject to the requirements of the Family Education Rights and Privacy Act (FERPA), 20 U.S.C. 1232g.

(5) The institution shall update this report at least forty-five calendar days before the start of the fall and spring academic semesters.

(6) The institution shall provide reports required under this section on its Internet website in a prominent location. The webpage that contains this report must include a statement notifying the public:

(a) of the availability of additional information related to findings, sanctions, and organizational sanction completion;

(b) where a member of the public may obtain the additional information that is not protected under the Family Education Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; and

(c) that the institution is required to provide this additional information pursuant to the South Carolina Freedom of Information Act.

(7) The institution shall furnish a printed notice of the nature and availability of this report and the website address where it can be found to attendees at student orientation.

(8) The institution shall maintain reports as they are updated for four years. Information that is four years old may be removed from the record by the institution as it updates its records.

(B) A public institution of higher learning shall submit to the Commission on Higher Education a statement within fourteen calendar

days that the reports have been updated as required in subsection (A)(4). The commission shall publish on their webpage a link to the institution's updated reports.

(C) A member of the public who believes that an institution is not complying with the information disclosure required under this section may seek relief as provided for under the South Carolina Freedom of Information Act."

Initial reports

SECTION 3. Each public institution of higher learning shall compile an initial report and make it available to the public and online before the beginning of the 2016-2017 academic year. This initial report must include the information outlined in Section 59-101-210 beginning with data after December 31, 2012. If a university cannot comply with this requirement by the 2016-2017 academic year, they may apply for a one-year waiver but all public institutions must be compliant by the 2017-2018 academic year.

Time effective

SECTION 4. This act expires three years after its effective date, unless extended or reenacted by the General Assembly by law.

Ratified the 6th day of June, 2016.

Approved the 9th day of June, 2016.

No. 266

(R305, H4554)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 11 TO TITLE 35 SO AS TO ENACT THE "SOUTH CAROLINA ANTI-MONEY LAUNDERING ACT" TO PROVIDE REGULATION AND OVERSIGHT OF THE MONEY TRANSMISSION SERVICES BUSINESS MOST COMMONLY USED BY ORGANIZED CRIMINAL ENTERPRISE TO LAUNDER THE MONETARY PROCEEDS OF ILLEGAL ACTIVITIES, AND TO PROVIDE

DEFINITIONS, EXCLUSIONS, PROCEDURES, AND PENALTIES.

Be it enacted by the General Assembly of the State of South Carolina:

South Carolina Anti-Money Laundering Act

SECTION 1. Title 35 of the 1976 Code is amended by adding:

"CHAPTER 11

South Carolina Anti-Money Laundering Act

Article 1

General Provisions

Section 35-11-100. This chapter may be cited as the 'South Carolina Anti-Money Laundering Act'.

Section 35-11-105. As used in this chapter:

(1) 'Applicant' means a person that files an application for a license pursuant to this act.

(2) 'Authorized delegate' means a person a licensee designates to provide money services on behalf of the licensee.

(3) 'Bank' means an institution organized under federal or state law which:

(a) accepts demand deposits or deposits that the depositor may use for payment to third parties and which engages in the business of making commercial loans; or

(b) engages in credit card operations and maintains only one office that accepts deposits, does not accept demand deposits or deposits that the depositor may use for payments to third parties, does not accept a savings or time deposit less than one hundred thousand dollars, and does not engage in the business of making commercial loans.

(4) 'Commissioner' means the South Carolina Attorney General.

(5) 'Control' means:

(a) ownership of, or the power to vote, directly or indirectly, at least twenty-five percent of a class of voting securities or voting interests of a licensee or person in control of a licensee;

(b) power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or person in control of a licensee; or

(c) power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

(6) 'Currency exchange' means receipt of revenues from the exchange of money of one government for money of another government.

(7) 'Executive officer' means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

(8) 'Licensee' means a person licensed pursuant to this act.

(9) 'Monetary value' means a medium of exchange, whether or not redeemable in money.

(10) 'Money' means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(11) 'Money services' means money transmission or currency exchange.

(12) 'Money transmission' means selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission. The term does not include the provision solely of delivery, online or telecommunications services, or network access.

(13) 'Outstanding', with respect to a payment instrument, means issued or sold by or for the licensee and reported as sold but not yet paid by or for the licensee.

(14) 'Payment instrument' means a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

(15) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited-liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation, or another legal or commercial entity.

(16) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(17) 'Responsible individual' means an individual who is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in this State.

(18) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or a territory or insular possession subject to the jurisdiction of the United States.

(19) 'Stored value' means monetary value that is evidenced by an electronic record.

(20) 'Unsafe or unsound practice' means a practice or conduct by a person licensed to engage in money transmission or an authorized delegate of such a person, which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the interests of its customers.

Section 35-11-110. This chapter does not apply to:

(1) the United States or a department, agency, or instrumentality of the United States;

(2) money transmission by the United States Postal Service or by a contractor on behalf of the United States Postal Service;

(3) a state, county, city, or another governmental agency or governmental subdivision of a state;

(4) a bank, bank holding company, office of an international banking corporation, branch of a foreign bank, corporation organized pursuant to the Bank Service Corporation Act, 12 U.S.C. Section 1861-1867 (Supp. V 1999), or corporation organized under the Edge Act, 12 U.S.C. Section 611-633 (1994 & Supp. V 1999), under the laws of a state or the United States if it does not issue, sell, or provide payment instruments or stored value through an authorized delegate who is not such a person;

(5) electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality of the United States, or a state or governmental subdivision, agency, or instrumentality of a state;

(6) a board of trade designated as a contract market under the federal Commodity Exchange Act, 7 U.S.C. Section 1-25 (1994), or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for a board of trade;

(7) a registered futures commission merchant under the federal commodities laws to the extent of its operation as a futures commission merchant;

(8) a person who provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from that registration granted under the federal securities laws to the extent of its operation as a provider of clearance or settlement services;

(9) an operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, similar funds transfers;

(10) a person registered as a securities broker-dealer under federal or state securities laws to the extent of his operation as a securities broker-dealer; or

(11) a credit union regulated and insured by the National Credit Union Association.

Article 2

Money Transmission Licenses

Section 35-11-200. (A) A person may not engage in the business of money transmission or advertise, solicit, or hold himself out as providing money transmission unless the person is:

(1) licensed under this chapter or approved to engage in money transmission pursuant to Section 35-11-210;

(2) an authorized delegate of a person licensed pursuant to this article; or

(3) an authorized delegate of a person approved to engage in money transmission pursuant to Section 35-11-210.

(B) A license issued pursuant to this chapter is not transferable or assignable.

Section 35-11-205. (A) In this section, 'material litigation' means litigation that according to generally accepted accounting principles is significant to an applicant's or a licensee's financial health and would be required to be disclosed in the applicant's or licensee's annual audited financial statements, report to shareholders, or similar records.

(B) A person applying for a license pursuant to this article shall do so in a form and in a medium prescribed by the commissioner. The application must state or contain:

(1) the legal name, residential and business addresses of the applicant, and any fictitious or trade name used by the applicant in conducting its business;

(2) a list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the ten-year period next preceding the submission of the application;

(3) a description of any money services previously provided by the applicant and the money services that the applicant seeks to provide in this State;

(4) a list of the applicant's proposed authorized delegates and the locations in this State where the applicant and the applicant's authorized delegates propose to engage in money transmission or provide other money services;

(5) a list of other states in which the applicant is licensed to engage in money transmission or provide other money services and any license revocations, suspensions, or other disciplinary action taken against the applicant in another state;

(6) information concerning a bankruptcy or receivership proceeding affecting the licensee;

(7) a sample form of contract for authorized delegates, if applicable, and a sample form of payment instrument or instrument upon which stored value is recorded, if applicable;

(8) the name and address of any bank through which the applicant's payment instruments and stored value will be paid;

(9) a description of the source of money and credit to be used by the applicant to provide money services; and

(10) other information the commissioner reasonably requires with respect to the applicant.

(C) If an applicant is a corporation, limited liability company, partnership, or other entity, the applicant also shall provide:

(1) the date of the applicant's incorporation or formation and state or country of incorporation or formation;

(2) if applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;

(3) a brief description of the structure or organization of the applicant, including a parent entity or subsidiary of the applicant, and whether a parent entity or subsidiary is publicly traded;

(4) the legal name, a fictitious or trade name, all business and residential addresses, and the employment, in the ten-year period next preceding the submission of the application of each executive officer, manager, director, or person who has control of the applicant;

(5) a list of criminal convictions and material litigation in which an executive officer, a manager, director, or person in control of, the applicant has been involved in the ten-year period next preceding the submission of the application;

(6) a copy of the applicant's audited financial statements for the most recent fiscal year and, if available, for the two-year period next preceding the submission of the application;

(7) a copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period next preceding the submission of the application;

(8) if the applicant is publicly traded, a copy of the most recent report filed with the United States Securities and Exchange Commission pursuant to Section 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. Section 78m (1994 & Supp. V 1999);

(9) if the applicant is a wholly owned subsidiary of a:

(a) corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed pursuant to Section 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. Section 78m (1994 & Supp. V 1999); or

(b) corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(10) if the applicant has a registered agent in this State, the name and address of the applicant's registered agent in this State; and

(11) other information the commissioner reasonably requires with respect to the applicant.

(D) A nonrefundable application fee of one thousand five hundred dollars and a license fee of seven hundred fifty dollars must accompany an application for a license pursuant to this article. The license fee must be refunded if the application is denied.

(E) The commissioner may waive one or more requirements of subsections (B) and (C) or permit an applicant to submit other information in lieu of the required information.

Section 35-11-210. (A) A person who is licensed to engage in money transmission in at least one other state, with the approval of the commissioner and in accordance with this section, may engage in money transmission and currency exchange in this State without being licensed pursuant to Section 35-11-205 if the:

(1) state in which the person is licensed has enacted the Uniform Money Services Act or the commissioner determines that the money transmission laws of that state are substantially similar to those imposed by the law of this State;

(2) person submits to, and in the form required by, the commissioner:

(a) in a record, an application for approval to engage in money transmission and currency exchange in this State without being licensed pursuant to Section 35-11-205;

(b) a nonrefundable fee of one thousand dollars; and

(c) a certification of license history in the other state.

(B) When an application for approval pursuant this section is complete, the commissioner shall promptly notify the applicant in a record, of the date on which the request was determined to be complete and:

(1) the commissioner shall approve or deny the request within one hundred twenty days after that date; or

(2) if the request is not approved or denied within one hundred twenty days after that date the:

(a) request is approved; and

(b) approval takes effect as of the first business day after expiration of the one hundred twenty-day period.

(C) A person who engages in money transmission and currency exchange in this State pursuant to this section shall comply with the requirements of, and is subject to the sanctions provided in this chapter, as if the person were licensed pursuant to Section 35-11-220.

Section 35-11-215. (A) Except as otherwise provided in subsection (B), a surety bond, letter of credit, or other similar security acceptable to the commissioner in the amount of fifty thousand dollars plus ten thousand dollars for each location, not exceeding a total addition of two hundred fifty thousand dollars, must accompany an application for a license.

(B) Security must be in a form satisfactory to the commissioner and payable to the State for the benefit of a claimant against the licensee to secure the faithful performance of the obligations of the licensee with respect to money transmission.

(C) The aggregate liability on a surety bond may not exceed the principal sum of the bond. A claimant against a licensee may maintain an action on the bond, or the commissioner may maintain an action on behalf of the claimant.

(D) A surety bond must cover claims for so long as the commissioner specifies, but for at least five years after the licensee ceases to provide money services in this State. However, the commissioner may permit the amount of security to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's payment instruments or stored-value obligations outstanding in this State is reduced. The commissioner may permit a licensee to substitute another

form of security acceptable to the commissioner for the security effective at the time the licensee ceases to provide money services in this State.

(E) In lieu of the security prescribed in this section, an applicant for a license or a licensee may provide security in a form prescribed by the commissioner.

(F) The commissioner may increase the amount of security required to a maximum of one million dollars if the financial condition of a licensee so requires, as evidenced by reduction of net worth, financial losses, or other relevant criteria.

Section 35-11-220. (A) When an application is filed pursuant to this article, the commissioner shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The commissioner may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The commissioner shall issue a license to an applicant pursuant to this article if the commissioner finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with Sections 35-11-205, 35-11-215, and 35-11-230; and

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the executive officers, managers, directors, and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in money transmission.

(B) When an application for an original license pursuant to this article is complete, the commissioner promptly shall notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the commissioner shall approve or deny the application within one hundred twenty days after that date; or

(2) if the application is not approved or denied within one hundred twenty days after that date the:

(a) application is considered approved; and

(b) commissioner shall issue the license pursuant to this article, to take effect as of the first business day after expiration of the one hundred twenty-day period.

(C) The commissioner may for good cause extend the application period.

(D) An applicant whose application is denied by the commissioner pursuant to this article may appeal, within thirty days after receipt of the notice of the denial, from the denial and request a hearing.

Section 35-11-225. (A) A person licensed pursuant to this article shall pay an annual renewal fee of seven hundred fifty dollars no later than thirty days before the anniversary of the issuance of the license or, if the last day is not a business day, on the next business day.

(B) A licensee under this article shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the commissioner. The renewal report must state or contain:

(1) a copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the licensee's most recent audited consolidated annual financial statement;

(2) the number and monetary amount of payment instruments and stored value sold by the licensee in this State which have not been included in a renewal report, and the monetary amount of payment instruments and stored value currently outstanding;

(3) a description of each material change in information submitted by the licensee in its original license application which has not been reported to the commissioner on a required report;

(4) a list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments pursuant to the requirements set forth in Sections 35-11-600 and 35-11-605;

(5) proof that the licensee continues to maintain adequate security as required by Section 35-11-215; and

(6) a list of the locations in this State where the licensee or an authorized delegate of the licensee engages in money transmission or provides other money services.

(C) If a licensee does not file a renewal report or pay its renewal fee by the renewal date or an extension of time granted by the commissioner, the commissioner shall send the licensee a notice of suspension. Unless the licensee files the report and pays the renewal fee before expiration of ten days after the notice is sent, the licensee's license is suspended ten days after the commissioner sends the notice of suspension. The suspension must be lifted if, within twenty days after its license is suspended, the licensee:

(1) files the report and pays the renewal fee; and

(2) pays one hundred dollars for each day after suspension that the commissioner did not receive the renewal report and the renewal fee.

(D) The commissioner for good cause may grant an extension of the renewal date.

Section 35-11-230. A person licensed pursuant to this article shall maintain a net worth of at least two hundred fifty thousand dollars determined in accordance with generally accepted accounting principles.

Article 3

Currency Exchange Licenses

Section 35-11-300. (A) A person may not engage in currency exchange or advertise, solicit, or hold himself out as providing currency exchange for which the person receives revenues equal or greater than five percent of total revenues unless the person is:

(1) licensed pursuant to this chapter;

(2) licensed for money transmission pursuant to Article 2, or approved to engage in money transmission pursuant to Section 35-11-210;

(3) an authorized delegate of a person licensed pursuant to Article 2; or

(4) an authorized delegate of a person approved to engage in money transmission pursuant to Section 35-11-210.

(B) A license issued pursuant to this chapter is not transferable or assignable.

Section 35-11-305. (A) A person applying for a license pursuant to this article shall do so in a form and in a medium prescribed by the commissioner. The application shall state or contain:

(1) the legal name and residential and business addresses of the applicant, if the applicant is an individual or, if the applicant is not an individual, the name of each partner, executive officer, manager, and director;

(2) the location of the principal office of the applicant;

(3) complete addresses of other locations in this State where the applicant proposes to engage in currency exchange, including all limited stations and mobile locations;

(4) a description of the source of money and credit to be used by the applicant to engage in currency exchange; and

(5) other information the commissioner reasonably requires with respect to the applicant, but not more than the commissioner may require pursuant to Article 2.

(B) A nonrefundable application fee of one thousand five hundred dollars and a license fee of seven hundred fifty dollars must accompany an application for a license pursuant to this article. The license fee must be refunded if the application is denied.

Section 35-11-310. (A) When a person applies for a license pursuant to this article, the commissioner shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The commissioner may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The commissioner shall issue a license to an applicant pursuant to this article if the commissioner finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with Section 35-11-305; and

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the executive officers, managers, directors, and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in currency exchange.

(B) When an application for an original license pursuant to this article is complete, the commissioner promptly shall notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the commissioner shall approve or deny the application within one hundred twenty days after that date; or

(2) if the application is not approved or denied within one hundred twenty days after that date the:

(a) application is considered approved; and

(b) commissioner shall issue the license pursuant to this article, to take effect as of the first business day after expiration of the period.

(C) The commissioner may for good cause extend the application period.

(D) An applicant whose application is denied a license by the commissioner pursuant to this article may appeal, within thirty days after receipt of the notice of the denial, from the denial and request a hearing.

Section 35-11-315. (A) A person licensed pursuant to this article shall pay a biennial renewal fee of seven hundred fifty dollars no later

than thirty days before each biennial anniversary of the issuance of the license or, if the last day is not a business day, on the next business day.

(B) A person licensed pursuant to this article shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the commissioner. The renewal report must state or contain a:

(1) description of each material change in information submitted by the licensee in its original license application which has not been reported to the commissioner on a required report; and

(2) list of the locations in this State where the licensee or an authorized delegate of the licensee engages in currency exchange, including limited stations and mobile locations.

(C) If a licensee does not file a renewal report and pay its renewal fee by the renewal date or an extension of time granted by the commissioner, the commissioner shall send the licensee a notice of suspension. Unless the licensee files the report and pays the renewal fee before expiration of ten days after the notice is sent, the licensee's license is suspended ten days after the commissioner sends the notice of suspension.

(D) The commissioner for good cause may grant an extension of the renewal date.

Article 4

Authorized Delegates

Section 35-11-400. (A) In this section, 'remit' means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

(B) A contract between a licensee and an authorized delegate must require the authorized delegate to operate in full compliance with this chapter. For such contracts initiated on or after the effective date of this act, the licensee shall provide to each authorized delegate information sufficient for compliance with this chapter.

(C) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

(D) If a license is suspended or revoked or a licensee does not renew its license, the commissioner shall notify all authorized delegates of the licensee whose names are in a record filed with the commissioner of the suspension, revocation, or nonrenewal. After notice is sent or publication is made, an authorized delegate shall immediately cease to provide money services as a delegate of the licensee.

(E) An authorized delegate may not provide money services outside the scope of activity permissible under the contract between the authorized delegate and the licensee, except activity in which the authorized delegate is authorized to engage in pursuant to Article 2 of this chapter. An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission.

(F) An authorized delegate may not use a subdelegate to conduct money services on behalf of a licensee.

Section 35-11-405. A person may not provide money services on behalf of a person not licensed pursuant to this chapter. A person that engages in that activity provides money services to the same extent as if the person were a licensee.

Article 5

Examinations, Reports, and Records

Section 35-11-500. (A) The commissioner may conduct an annual examination of a licensee or of any of the licensee's authorized delegates on a forty-five day notice in a record to the licensee.

(B) The commissioner may examine a licensee or its authorized delegate, at any time, without notice, if the commissioner has reason to believe that the licensee or authorized delegate is engaging in an unsafe or unsound practice or has violated or is violating this chapter or a rule adopted or an order issued pursuant to this chapter.

(C) If the commissioner concludes that an on-site examination is necessary pursuant to subsection (A), the licensee shall pay the reasonable cost of the examination.

(D) Information obtained during an examination pursuant to this chapter may be disclosed only as provided in Section 35-11-530.

Section 35-11-505. The commissioner may consult and cooperate with other state money services regulators in enforcing and administering this act. They jointly may pursue examinations and take other official action that they are otherwise empowered to take.

Section 35-11-510. (A) A licensee shall file with the commissioner within fifteen business days any material changes in information provided in a licensee's application as prescribed by the commissioner.

(B) A licensee shall file with the commissioner within forty-five days after the end of each fiscal quarter a current list of all authorized delegates, and locations in this State where the licensee or an authorized delegate of the licensee provides money services, including limited stations and mobile locations. The licensee shall state the name and street address of each location and authorized delegate.

(C) A licensee shall file a report with the commissioner within three business days after the licensee has reason to know of the occurrence of any of the following events:

(1) the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Section 101-110 (1994 & Supp. V 1999), for bankruptcy or reorganization;

(2) the filing of a petition by or against the licensee for receivership, the commencement of another judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(3) the commencement of a proceeding to revoke or suspend its license in a state or country in which the licensee engages in business or is licensed;

(4) the cancellation or other impairment of the licensee's bond or other security;

(5) a charge or conviction of the licensee or of an executive officer, manager, director, or person in control of the licensee for a felony; or

(6) a charge or conviction of an authorized delegate for a felony.

Section 35-11-515. (A) A licensee shall:

(1) give the commissioner notice in a record of a proposed change of control within fifteen days after learning of the proposed change of control;

(2) request approval of the acquisition; and

(3) submit a nonrefundable fee of one thousand dollars with the notice.

(B) After review of a request for approval pursuant to subsection (A), the commissioner may require the licensee to provide additional information concerning the proposed persons in control of the licensee. The additional information must be limited to the same types required of the licensee or persons in control of the licensee as part of its original license or renewal application.

(C) The commissioner shall approve a request for change of control pursuant to subsection (A) if, after investigation, the commissioner determines that the person or group of persons requesting approval has

the competence, experience, character, and general fitness to operate the licensee or person in control of the licensee in a lawful and proper manner and that the public interest will not be jeopardized by the change of control.

(D) When an application for a change of control pursuant to this article is complete, the commissioner shall notify the licensee in a record of the date on which the request was determined to be complete and:

(1) the commissioner shall approve or deny the request within one hundred twenty days after that date; or

(2) if the request is not approved or denied within one hundred twenty days after that date:

(a) the request is considered approved; and

(b) the commissioner shall permit the change of control under this section to take effect as of the first business day after expiration of the period.

(E) The commissioner, by rule of order, may exempt a person from any of the requirements of subsection (A)(2) and (3) if it is in the public interest to do so.

(F) Subsection (A) does not apply to a public offering of securities.

(G) Before filing a request for approval to acquire control of a licensee or person in control of a licensee, a person may request in a record a determination from the commissioner as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the commissioner determines that the person would not be a person in control of a licensee, the commissioner shall enter an order to that effect and the proposed person and transaction is not subject to the requirements of subsections (A) through (C).

Section 35-11-520. (A) A licensee shall maintain the following records for determining its compliance with this act for at least three years:

(1) a record of each payment instrument or stored-value obligation sold;

(2) a general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;

(3) bank statements and bank reconciliation records;

(4) records of outstanding payment instruments and stored-value obligations;

(5) records of each payment instrument and stored-value obligation paid within the three-year period;

(6) a list of the last known names and addresses of all of the licensee's authorized delegates; and

(7) other records the commissioner reasonably requires by rule.

(B) The items specified in subsection (A) may be maintained in any form of record.

(C) Records may be maintained outside this State if they are made accessible to the commissioner on a seven business-day notice that is sent in a record.

(D) All records maintained by the licensee as required in subsections (A) through (C) are open to inspection by the commissioner pursuant to Section 35-11-500.

Section 35-11-525. (A) A licensee and an authorized delegate shall file with the commissioner all reports required by federal currency reporting, record keeping, and suspicious transaction reporting requirements as set forth in 31 U.S.C. Section 5311 (1994), 31 C.F.R. Section 103 (2000) and other federal and state laws pertaining to money laundering.

(B) The timely filing of a complete and accurate report required pursuant to subsection (A) with the appropriate federal agency is in compliance with the requirements of subsection (A), unless the commissioner notifies the licensee that reports of this type are not being regularly and comprehensively transmitted by the federal agency to the commissioner.

Section 35-11-530. (A) Unless otherwise specified in this section, all information filed with the Securities Commissioner shall be available for public inspection pursuant to rules promulgated by the commissioner consistent with state and federal law governing the disclosure of public information.

(B) Except for reasonably segregable portions of information and records that by law would routinely be made available to a party other than an agency in litigation with the commissioner, the commissioner shall not publish or make available:

(1) information contained in reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an investigation, examination, or inspection of the books and records of a person;

(2) interagency or intra-agency memoranda or letters, including without limitation:

(a) records that reflect discussions between or consideration by the commissioner or members of the commissioner's staff, or both, of an

action taken or proposed to be taken by the commissioner or by a member of the commissioner's staff; and

(b) reports, summaries, analyses, conclusions, or any other work product of the commissioner or of attorneys, accountants, analysts, or other members of the commissioner's staff, prepared in the course of an:

(i) inspection of the books or records of a person whose affairs are regulated by the commissioner; or

(ii) examination, investigation, or litigation conducted by or on behalf of the commissioner;

(3) personnel files, medical files, and similar files if disclosure would constitute a clearly unwarranted invasion of personal privacy, including without limitation:

(a) information concerning all employees of the South Carolina Securities Division and all persons subject to regulation by the division; and

(b) personal information reported to the commissioner under the division's rules concerning registration about employees of applicants, licensees, or their agents;

(4)(a) investigatory records compiled for law enforcement purposes to the extent that production of the records would:

(i) interfere with enforcement proceedings;

(ii) deprive a person of a right to a fair trial or an impartial adjudication; or

(iii) disclose the identity of a confidential source;

(b) the commissioner also may withhold investigatory records that would:

(i) constitute an unwarranted invasion of personal privacy;

(ii) disclose investigative techniques and procedures; or

(iii) endanger the life or physical safety of law enforcement personnel;

(c) as used in this section, 'investigatory records' includes:

(i) all documents, records, transcripts, correspondence, and related memoranda and work products concerning examinations and other investigations and related litigation as authorized by law that pertain to or may disclose the possible violation by a person of a provision of the statutes or rules administered by the commissioner; and

(ii) all written communications from or to a person confidentially complaining or otherwise furnishing information about a possible violation, as well as all correspondence and memoranda in connection with the confidential complaint or information;

(5) information contained in or related to examinations, operating reports, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, check issuers, money transmitters, money services providers, or money service businesses;

(6)(a) financial records of an applicant, licensee, or the agent of an applicant or licensee obtained during or as a result of an examination by the commissioner;

(b) when a record is required to be filed pursuant to this article with the commissioner as part of an application for license, annual renewal, or otherwise, the record, including financial statements prepared by certified public accountants, must be public information unless sections of the information are bound separately and are marked 'confidential' by the applicant, licensee, or agent upon filing;

(c) information pursuant to subitem (b) bound separately and marked 'confidential' must be considered nonpublic until ten days after the commissioner has given the applicant, licensee, or agent notice that an order will be entered finding the material public information.

(d) an applicant, licensee, or agent may seek an injunction from the Richland County Circuit Court ordering the commissioner to withhold the information as nonpublic pending a final order from a court of competent jurisdiction if the order of the commissioner pursuant to subitem (c) is appealed under applicable law;

(7) trade secrets obtained from a person; or

(8) another record that is required to be closed to the public and is not considered open to public inspection under other law.

(C) The commissioner may disclose information not otherwise subject to disclosure pursuant to subsection (A) to representatives of state or federal agencies who promise in a record that they will maintain the confidentiality of the information; or the commissioner finds that the release is reasonably necessary for the protection of the public and in the interests of justice, and the licensee has been given previous notice by the commissioner of the commissioner's intent to release the information.

(D) This section does not prohibit the commissioner from disclosing to the public a list of persons licensed under this chapter or the aggregated financial data concerning those licensees.

Article 6

Permissible Investments

Section 35-11-600. (A) A licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the aggregate amount of all of its outstanding payment instruments and store-value obligations issued or sold in all states and money transmitted from all states by the licensee.

(B) The commissioner, with respect to a licensee, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money and certificates of deposit issued by a bank. The commissioner by rule may prescribe or by order allow other types of investments that the commissioner determines to have a safety substantially equivalent to other permissible investments.

(C) Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments and stored-value obligations in the event of bankruptcy or receivership of the licensee.

Section 35-11-605. (A) Except to the extent otherwise limited by the commissioner pursuant to Section 35-11-600, the following investments are permissible pursuant to Section 35-11-600:

(1) cash, a certificate of deposit, or senior debt obligation of an insured depositary institution, as defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813 (1994 & Supp. V 1999);

(2) banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the Federal Reserve System and is eligible for purchase by a Federal Reserve Bank;

(3) an investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;

(4) an investment security that is an obligation of the United States or a department, agency, or instrumentality of the United States; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a State or a governmental subdivision, agency, or instrumentality of a state;

(5) receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts that

are not past due or doubtful of collection if the aggregate amount of receivables under this item does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not hold at one time receivables under this item in any one person aggregating more than ten percent of the licensee's total permissible investments; and

(6) a share or a certificate issued by an open-end management investment company that is registered with the United States Securities and Exchange Commission under the Investment Companies Act of 1940, 15 U.S.C. Section 80a-1-64 (1994 & Supp. V 1999), and whose portfolio is restricted by the management company's investment policy to investments specified in items (1) through (4).

(B) The following investments are permissible pursuant to Section 35-11-600, but only to the extent specified:

(1) an interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this item does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not at one time hold investments under this item in any one person aggregating more than ten percent of the licensee's total permissible investments;

(2) a share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the United States Securities and Exchange Commission under the Investment Companies Act of 1940, 15 U.S.C. Section 80a-1-64 (1994 & Supp. V 1999), and whose portfolio is restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate of investments under this item does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not at one time hold investments in any one person aggregating more than ten percent of the licensee's total permissible investments;

(3) a demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange if the aggregate of the amount of principal and interest outstanding under demand-borrowing agreements under this item does not exceed twenty percent of the total permissible investments of a licensee and the licensee does not at one time hold principal and interest outstanding under demand-borrowing agreements under this item with any one person aggregating more than ten percent of the licensee's total permissible investments; and

(4) another investment the commissioner designates, to the extent specified by the commissioner.

(C) The aggregate of investments pursuant to subsection (B) may not exceed fifty percent of the total permissible investments of a licensee calculated pursuant to Section 35-11-600.

Article 7

Enforcement

Section 35-11-700. (A) The commissioner may suspend or revoke a license or order a licensee to revoke the designation of an authorized delegate if:

(1) the licensee violates this chapter or a rule adopted or an order issued pursuant to this act;

(2) the licensee does not cooperate with an examination or investigation by the commissioner;

(3) the licensee engages in fraud, intentional misrepresentation, or gross negligence;

(4) an authorized delegate is convicted of a violation of a state or federal anti-money laundering statute, or violates a rule adopted or an order issued pursuant to this chapter, as a result of the licensee's wilful misconduct or wilful blindness;

(5) the competence, experience, character, or general fitness of the licensee, authorized delegate, person in control of a licensee, or responsible person of the licensee or authorized delegate indicates that it is not in the public interest to permit the person to provide money services;

(6) the licensee engages in an unsafe or unsound practice;

(7) the licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors; or

(8) the licensee does not remove an authorized delegate after the commissioner issues and serves upon the licensee a final order including a finding that the authorized delegate has violated this chapter.

(B) In determining whether a licensee is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the licensee's money transmission, the magnitude of the loss, the gravity of the violation of this act, and the previous conduct of the person involved.

Section 35-11-705. (A) The commissioner may issue an order suspending or revoking the designation of an authorized delegate, if the commissioner finds that the:

(1) authorized delegate violated this chapter or a rule adopted or an order issued pursuant to this chapter;

(2) authorized delegate did not cooperate with an examination or investigation by the commissioner;

(3) authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence;

(4) authorized delegate is convicted of a violation of a state or federal anti-money laundering statute;

(5) competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money services; or

(6) authorized delegate is engaging in an unsafe or unsound practice.

(B) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the authorized delegate's provision of money services, the magnitude of the loss, the gravity of the violation of this chapter or a rule adopted or order issued pursuant to this chapter, and the previous conduct of the authorized delegate.

(C) An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the commissioner.

Section 35-11-710. (A) If the commissioner determines that a violation of this chapter or of a rule adopted or an order issued pursuant to this chapter by a licensee or authorized delegate is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of assets of the licensee, the commissioner may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order becomes effective upon service of it upon the licensee or authorized delegate.

(B) The commissioner may issue an order against a licensee to cease and desist from providing money services through an authorized delegate that is the subject of a separate order by the commissioner.

(C) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to Section 35-11-700 or 35-11-705.

Section 35-11-715. The commissioner may enter into a consent order at any time with a person to resolve a matter arising pursuant to this chapter or a rule adopted or order issued pursuant to this chapter. A consent order must be signed by the person to whom it is issued or by the person's authorized representative, and must indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this chapter or a rule adopted or an order issued pursuant to this chapter has been violated.

Section 35-11-720. The commissioner may assess a civil penalty against a person that violates this chapter or a rule adopted or an order issued pursuant to this chapter in an amount not to exceed one thousand dollars per day for each day the violation is outstanding, plus this state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney fees.

Section 35-11-725. (A) A person who intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained pursuant to this chapter, who intentionally makes a false entry or omits a material entry in that record, or violates a rule promulgated or order issued pursuant to this chapter is guilty of a Class B felony.

(B) A person who knowingly engages in an activity for which a license is required pursuant to this chapter without being licensed pursuant to this chapter and who receives more than five hundred dollars in compensation within a thirty-day period from this activity is guilty of a Class B felony.

(C) A person who knowingly engages in an activity for which a license is required pursuant to this chapter without being licensed pursuant to this chapter and who receives no more than five hundred dollars in compensation within a thirty-day period from this activity is guilty of a Class A misdemeanor.

Section 35-11-730. (A) If the commissioner has reason to believe that a person has violated or is violating Section 35-11-200 or 35-11-300, the commissioner may issue an order to show cause why an order to cease and desist should not be issued requiring the person to cease and desist from the violation of Section 35-11-200 or 35-11-300.

(B) In an emergency, the commissioner may petition the Richland County Circuit Court for the issuance of a temporary restraining order ex parte pursuant to the rules of civil procedure.

(C) An order to cease and desist becomes effective upon service of the order on the person.

(D) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to Sections 35-11-800 and 35-11-805.

Section 35-11-735. (A) Whenever a licensee has refused or is unable to pay its obligations generally as they become due or whenever it appears to the commissioner that a licensee is in an unsafe or unsound condition, the commissioner may apply to the Richland County Circuit Court or to the circuit court of any county in which the licensee is located for the appointment of a receiver for the licensee. The court may require the receiver to post a bond in an amount that appears necessary to protect claimants of the licensee.

(B) The receiver, subject to the approval of the court, shall take possession of the books, records, and assets of the licensee and shall take an action with respect to employees, agents, or representatives of the licensee or other action that may be necessary to conserve the assets of the licensee or ensure payment of instruments issued by the licensee pending further disposition of its business as provided by law. The receiver shall sue and defend, compromise, and settle all claims involving the licensee and exercise the powers and duties that are necessary and consistent with the laws of this State applicable to the appointment of receivers.

(C) The receiver, from time to time, but in no event less frequently than once each calendar quarter, shall report to the court with respect to all acts and proceedings in connection with the receivership.

Section 35-11-740. (A)(1) A person who, knowing that the property involved in a financial transaction represents the proceeds of, or is derived directly or indirectly from the proceeds of unlawful activity, conducts or attempts to conduct such a financial transaction that in fact involves the proceeds:

(a) with the intent to promote the carrying on of unlawful activity; or

(b) knowing that the transaction is designed in whole or in part to conceal or disguise the nature, location, sources, ownership, or control of the proceeds of unlawful activity is guilty of a felony and, upon conviction, must be punished as follows:

(i) for a Class F felony if the transactions exceed three hundred dollars but are less than twenty thousand dollars in a twelve-month period;

(ii) for a Class E felony for transactions that total or exceed twenty thousand dollars but are less than one hundred thousand dollars in a twelve-month period; or

(iii) for a Class C felony for transactions that total or exceed one hundred thousand dollars in a twelve-month period.

In addition to these penalties, a person who is found guilty of or who pleads guilty or nolo contendere to having violated this section may be sentenced to pay a fine not to exceed two hundred fifty thousand dollars, or twice the value of the financial transactions, whichever is greater; however, for a second or subsequent violation of this section, the fine may be up to five hundred thousand dollars, or quintuple the value of the financial transactions, whichever is greater.

(2) A person who transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in South Carolina to or through a place outside the United States or to a place in South Carolina from or through a place outside the United States:

(a) with the intent to promote the carrying on of unlawful activity; or

(b) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of unlawful activity and knowing that the transportation is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of unlawful activity is guilty of a felony and, upon conviction, must be punished as follows:

(i) for a Class F felony if the transactions exceed three hundred dollars but are less than twenty thousand dollars in a twelve-month period;

(ii) for a Class E felony for transactions that total or exceed twenty thousand dollars but are less than one hundred thousand dollars in a twelve-month period; or

(iii) for a Class C felony for transactions that total or exceed one hundred thousand dollars in a twelve-month period.

In addition to these penalties, a person who is found guilty of or who pleads guilty or nolo contendere to having violated this section may be sentenced to pay a fine not to exceed two hundred fifty thousand dollars or twice the value of the financial transactions, whichever is greater; however, for a second or subsequent violation of this section, the fine may be up to five hundred thousand dollars, or quintuple the value of the financial transactions, whichever is greater.

(3) A person with the intent:

(a) to promote the carrying on of unlawful activity; or

(b) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of unlawful activity, conducts or attempts to conduct a financial transaction involving property represented by a law enforcement officer to be the proceeds of unlawful activity, or property used to conduct or facilitate unlawful activity is guilty of a felony and, upon conviction, must be punished as follows:

(i) for a Class F felony if the transactions exceed three hundred dollars but are less than twenty thousand dollars in a twelve-month period;

(ii) for a Class E felony for transactions that total or exceed twenty thousand dollars but are less than one hundred thousand dollars in a twelve-month period; or

(iii) for a Class C felony for transactions that total or exceed one hundred thousand dollars in a twelve-month period.

In addition to these penalties, a person who is found guilty of or who pleads guilty or nolo contendere to having violated this section may be sentenced to pay a fine not to exceed two hundred fifty thousand dollars or twice the value of the financial transactions, whichever is greater; however, for a second or subsequent violation of this section, the fine may be up to five hundred thousand dollars or quintuple the value of the financial transactions, whichever is greater.

For purposes of this subitem, the term 'represented' means a representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a state official authorized to investigate or prosecute violations of this section.

(B) A person who conducts or attempts to conduct a transaction described in subsection (A)(1), or transportation described in subsection (A)(2), is liable to the State for a civil penalty of not more than the greater of:

(1) the value of the property, funds, or monetary instruments involved in the transaction; or

(2) ten thousand dollars.

A court may issue a pretrial restraining order or take another action necessary to ensure that a bank account or other property held by the defendant in the United States is available to satisfy a civil penalty under this section.

(C) As used in this section:

(1) the term 'conducts' includes initiating, concluding, or participating in initiating or concluding a transaction;

(2) the term 'transaction' includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition and, with respect to a

financial institution, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of a stock, bond, certificate of deposit, or other monetary instrument, or another payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(3) the term 'financial transaction' means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments;

(4) the term 'monetary instruments' means coin or currency of the United States or of another country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in that form that title to it passes upon delivery, and negotiable instruments in bearer form or otherwise in that form that title to it passes upon delivery;

(5) the term 'financial institution' has the definition given that term in Section 5312(a)(2), Title 31, United States Code, and the regulations promulgated thereunder.

(D) Nothing in this section supersedes a provision of law imposing criminal penalties or affording civil remedies in addition to those provided for in this section, and nothing in this section precludes reliance in the appropriate case upon the provisions set forth in Section 44-53-475.

Article 8

Administrative Procedures

Section 35-11-800. All administrative proceedings pursuant to this chapter must be conducted in accordance with Article 3, Chapter 23, Title 1.

Section 35-11-805. Except as otherwise provided in Sections 35-11-225(C), 35-11-315(C), 35-11-710, and 35-11-730, the commissioner may not suspend or revoke a license, issue an order to cease and desist, suspend or revoke the designation of an authorized delegate, or assess a civil penalty without notice and an opportunity to be heard. The commissioner also shall hold a hearing when requested to do so by an applicant whose application for a license is denied.

Section 35-11-810. This chapter is administered by the commissioner who may employ such additional assistants as he deems necessary. The

commissioner may delegate any or all of his duties pursuant to this chapter to members of his staff, as he deems necessary or appropriate.

Section 35-11-815. The commissioner may promulgate and amend regulations or issue orders necessary to carry out the purposes of this chapter in order to provide for the protection of the public and to assist licensees in interpreting and complying with this chapter.

Article 9

Miscellaneous Provisions

Section 35-11-900. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it."

State Grand Jury jurisdiction

SECTION 2. Section 14-7-1630(A) of the 1976 Code, as last amended by Act 7 of 2015, is further amended to read:

"(A) The jurisdiction of a state grand jury impaneled pursuant to this article extends throughout the State. The subject matter jurisdiction of a state grand jury in all cases is limited to the following offenses:

(1) a crime involving narcotics, dangerous drugs, or controlled substances, or a crime arising out of or in connection with a crime involving narcotics, dangerous drugs, or controlled substances, including, but not limited to, money laundering as specified in Section 44-53-475, obstruction of justice, perjury or subornation of perjury, or any attempt, aiding, abetting, solicitation, or conspiracy to commit one of the aforementioned crimes, if the crime is of a multi-county nature or has transpired or is transpiring or has significance in more than one county of this State;

(2) a crime involving criminal gang activity or a pattern of criminal gang activity pursuant to Article 3, Chapter 8, Title 16;

(3) a crime, statutory, common law or other, involving public corruption as defined in Section 14-7-1615, a crime, statutory, common law or other, arising out of or in connection with a crime involving public corruption as defined in Section 14-7-1615, and any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime, statutory, common law or other, involving public corruption as defined in Section 14-7-1615;

(4) a crime involving the election laws, including, but not limited to, those named offenses specified in Title 7, or a common law crime involving the election laws if not superseded, or a crime arising out of or in connection with the election laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the election laws;

(5) a crime involving computer crimes, pursuant to Chapter 16, Title 16, or a conspiracy or solicitation to commit a crime involving computer crimes;

(6) a crime involving terrorism, or a conspiracy or solicitation to commit a crime involving terrorism. Terrorism includes an activity that:

(a) involves an act dangerous to human life that is a violation of the criminal laws of this State;

(b) appears to be intended to:

(i) intimidate or coerce a civilian population;

(ii) influence the policy of a government by intimidation or coercion; or

(iii) affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(c) occurs primarily within the territorial jurisdiction of this State;

(7) a crime involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws;

(8) a crime involving obscenity, including, but not limited to, a crime as provided in Article 3, Chapter 15, Title 16, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving obscenity;

(9) a crime involving the knowing and wilful making of, aiding and abetting in the making of, or soliciting or conspiring to make a false, fictitious, or fraudulent statement or representation in an affidavit regarding an alien's lawful presence in the United States, as defined by law, if the number of violations exceeds twenty or if the public benefit received by a person from a violation or combination of violations exceeds twenty thousand dollars;

(10) a crime involving financial identity fraud or identity fraud involving the false, fictitious, or fraudulent creation or use of documents used in an immigration matter as defined in Section 16-13-525, if the number of violations exceeds twenty, or if the value of the ascertainable loss of money or property suffered by a person or persons from a violation or combination of violations exceeds twenty thousand dollars;

(11) a crime involving the knowing and wilful making of, aiding or abetting in the making of, or soliciting or conspiring to make a false,

fictitious, or fraudulent statement or representation in a document prepared or executed as part of the provision of immigration assistance services in an immigration matter, as defined by law, if the number of violations exceeds twenty, or if a benefit received by a person from a violation or combination of violations exceeds twenty thousand dollars;

(12) a knowing and wilful crime involving actual and substantial harm to the water, ambient air, soil or land, or both soil and land. This crime includes a knowing and wilful violation of the Pollution Control Act, the Atomic Energy and Radiation Control Act, the State Underground Petroleum Environmental Response Bank Act, the State Safe Drinking Water Act, the Hazardous Waste Management Act, the Infectious Waste Management Act, the Solid Waste Policy and Management Act, the Erosion and Sediment Control Act, the South Carolina Mining Act, and the Coastal Zone Management Act, or a knowing and wilful crime arising out of or in connection with environmental laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a knowing and wilful crime involving the environment if the anticipated actual damages, including, but not limited to, the cost of remediation, is two million dollars or more, as certified by an independent environmental engineer who must be contracted by the Department of Health and Environmental Control. If the knowing and wilful crime is a violation of federal law, a conviction or an acquittal pursuant to federal law for the same act is a bar to the impaneling of a state grand jury pursuant to this section;

(13) a crime involving or relating to the offense of trafficking in persons, as defined in Section 16-3-2020, when a victim is trafficked in more than one county or a trafficker commits the offense of trafficking in persons in more than one county; and

(14) a crime involving a violation of the South Carolina Anti-Money Laundering Act as set forth in Chapter 11, Title 35, or a crime related to a violation of the Anti-Money Laundering Act."

Savings Clause

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded on this law, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision expressly shall provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining

a pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws. Moreover, the provisions of this act, to include those provisions that amend existing laws, shall not apply to conduct that occurred prior to the effective date of this act.

Severability

SECTION 4. The provisions of this act are severable. If any section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, that holding shall not affect the constitutionality or validity of the remaining portions of the act, the General Assembly hereby declaring that it would have passed each and every section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, and word of the act, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, items, subitems, sentences, clauses, phrases, or words of the act may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 5. This act takes effect one year after approval of this act by the Governor or upon the publication in the State Register of final regulations implementing the act, whichever occurs later. The commissioner is authorized to begin promulgating these regulations upon approval of this act by the Governor which shall take effect when this act takes effect as provided in this section.

Ratified the 6th day of June, 2016.

Approved the 9th day of June, 2016.

No. 267

(R223, S689)

AN ACT TO AMEND SECTION 56-1-50, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ISSUANCE OF MOTOR VEHICLE BEGINNER'S PERMITS AND VEHICLE OPERATION, SO AS TO DELETE THE PROVISION THAT ALLOWS A PERMITTEE TO OPERATE A MOTOR SCOOTER, OR LIGHT MOTOR-DRIVEN CYCLE, TO PROVIDE THE TIMES OF DAY WHEN A PERMITTEE MAY OPERATE A MOTORCYCLE OR MOPED UNSUPERVISED AND WHEN A PERMITTEE MUST OPERATE A MOTORCYCLE OR MOPED WHILE UNDER SUPERVISION, AND TO REVISE THE LOCATION WHERE THE PERMITTEE'S SUPERVISOR MUST BE LOCATED; AND TO AMEND SECTION 56-5-3630, RELATING TO THE OPERATION OF A MOTORCYCLE, SO AS TO PROVIDE A LOCATION WHERE A PASSENGER MAY RIDE UPON A MOTORCYCLE, AND TO PROVIDE THAT THE PROVISIONS CONTAINED IN THIS SECTION DO NOT APPLY TO PERSONS RIDING IN A MOTORCYCLE SIDECAR.

Be it enacted by the General Assembly of the State of South Carolina:

Beginner's permit

SECTION 1. Section 56-1-50(B)(2) and (C) of the 1976 Code is amended to read:

"(2) motorcycles or mopeds after six o'clock a.m. and not later than six o' clock p.m. However, beginning on the day that daylight saving time goes into effect through the day that daylight saving time ends, the permittee may operate motorcycles or mopeds after six o'clock a.m. and not later than eight o'clock p.m. A permittee may not operate a motorcycle at any other time unless accompanied by a licensed motorcycle operator twenty-one years of age or older who has at least one year of driving experience. A permittee may not operate a moped at any other time unless accompanied by a licensed driver twenty-one years of age or older who has at least one year of driving experience.

(C) The accompanying driver must:

(1) occupy a seat beside the permittee when the permitee is operating a motor vehicle; or

(2) be within a safe viewing distance of the permittee when the permitee is operating a motorcycle or a moped."

Motorcycle operation

SECTION 2. Section 56-5-3630 of the 1976 Code is amended to read:

"Section 56-5-3630. (A) A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto and the operator shall not carry any other person nor shall any other person ride on a motorcycle unless the motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle at the rear or side of the operator.

(B) A person shall ride upon a motorcycle only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle.

(C) No person shall operate a motorcycle while carrying any package, bundle or other article which prevents him from keeping both hands on the handlebars.

(D) No operator shall carry any person, nor shall any person ride, in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

(E) No person shall ride upon a motorcycle as a passenger unless, when sitting astride the seat, the person can reach the footrests with both feet. Provided, the provisions of this section shall not apply to persons riding in a motorcycle sidecar.

(F) No person riding upon a motorcycle shall attach himself or the motorcycle to any other vehicle on the roadway."

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 7th day of June, 2016.

No. 268

(R227, S916)

AN ACT TO AMEND SECTION 63-3-510, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE JURISDICTION OF THE FAMILY COURT, SO AS TO RAISE THE AGE THAT A PERSON IS CONSIDERED A CHILD FOR PURPOSES OF DELINQUENCY MATTERS BEFORE THE FAMILY COURT; TO AMEND SECTION 63-19-20, RELATING TO THE DEFINITION OF "CHILD" OR "JUVENILE" , SO AS TO MEAN A PERSON UNDER THE AGE OF EIGHTEEN YEARS, WITH EXCEPTIONS; TO AMEND SECTIONS 63-19-1030, 63-19-1210, 63-19-1410, 63-19-1420, 63-19-1440, AS AMENDED, 63-19-1850, AS AMENDED, AND 63-19-2050, AS AMENDED, ALL RELATING TO JUVENILE DELINQUENCY PROCEEDINGS IN THE FAMILY COURT, SO AS TO RAISE AGE LIMITATIONS TO CONFORM WITH SECTIONS 63-3-510 AND 63-19-20; AND TO REQUIRE CERTAIN STATE AGENCIES TO COLLECT DATA AND SUBMIT A REPORT ADDRESSING THE FISCAL IMPACT OF RAISING THE AGE THAT A PERSON IS CONSIDERED A CHILD FOR PURPOSES OF DELINQUENCY MATTERS BEFORE THE FAMILY COURT.

Be it enacted by the General Assembly of the State of South Carolina:

Jurisdiction of the family court, age limitations

SECTION 1. Section 63-3-510 of the 1976 Code is amended to read:

"Section 63-3-510. (A) Except as otherwise provided herein, the court shall have exclusive original jurisdiction and shall be the sole court for initiating action:

(1) Concerning any child living or found within the geographical limits of its jurisdiction:

(a) who is neglected as to proper or necessary support or education as required by law, or as to medical, psychiatric, psychological, or other care necessary to his well-being, or who is abandoned by his parent or other custodian;

(b) whose occupation, behavior, condition, environment, or associations are such as to injure or endanger his welfare or that of others;

(c) who is beyond the control of his parent or other custodian;

(d) who is alleged to have violated or attempted to violate any state or local law or municipal ordinance, regardless of where the violation occurred except as provided in Section 63-3-520;

(e) whose custody is the subject of controversy, except in those cases where the law now gives other courts concurrent jurisdiction. In the consideration of these cases, the court shall have concurrent jurisdiction to hear and determine the issue of custody and support.

(2) For the treatment or commitment to any mental institution of a mentally defective or mentally disordered or emotionally disturbed child. Provided, that nothing herein is intended to conflict with the authority of probate courts in dealing with mental cases.

(3) Concerning any person eighteen years of age or over, living or found within the geographical limits of the court's jurisdiction, alleged to have violated or attempted to violate any state or local law or municipal ordinance prior to having become eighteen years of age and such person shall be dealt with under the provisions of this title relating to children.

(4) For the detention of a juvenile in a juvenile detention facility who is charged with committing a criminal offense when detention in a secure facility is found to be necessary pursuant to the standards set forth in Section 63-19-820 and when the facility exists in, or is otherwise available to, the county in which the crime occurred.

(B) Whenever the court has acquired the jurisdiction of any child under eighteen years of age, jurisdiction continues so long as, in the judgment of the court, it may be necessary to retain jurisdiction for the correction or education of the child, but jurisdiction shall terminate when the child attains the age of twenty-two years. Any child who has been adjudicated delinquent and placed on probation by the court remains under the authority of the court only until the expiration of the specified term of his probation. This specified term of probation may expire before but not after the twentieth birthday of the child."

Juvenile justice code definitions

SECTION 2. Section 63-19-20(1) of the 1976 Code is amended to read:

"(1) 'Child' or 'juvenile' means a person less than eighteen years of age. 'Child' or 'juvenile' does not mean a person seventeen years of age

or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. However, a person seventeen years of age who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the discretion of the solicitor. An additional or accompanying charge associated with the charges contained in this item must be heard by the court with jurisdiction over the offenses contained in this item."

Family court hearing requirements, age limitations for juveniles

SECTION 3. Section 63-19-1030(B) of the 1976 Code is amended to read:

"(B) The petition and all subsequent court documents must be entitled: 'In the Family Court of _____ County.
In the Interest of _____, a child under eighteen years of age.'

The petition must be verified and may be upon information and belief. It shall set forth plainly:

(1) the facts which bring the child within the purview of this chapter;

(2) the name, age, and residence of the child;

(3) the names and residences of the child's parents;

(4) the name and residence of a legal guardian, if there is one, of the person or persons having custody of or control of the child, or of the nearest known relative if no parent or guardian can be found. If any of these facts are not known by the petitioner, the petition shall state that."

Transfer of jurisdiction from family to circuit court, age limitations

SECTION 4. Section 63-19-1210 of the 1976 Code is amended to read:

"Section 63-19-1210. In accordance with the jurisdiction granted to the family court pursuant to Sections 63-3-510, 63-3-520, and 63-3-530, jurisdiction over a case involving a child must be transferred or retained as follows:

(1) If, during the pendency of a criminal or quasi-criminal charge against a child in a circuit court of this State, it is ascertained that the child was under the age of eighteen years at the time of committing the alleged offense, it is the duty of the circuit court immediately to transfer

the case, together with all the papers, documents, and testimony connected with it, to the family court of competent jurisdiction, except in those cases where the Constitution gives to the circuit court exclusive jurisdiction or in those cases where jurisdiction has properly been transferred to the circuit court by the family court under the provisions of this section. The court making the transfer shall order the child to be taken immediately to the place of detention designated by the court or to that court itself, or shall release the child to the custody of some suitable person to be brought before the court at a time designated. The court then shall proceed as provided in this chapter. The provisions of this section are applicable to all existing offenses and to offenses created in the future unless the General Assembly specifically directs otherwise.

(2) Whenever a child is brought before a magistrate or city recorder and, in the opinion of the magistrate or city recorder, the child should be brought to the family court of competent jurisdiction under the provisions of this section, the magistrate or city recorder shall transfer the case to the family court and direct that the child involved be taken there.

(3) When an action is brought in a circuit court which, in the opinion of the judge, falls within the jurisdiction of the family court, he may transfer the action upon his own motion or the motion of any party.

(4) If a child seventeen years of age or older is charged with an offense which, if committed by an adult, would be a misdemeanor, a Class E or F felony as defined in Section 16-1-20, or a felony which provides for a maximum term of imprisonment of ten years or less, and if the court, after full investigation, considers it contrary to the best interest of the child or of the public to retain jurisdiction, the court, in its discretion, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult.

(5) If a child fourteen, fifteen, or sixteen years of age is charged with an offense which, if committed by an adult, would be a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more, the court, after full investigation and hearing, may determine it contrary to the best interest of the child or of the public to retain jurisdiction. The court, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(6) Within thirty days after the filing of a petition in the family court alleging the child has committed the offense of murder or criminal sexual conduct, the person executing the petition may request in writing that the

case be transferred to the court of general sessions with a view to proceeding against the child as a criminal rather than as a child coming within the purview of this chapter. The judge of the family court is authorized to determine this request. If the request is denied, the petitioner may appeal within five days to the circuit court. Upon the hearing of the appeal, the judge of the circuit court is vested with the discretion of exercising and asserting the jurisdiction of the court of general sessions or of relinquishing jurisdiction to the family court. If the circuit judge elects to exercise the jurisdiction of the general sessions court for trial of the case, he shall issue an order to that effect, and then the family court has no further jurisdiction in the matter.

(7) Once the family court relinquishes its jurisdiction over the child and the child is bound over to be treated as an adult, Section 63-19-2020 dealing with the confidentiality of identity and fingerprints does not apply.

(8) When jurisdiction is relinquished by the family court in favor of another court, the court shall have full authority and power to grant bail, hold a preliminary hearing and any other powers as now provided by law for magistrates in such cases.

(9) If a child fourteen years of age or older is charged with a violation of Section 16-23-430, Section 16-23-20, or Section 44-53-445, the court, after full investigation and hearing, if it considers it contrary to the best interest of the child or the public to retain jurisdiction, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offenses if committed by an adult.

(10) If a child fourteen years of age or older is charged with an offense which, if committed by an adult, provides for a term of imprisonment of ten years or more and the child previously has been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which, if committed by an adult, provide for a term of imprisonment of ten years or more, the court, after full investigation and hearing, if it considers it contrary to the best interest of the child or the public to retain jurisdiction, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult. For the purpose of this item, an adjudication or conviction is considered a second adjudication or conviction only if the date of the commission of the second offense occurred subsequent to the imposition of the sentence for the first offense."

Adjudication of juveniles in family court, age limitations

SECTION 5. Section 63-19-1410(A) of the 1976 Code is amended to read:

"(A) When a child is found by decree of the court to be subject to this chapter, the court shall in its decree make a finding of the facts upon which the court exercises its jurisdiction over the child. Following the decree, the court by order may:

(1) cause a child concerning whom a petition has been filed to be examined or treated by a physician, psychiatrist, or psychologist and for that purpose place the child in a hospital or other suitable facility;

(2) order care and treatment as it considers best, except as otherwise provided in this section and may designate a state agency as the lead agency to provide a family assessment to the court. The assessment shall include, but is not limited to, the strengths and weaknesses of the family, problems interfering with the functioning of the family and with the best interests of the child, and recommendations for a comprehensive service plan to strengthen the family and assist in resolving these issues.

The lead agency shall provide the family assessment to the court in a timely manner, and the court shall conduct a hearing to review the proposed plan and adopt a plan as part of its order that will best meet the needs and best interest of the child. In arriving at a comprehensive plan, the court shall consider:

(a) additional testing or evaluation that may be needed;

(b) economic services including, but not limited to, employment services, job training, food stamps, and aid to families with dependent children;

(c) counseling services including, but not limited to, marital counseling, parenting skills, and alcohol and drug abuse counseling; and

(d) any other programs or services appropriate to the child's and family's needs.

The lead agency is responsible for monitoring compliance with the court-ordered plan and shall report to the court as the court requires. In support of an order, the court may require the parents or other persons having custody of the child or any other person who has been found by the court to be encouraging, causing, or contributing to the acts or conditions which bring the child within the purview of this chapter to do or omit to do acts required or forbidden by law, when the judge considers the requirement necessary for the welfare of the child. In case of failure

to comply with the requirement, the court may proceed against those persons for contempt of court;

(3) place the child on probation or under supervision in the child's own home or in the custody of a suitable person elsewhere, upon conditions as the court may determine. A child placed on probation by the court remains under the authority of the court only until the expiration of the specified term of the child's probation. This specified term of probation may expire before but not after the twentieth birthday of the child. Probation means casework services during a continuance of the case. Probation must not be ordered or administered as punishment but as a measure for the protection, guidance, and well-being of the child and the child's family. Probation methods must be directed to the discovery and correction of the basic causes of maladjustment and to the development of the child's personality and character, with the aid of the social resources of the community. As a condition of probation, the court may order the child to participate in a community mentor program as provided for in Section 63-19-1430. The court may impose monetary restitution or participation in supervised work or community service, or both, as a condition of probation. The Department of Juvenile Justice, in coordination with local community agencies, shall develop and encourage employment of a constructive nature designed to make reparation and to promote the rehabilitation of the child. When considering the appropriate amount of monetary restitution to be ordered, the court shall establish the monetary loss suffered by the victim and then weigh and consider this amount against the number of individuals involved in causing the monetary loss, the child's particular role in causing this loss, and the child's ability to pay the amount over a reasonable period of time. The Department of Juvenile Justice shall develop a system for the transferring of court-ordered restitution from the child to the victim or owner of property injured, destroyed, or stolen. As a condition of probation the court may impose upon the child a fine not exceeding two hundred dollars when the offense is one in which a magistrate, municipal, or circuit court judge has the authority to impose a fine. A fine may be imposed when commitment is suspended but not in addition to commitment;

(4) order the child to participate in a community mentor program as provided in Section 63-19-1430;

(5) commit the child to the custody or to the guardianship of a public or private institution or agency authorized to care for children or to place them in family homes or under the guardianship of a suitable person. Commitment must be for an indeterminate period but in no event beyond the child's twenty-second birthday;

(6) require that a child under twelve years of age who is adjudicated delinquent for an offense listed in Section 23-3-430(C) be given appropriate psychiatric or psychological treatment to address the circumstances of the offense for which the child was adjudicated; and

(7) dismiss the petition or otherwise terminate its jurisdiction at any time on the motion of either party or on its own motion."

Driver's license restrictions for delinquent juveniles, age limitations

SECTION 6. Section 63-19-1420 of the 1976 Code is amended to read:

"Section 63-19-1420. (A) If a child is adjudicated delinquent for a status offense or is found in violation of a court order relating to a status offense, the court may suspend or restrict the child's driver's license until the child's eighteenth birthday.

(B) If a child is adjudicated delinquent for violation of a criminal offense or is found in violation of a court order relating to a criminal offense or is found in violation of a term or condition of probation, the court may suspend or restrict the child's driver's license until the child's twentieth birthday.

(C) If the court suspends the child's driver's license, the child must submit the license to the court, and the court shall forward the license to the Department of Motor Vehicles for license suspension. However, convictions not related to the operation of a motor vehicle shall not result in increased insurance premiums.

(D) If the court restricts the child's driver's license, the court may restrict the child's driving privileges to driving only to and from school or to and from work or as the court considers appropriate. Upon the court restricting a child's driver's license, the child must submit the license to the court and the court shall forward the license to the Department of Motor Vehicles for reissuance of the license with the restriction clearly noted.

(E) Notwithstanding the definition of a 'child' as provided for in Section 63-19-20, the court may suspend or restrict the driver's license of a child under the age of seventeen until the child's eighteenth birthday if subsection (B) applies.

(F) Upon suspending or restricting a child's driver's license under this section, the family court judge shall complete a form provided by and which must be remitted to the Department of Motor Vehicles."

Commitment of juveniles to the Department of Juvenile Justice, age limitations

SECTION 7. Section 63-19-1440 of the 1976 Code, as last amended by Act 227 of 2012, is further amended to read:

"Section 63-19-1440. (A) A child, after the child's twelfth birthday and before the eighteenth birthday or while under the jurisdiction of the family court for disposition of an offense that occurred prior to the child's eighteenth birthday, may be committed to the custody of the Department of Juvenile Justice which shall arrange for placement in a suitable corrective environment. Children under the age of twelve years may be committed only to the custody of the department which shall arrange for placement in a suitable corrective environment other than institutional confinement. No child under the age of eighteen years may be committed or sentenced to any other penal or correctional institution of this State.

(B) All commitments to the custody of the Department of Juvenile Justice for delinquency as opposed to the conviction of a specific crime may be made only for the reasons and in the manner prescribed in Sections 63-3-510, 63-3-520, 63-3-580, 63-3-600, 63-3-650, and this chapter, with evaluations made and proceedings conducted only by the judges authorized to order commitments in this section. When a child is committed to the custody of the department, commitment must be for an indeterminate sentence, not extending beyond the twenty-second birthday of the child unless sooner released by the department, or for a determinate commitment sentence not to exceed ninety days.

(C) The court, before committing a child as a delinquent or as a part of a sentence including commitments for contempt, shall order a community evaluation or temporarily commit the child to the Department of Juvenile Justice for not more than forty-five days for evaluation. A community evaluation is equivalent to a residential evaluation, but it is not required to include all components of a residential evaluation. However, in either evaluation the department shall make a recommendation to the court on the appropriate disposition of the case and shall submit that recommendation to the court before final disposition. The department is authorized to allow any child adjudicated delinquent for a status offense, a misdemeanor offense, or violation of probation or contempt for any offense who is temporarily committed to the department's custody for a residential evaluation, to reside in that child's home or in his home community while undergoing a community evaluation, unless the committing judge finds and

concludes in the order for evaluation, that a community evaluation of the child must not be conducted because the child presents an unreasonable flight or public safety risk to his home community. The court may waive in writing the evaluation of the child and proceed to issue final disposition in the case if the child:

(1) has previously received a residential evaluation or a community evaluation and the evaluation is available to the court;

(2) has been within the past year temporarily or finally discharged or conditionally released for parole from a correctional institution of the department, and the child's previous evaluation or other equivalent information is available to the court; or

(3) receives a determinate commitment sentence not to exceed ninety days.

(D) When a juvenile is adjudicated delinquent or convicted of a crime or has entered a plea of guilty or nolo contendere in a court authorized to commit to the custody of the Department of Juvenile Justice, the juvenile may be committed for an indeterminate period until the juvenile has reached age twenty-two or until sooner released by the releasing entity or released by order of a judge of the Supreme Court or the circuit court of this State, rendered at chambers or otherwise, in a proceeding in the nature of an application for a writ of habeas corpus. A juvenile who has not been paroled or otherwise released from the custody of the department by the juvenile's nineteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. If not sooner released by the releasing entity, the juvenile must be released by age twenty-two according to the provisions of the juvenile's commitment; however, notwithstanding the above provision, any juvenile committed as an adult offender by order of the court of general sessions must be considered for parole or other release according to the laws pertaining to release of adult offenders.

(E) A juvenile committed to the Department of Juvenile Justice following an adjudication for a violent offense contained in Section 16-1-60 or for the offense of assault and battery of a high and aggravated nature, who has not been paroled or released from the custody of the department by his eighteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections. A juvenile who has not been paroled or released from the custody of the department by his nineteenth birthday must be transferred to the custody and authority of the Youthful Offender Division of the Department of Corrections at age nineteen. If not released sooner by the Board of Juvenile Parole, a juvenile transferred pursuant to this subsection must be released by his twenty-second birthday according to

the provisions of his commitment. Notwithstanding the above provision, a juvenile committed as an adult offender by order of the court of general sessions must be considered for parole or other release according to the laws pertaining to release of adult offenders.

(F) Notwithstanding subsections (A) and (E), a child may be committed to the custody of the Department of Juvenile Justice or to a secure evaluation center operated by the department for a determinate period not to exceed ninety days when:

(1) the child has been adjudicated delinquent by a family court judge for a status offense, as defined in Section 63-19-20, excluding truancy, and the order acknowledges that the child has been afforded all due process rights guaranteed to a child offender;

(2) the child is in contempt of court for violation of a court order to attend school or an order issued as a result of the child's adjudication of delinquency for a status offense, as defined in Section 63-19-20; or

(3) the child is determined by the court to have violated the conditions of probation set forth by the court in an order issued as a result of the child's adjudication of delinquency for a status offense, as defined in Section 63-19-20 including truancy.

Orders issued pursuant to this subsection must acknowledge:

(a) that the child has been advised of all due process rights afforded to a child offender; and

(b) that the court has received information from the appropriate state or local agency or public entity that has reviewed the facts and circumstances causing the child to be before the court.

(G) A child committed under this section may not be confined with a child who has been determined by the department to be violent.

(H) After having served at least two-thirds of the time ordered by a court, a child committed to the Department of Juvenile Justice for a determinate period pursuant to this section may be released by the department prior to the expiration of the determinate period for 'good behavior' as determined by the department. The court, in its discretion, may state in the order that the child is not to be released prior to the expiration of the determinate period ordered by the court.

(I) Juveniles detained in any temporary holding facility or juvenile detention center or who are temporarily committed for evaluation to a Department of Juvenile Justice evaluation center for the offense for which they were subsequently committed by the family court to the custody of the Department of Juvenile Justice shall receive credit toward their parole guidelines, if indeterminately sentenced, or credit toward their date of release, if determinately sentenced, for each day they are

detained in or temporarily committed to any secure pre-dispositional facility, center, or program."

Conditional release of juveniles, age limitations

SECTION 8. Section 63-19-1850(A) of the 1976 Code, as last amended by Act 151 of 2010, is further amended to read:

"(A) A juvenile who shall have been conditionally released from a correctional facility shall remain under the authority of the releasing entity until the expiration of the specified term imposed in the juvenile's conditional aftercare release. The specified period of conditional release may expire before but not after the twenty-second birthday of the juvenile. Each juvenile conditionally released is subject to the conditions and restrictions of the release and may at any time on the order of the releasing entity be returned to the custody of a correctional institution for violation of aftercare rules or conditions of release. The conditions of release must include the requirement that the juvenile parolee must permit the search or seizure, without a search warrant, with or without cause, of the juvenile parolee's person, any vehicle the juvenile parolee owns or is driving, and any of the juvenile parolee's possessions by:

(1) his aftercare counselor;

(2) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(3) any other law enforcement officer.

However, the conditions of release of a juvenile parolee who was adjudicated delinquent of a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the juvenile parolee agree to be subject to search or seizure, without a search warrant, with or without cause, of the juvenile parolee's person, any vehicle the juvenile parolee owns or is driving, or any of the juvenile parolee's possessions.

By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment. Immediately before each search or seizure conducted pursuant to this subsection, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on parole or probation or that the

individual is currently subject to the provisions of his conditional release. A law enforcement officer conducting a search or seizure without a warrant pursuant to this subsection shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this subsection, he is subject to discipline pursuant to the employing agency's policies and procedures."

Expungement orders in family court, age limitations

SECTION 9. Section 63-19-2050(C) of the 1976 Code, as last amended by Act 22 of 2015, is further amended to read:

"(C)(1) If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed a status offense, the court shall grant the expungement order. If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed multiple status offenses, the court may grant an expungement order for the multiple status offenses.

(2) If the person has been taken into custody for, charged with, or adjudicated delinquent for having committed a nonviolent crime, as defined in Section 16-1-70, the court may grant the expungement order.

(3) The court shall not grant the expungement order unless the court finds that the person is at least eighteen years of age, has successfully completed any dispositional sentence imposed, has not been subsequently adjudicated for or convicted of any criminal offense, and does not have any criminal charges pending in family court or general sessions court. If the person was found not guilty in an adjudicatory hearing in the family court, the court shall grant the expungement order regardless of the person's age and the person must not be charged a fee for the expungement. An adjudication for a violent crime, as defined in Section 16-1-60, must not be expunged."

Data collection and reporting requirements

SECTION 10. South Carolina Court Administration shall consult with the South Carolina Commission on Indigent Defense, South Carolina Commission on Prosecution Coordination, South Carolina Department of Corrections, South Carolina Department of Juvenile Justice, and South Carolina Department of Probation, Parole and Pardon Services to determine data and statistics that should be collected relevant to determining the fiscal and revenue impact of this act. All state and local agencies and courts shall collect the relevant data and statistics from July 1, 2016, through June 30, 2017, and transmit the data and statistics to court administration pursuant to court administration's instructions. Court administration shall collect the relevant data and statistics and make a report to the General Assembly by September 1, 2017.

Savings clause

SECTION 11. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 12. Section 10 of this act takes effect upon approval by the Governor. Sections 1 through 9 and Section 11 of this act take effect on July 1, 2019, contingent upon the Department of Juvenile Justice having received any funds that may be necessary for implementation. If the report submitted to the General Assembly on September 1, 2017, reflects any additional funds needed by the Department of Juvenile Justice to ensure implementation will be possible on July 1, 2019, the department shall include these funds in its budget requests to the General Assembly as part of Fiscal Years 2017-2018 and 2018-2019. Beginning on September 1, 2017, all state and local agencies and courts involved with

the implementation of the provisions of this act may begin undertaking and executing any and all applicable responsibilities so that the provisions of this act may be fully implemented on July 1, 2019.

Ratified the 2nd day of June, 2016.

Approved the 6th day of June, 2016.

No. 269

(R239, S1122)

AN ACT TO AMEND SECTION 12-28-110, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS PERTAINING TO MOTOR FUELS, SO AS TO AMEND CERTAIN DEFINITIONS; TO AMEND SECTION 12-37-2820, RELATING TO THE ASSESSMENT OF MOTOR VEHICLES, SO AS TO CLARIFY A DEFINITION AS IT RELATES TO MOTOR VEHICLES FUELED BY ALTERNATIVE FUEL; AND BY ADDING SECTION 12-6-3695 SO AS TO ALLOW AN INCOME TAX CREDIT TO A TAXPAYER WHO PURCHASES OR CONSTRUCTS AND INSTALLS AND PLACES IN SERVICE IN THIS STATE ELIGIBLE PROPERTY THAT IS USED FOR DISTRIBUTION, DISPENSING, OR STORING ALTERNATIVE FUEL AT A NEW OR EXISTING FUEL DISTRIBUTION OR DISPENSING FACILITY, AND TO SPECIFY THE AMOUNT OF THE CREDIT AND THE REQUIREMENTS OF THE CREDIT.

Be it enacted by the General Assembly of the State of South Carolina:

Definitions

SECTION 1. A. Section 12-28-110(1) of the 1976 Code is amended to read:

"(1) 'Alternative fuel' means a liquefied petroleum gas, liquefied natural gas, compressed natural gas product, or a combination of liquefied petroleum gas and a compressed natural gas product used in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance. It includes all forms of fuel

commonly or commercially known or sold as butane, propane, liquefied natural gas, or compressed natural gas."

B. Section 12-28-110(39) of the 1976 Code is amended to read:

"(39) 'Motor fuel' means gasoline, diesel fuel, substitute fuel, renewable fuel, alternative fuel, and blended fuel."

C. Section 12-28-110(55) of the 1976 Code is amended to read:

"(55) 'Motor fuel subject to the user fee' means gasoline, diesel fuel, kerosene, blended fuel, substitute fuel, alternative fuel and blends of them and any other substance blended with them."

Definition

SECTION 2. A. Section 12-37-2820(B) of the 1976 Code is amended to read:

"(B) 'Gross capitalized cost', as used in this section, means the original cost upon acquisition for income tax purposes, not to include taxes, interest, or cab customizing. However, for a motor vehicle which is fueled wholly or partially by alternative fuel as defined in Section 12-28-110(1), and that was acquired after 2015 but before 2026, the gross capitalized cost is reduced by the differential costs of a comparable diesel or gasoline powered vehicle, not to exceed thirty percent of the total acquisition cost of the motor vehicle. This reduction shall apply for the first ten property tax years for which tax is due following the acquisition of the vehicle."

B. This SECTION first applies to property tax years beginning after 2015.

Income tax credit for alternative fuel property

SECTION 3. A. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

"Section 12-6-3695. (A)(1) A taxpayer who purchases or constructs, installs, and places in service in this State eligible property that is used for distribution, dispensing, or storing alternative fuel specified in this subsection, at a new or existing fuel distribution or dispensing facility,

is allowed an income tax credit equal to twenty-five percent of the cost to the taxpayer of purchasing, constructing, and installing the eligible property.

(2) The entire credit may not be taken in the taxable year in which the property is placed in service, but must be taken in three equal annual installments beginning with the taxable year in which the property is placed in service. If, in one of the years in which the installment of a credit accrues, property directly and exclusively used for distributing, dispensing, or storing alternative fuel is disposed of or taken out of service and is not replaced, the credit expires and the taxpayer may not claim any remaining installment of the credit.

(3) The unused portion of an unexpired credit may be carried forward for not more than ten succeeding taxable years.

(4) The taxpayer may transfer any applicable credit associated with this section. To the extent that the taxpayer transfers the credit, the taxpayer must notify the department of the transfer in the manner the department prescribes. Notwithstanding subsection (D), as used in this item, the term 'taxpayer' only applies to the State or any agency or instrumentality, authority, or political subdivision, including municipalities.

(5) A taxpayer who claims any other credit allowed pursuant to this article with respect to the costs of constructing and installing a facility may not take the credit allowed in this section with respect to the same costs.

(B) The Department of Revenue may require documentation that it considers necessary to administer the credit.

(C) To claim the credits allowed in this section, the taxpayer must place the property or facility in service before January 1, 2026.

(D) For purposes of this section:

(1) 'Eligible property' includes pumps, compressors, storage tanks, and related equipment that is directly and exclusively used for distribution, dispensing, or storing alternative fuel. The equipment used to store, distribute, or dispense alternative fuel must be labeled for this purpose and clearly identified as associated with alternative fuel.

(2) 'Alternative fuel' means compressed natural gas, liquefied natural gas, or liquefied petroleum gas, dispensed for use in motor vehicles and compressed natural gas, liquefied natural gas, or liquefied petroleum gas, dispensed by a distributor or facility.

(3) 'Taxpayer' means any sole proprietor, partnership, corporation of any classification, limited liability company, or association taxable as a business entity. Also, the word 'taxpayer' includes the State or any

agency or instrumentality, authority, or political subdivision, including municipalities."

B. This SECTION first applies to tax years beginning after 2015.

Time effective

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Approved the 6th day of June, 2016.

No. 270

(R292, S667)

AN ACT TO AMEND SECTION 1-1-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE JURISDICTION AND BOUNDARIES OF THE STATE, SO AS TO CLARIFY THE BOUNDARY BETWEEN NORTH CAROLINA AND SOUTH CAROLINA ALONG HORRY, DILLON, MARLBORO, CHESTERFIELD, LANCASTER, YORK, CHEROKEE, AND SPARTANBURG COUNTIES AND TO PROVIDE ADDITIONAL INFORMATION ABOUT THE PLATS DESCRIBING THE LOCATION OF THE BOUNDARY BETWEEN NORTH CAROLINA AND SOUTH CAROLINA ALONG GREENVILLE, PICKENS, AND OCONEE COUNTIES; BY ADDING SECTION 12-2-115 SO AS TO PROVIDE THAT "NEW JOBS" ARE NOT CREATED IN SOUTH CAROLINA BY EMPLOYEES WHOSE WORK LOCATION IS CHANGED FROM NORTH CAROLINA TO SOUTH CAROLINA AS A RESULT OF THE BOUNDARY CLARIFICATION, NOR IS THERE ANY NEW INVESTMENT IN SOUTH CAROLINA AS A RESULT OF PROPERTY THAT CHANGES LOCATION FROM NORTH CAROLINA TO SOUTH CAROLINA AS A RESULT OF THE BOUNDARY CLARIFICATION; BY ADDING SECTION 12-2-120 SO AS TO PROVIDE FOR THE MANNER AND APPLICATION OF TAX ASSESSMENTS AND REFUNDS FOR THE PERIOD PRIOR TO THE BOUNDARY CLARIFICATION;

BY ADDING SECTION 12-2-130 SO AS TO PROVIDE THAT IN THE YEAR CONTAINING THE DATE OF THE BOUNDARY CLARIFICATION, THE DEPARTMENT OF REVENUE HAS THE AUTHORITY TO COMPROMISE TAXES THAT RESULT IN TAXATION IN BOTH SOUTH CAROLINA AND NORTH CAROLINA SOLELY BECAUSE OF THE BOUNDARY CLARIFICATION; BY ADDING SECTION 12-6-5600 SO AS TO PROVIDE FOR THE INCOME TAX TREATMENT OF INDIVIDUALS AND BUSINESSES WHOSE STATE OF RESIDENCE OR PROPERTY LOCATION CHANGES AS A RESULT OF THE BOUNDARY CLARIFICATION; BY ADDING SECTION 12-21-820 SO AS TO PROVIDE FOR THE MANNER OF CIGARETTE AND TOBACCO PRODUCTS TAXATION AS A RESULT OF THE BOUNDARY CLARIFICATION; BY ADDING SECTION 12-24-160 SO AS TO PROVIDE THAT IF, AS A RESULT OF THE BOUNDARY CLARIFICATION, PROPERTY IS DEEMED TO HAVE CHANGED LOCATIONS FROM NORTH CAROLINA TO SOUTH CAROLINA AND IF SOLELY AS A RESULT OF THIS CHANGE, A DEED IS FILED IN SOUTH CAROLINA, NO DEED RECORDING FEES ARE DUE ON THIS FILING AND NO COUNTY FILING FEES MAY BE CHARGED; BY ADDING SECTION 12-28-350 SO AS TO PROVIDE THAT A RETAILER THAT SELLS MOTOR FUEL WHOSE BUSINESS LOCATION CHANGES FROM SOUTH CAROLINA TO NORTH CAROLINA AS A RESULT OF THE BOUNDARY CLARIFICATION IS ALLOWED A REFUND OF SOUTH CAROLINA MOTOR FUEL TAXES OR USER FEES IF NORTH CAROLINA REQUIRES THAT RETAILER TO PAY THE NORTH CAROLINA MOTOR FUEL TAXES OR USER FEES ON THAT SAME FUEL; BY ADDING SECTION 12-36-2695 SO AS TO PROVIDE FOR THE MANNER IN WHICH SALES AND USE TAXES AND ADMISSIONS TAXES MUST BE COLLECTED AND PAID AS A RESULT OF THE BOUNDARY CLARIFICATION; BY ADDING SECTION 12-37-140 SO AS TO PROVIDE FOR HOW CERTAIN REAL AND PERSONAL PROPERTY IS SUBJECT TO PROPERTY TAXATION, AND FOR PROCEDURAL MATTERS RELATING TO THIS TAXATION, INCLUDING APPLICATION LIEN DATES; BY ADDING SECTION 12-37-145 SO AS TO FURTHER PROVIDE FOR MOTOR VEHICLE LICENSE REGISTRATION AND MOTOR VEHICLE PERSONAL PROPERTY TAXES AS A RESULT OF THE BOUNDARY CLARIFICATION; BY ADDING

SECTION 12-37-150 SO AS TO PROVIDE THAT IF AS A RESULT OF THE BOUNDARY CLARIFICATION AN INDIVIDUAL IS REQUIRED TO REGISTER HIS PERSONAL MOTOR VEHICLE IN SOUTH CAROLINA AND IF THE PROPERTY TAXES ON THAT MOTOR VEHICLE WOULD HAVE BEEN LESS IN NORTH CAROLINA, THE INDIVIDUAL MAY RECEIVE A TAX REBATE FROM THE SOUTH CAROLINA COUNTY FOR THE DIFFERENCE BETWEEN THE TAX THE INDIVIDUAL WAS REQUIRED TO PAY IN SOUTH CAROLINA AND THE INDIVIDUAL WAS REQUIRED TO PAY IN NORTH CAROLINA ON THAT SAME VEHICLE; BY ADDING SECTION 12-37-155 SO AS TO PROVIDE THAT FOR 2017 ONLY, THE LIEN DATE FOR NONBUSINESS PERSONAL PROPERTY, OTHER THAN MOTOR VEHICLES, IS JANUARY 1, 2017, FOR INDIVIDUALS WHOSE STATE OF RESIDENCY CHANGES FROM NORTH CAROLINA TO SOUTH CAROLINA SOLELY AS A RESULT OF THE BOUNDARY CLARIFICATION; BY ADDING SECTION 29-3-800 SO AS TO PROVIDE SPECIFIED PROCEDURES IN REGARD TO THE FORECLOSURE OF MORTGAGES AND OTHER LIENS ENCUMBERING AFFECTED LANDS; BY ADDING SECTION 30-5-270 SO AS TO PROVIDE FOR SPECIAL RECORDING REQUIREMENTS FOR DEEDS, PLATS, MORTGAGES, AND OTHER INSTRUMENTS REGARDING REAL PROPERTY IN THE AFFECTED JURISDICTIONS, AND TO REQUIRE A NOTICE OF THE STATE BOUNDARY CLARIFICATION TO BE PROVIDED BY THE REGISTER OF DEEDS OR CLERKS OF COURT IN CERTAIN CIRCUMSTANCES; BY ADDING SECTION 44-1-315 SO AS TO PROVIDE A COMPLIANCE SCHEDULE FOR ENVIRONMENTAL PERMITTEES IMPACTED BY THE BOUNDARY CLARIFICATION; BY ADDING SECTION 44-6-110 SO AS TO PROVIDE THAT A MEDICAID PROVIDER OUTSIDE OF THE GEOGRAPHICAL BOUNDARY OF SOUTH CAROLINA BUT WITHIN THE SOUTH CAROLINA MEDICAID SERVICE AREA SHALL NOT LOSE STATUS AS A MEDICAID PROVIDER AS A RESULT OF THE CLARIFICATION OF THE SOUTH CAROLINA - NORTH CAROLINA BORDER; BY ADDING CHAPTER 2 TO TITLE 58 SO AS TO PROVIDE FOR THE MANNER IN WHICH UTILITY SERVICES MUST BE PROVIDED IN AREAS AFFECTED BY THE BOUNDARY CLARIFICATION; BY ADDING SECTION

59-63-550 SO AS TO FURTHER PROVIDE FOR SCHOOL ATTENDANCE PROCEDURES AND REQUIREMENTS FOR CHILDREN RESIDING IN SCHOOL DISTRICTS AFFECTED BY THE BOUNDARY CLARIFICATION; AND BY ADDING SECTION 59-112-150 SO AS TO FURTHER PROVIDE FOR IN-STATE TUITION RATES AND THE AWARDING OF OTHER STATE-SUPPORTED SCHOLARSHIPS AND GRANTS TO INDEPENDENT PERSONS AND THEIR DEPENDENTS AFFECTED BY THE BOUNDARY CLARIFICATION.

Be it enacted by the General Assembly of the State of South Carolina:

Part I

Boundary Clarification

Purpose

SECTION 1. The provisions of Section 1-1-10 of the 1976 Code are amended to clarify the original location of the boundary between North and South Carolina along Horry, Dillon, Marlboro, Chesterfield, Lancaster, York, Cherokee, and Spartanburg counties and to provide additional information about the plats describing the location of the boundary between North Carolina and South Carolina along Greenville, Pickens, and Oconee counties so that the northern line will be as described by those plats.

Boundary clarified

SECTION 2. Section 1-1-10 of the 1976 Code, as last amended by Act 264 of 2008, is further amended to read:

"Section 1-1-10. The sovereignty and jurisdiction of this State extends to all places within its bounds, which are declared to be as follows:

The northern line beginning at a point at the low-water mark of the Atlantic Ocean on the eastern shore of Bird Island and then following the line as recorded by a set of 51 signed plats as follows:

Section between Horry County, SC and Brunswick/Columbus counties, NC: 1 plat sheet, signed by Sidney C. Miller 9/29/14 and Gary W. Thompson 2/24/15; Section between Dillon County, SC and Robeson County, NC: 2 plat sheets, signed by Sidney C. Miller and Gary W. Thompson 10/7/13; Section between Marlboro, Chesterfield and

Lancaster counties, SC and Scotland, Richmond, Anson and Union counties, NC: 5 plat sheets, signed by Sidney C. Miller and Gary W. Thompson 10/7/13; Section between Lancaster and York counties, SC and Union and Mecklenberg counties, NC: 3 plat sheets, signed by Sidney C. Miller and Gary W. Thompson 10/7/13; Section of Lake Wylie: 1 plat sheet, signed by Sidney C. Miller and Gary W. Thompson 3/23/12; Section between York, Cherokee and Spartanburg counties, SC and Gaston, Cleveland, Rutherford and Polk counties, NC: 4 plat sheets, signed by Sidney C. Miller and Gary W. Thompson 10/7/13 (Section between Greenville and Pickens counties, SC and Polk, Henderson and Transylvania counties, NC: 34 plat sheets, signed by Sidney C. Miller and Gary W. Thompson dated 12/20/2005; Section between Pickens and Oconee counties, SC and Transylvania and Jackson counties, NC: 1 plat sheet, prepared by Concord Engineering & Surveying, Inc. dated May 2005 to the most westward point on those plats marked by the '+' in the inscription 'LAT 35, AD 1813, NC + SC' chiseled on Commissioners' Rock on the east bank of the Chattooga River; thence following a geodetic line with a geodetic azimuth of 270 degrees to the centerline of the Chattooga River. (Plats on file with the South Carolina Department of Archives and History, the South Carolina Geodetic Survey and filed for record as applicable in the respective county offices where deeds are recorded in Horry, Dillon, Marlboro, Chesterfield, Lancaster, York, Cherokee, Spartanburg, Greenville, Pickens and Oconee counties).

The lateral seaward boundary between North Carolina and South Carolina from the low-water mark of the Atlantic Ocean shall be and is hereby designated as a continuation of the North Carolina-South Carolina boundary line as described by monuments located at latitude 33° 51′ 50.7214″ N., longitude 78° 33′ 22.9448″ W., at latitude 33° 51′ 36.4626″ N., longitude 78° 33′ 06.1937″ W., and at latitude 33° 51′ 07.8792″ N., longitude 78° 32′ 32.6210″ W., (coordinates based on North American Datum 1927), in a straight line projection of said line to the seaward limits of the states' territorial jurisdiction, such line to be extended on the same bearing insofar as a need for further delimitation may arise.

From the state of Georgia, this State is divided by the Savannah River, at the point where the northern edge of the navigable channel of the Savannah River intersects the seaward limit of the state's territorial jurisdiction; thence generally along the northern edge of the navigable channel up the Savannah River; thence along the northern edge of the sediment basin to the Tidegate; thence to the confluence of the Tugaloo and Seneca Rivers; thence up the Tugaloo River to the confluence of the Tallulah and the Chattooga Rivers; thence up the Chattooga River to the

35th parallel of north latitude, which is the boundary of North Carolina, the line being midway between the banks of said respective rivers when the water is at ordinary stage, except in the lower reaches of the Savannah River, as hereinafter described. And when the rivers are broken by islands of natural formation which, under the Treaty of Beaufort, are reserved to the state of Georgia, the line is midway between the island banks and the South Carolina banks when the water is at ordinary stage, except in the lower reaches of the Savannah River, as hereinafter described.

The boundary between Georgia and South Carolina along the lower reaches of the Savannah River, and the lateral seaward boundary, is more particularly described as follows and depicted in 'Georgia--South Carolina Boundary Project, Lower Savannah River Segment, Portfolio of Maps' prepared by the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, National Geodetic Survey, Remote Sensing Division--2001 (copies on file at the South Carolina Department of Archives and History and the South Carolina Geodetic Survey):

Beginning at a point where the thread of the northernmost branch of the Savannah River equidistant between its banks intersects latitude 32° 07′ 00″ N., (North American Datum 1983-86), located in the Savannah River, and proceeding in a southeasterly direction down the thread of the Savannah River equidistant between the banks of the Savannah River on Hutchinson Island and on the mainland of South Carolina including the small downstream island southeast of the aforesaid point, at ordinary stage, until reaching the vicinity of Pennyworth Island;

Proceeding thence easterly down the thread of the northernmost channel of the Savannah River known as the Back River as it flows north of Pennyworth Island, making the transition to the said northernmost channel using the equidistant method between Pennyworth Island, the Georgia bank on Hutchinson Island, and the South Carolina mainland bank, thence to the thread of the said northernmost channel equidistant from the South Carolina mainland bank and Pennyworth Island at ordinary stage, around Pennyworth Island;

Proceeding thence southeasterly to the thread of the northern channel of the Savannah River equidistant from the Georgia bank on Hutchinson Island and the South Carolina mainland bank, making the transition utilizing the equidistant method between Pennyworth Island, the Georgia bank on Hutchinson Island, and the South Carolina mainland bank;

Proceeding thence southeasterly down the thread of the Savannah River equidistant from the Hutchinson Island and South Carolina

mainland banks of the river at ordinary stage, through the tide gates, until reaching the northwestern (farthest upstream) boundary of the 'Back River Sediment Basin', as defined in the 'Annual Survey-1992, Savannah Harbor, Georgia, U. S. Coastal Highway, No. 17 to the Sea', U. S. Army Corps of Engineers, Savannah District as amended by the Examination Survey-1992 charts for the Savannah Harbor Deepening Project, Drawings No. DSH 1 12/107, (hereinafter the 'Channel Chart');

Proceeding thence along the said northwestern boundary to its intersection with the northern boundary of the Back River Sediment Basin; thence southeasterly until said northern boundary intersects the northern boundary of the main navigational channel as depicted on the Channel Chart at the point designated as SR-34 (latitude 32° 05′ 01.440″ N., longitude 081° 02′ 17.252″ W., North American Datum (NAD 1983-86);

Proceeding thence toward the mouth of the Savannah River along the northern boundary of the main navigational channel at the new channel limit as depicted on the Channel Chart, via Oglethorpe Range through point SR-33 (latitude 32° 05′ 17.168″ N., longitude 081° 01′ 34.665″ W., NAD 1983-86), Fort Jackson Range through point SR-32 (latitude 32° 05′ 30.133″ N., longitude 081° 01′ 17.750″ W., NAD 1983-86), the Bight Channel through points SR-31 (latitude 32° 05′ 55.631″ N., longitude 081° 01′ 02.480″ W., NAD 1983-86), SR-30 (latitude 32° 06′ 06.272″ N., longitude 081° 00′ 44.802″ W., NAD 1983-86), SR-29 (latitude 32° 06′ 09.053″ N., longitude 081° 00′ 31.887″ W., NAD 1983-86), SR-28 (latitude 32° 06′ 08.521″ N., longitude 081° 00′ 15.498″ W., NAD 1983-86), and SR-27 (latitude 32° 06′ 01.565″ N., longitude 080° 59′ 58.406″ W., NAD 1983-86), Upper Flats Range through points SR-26 (latitude 32° 05′ 41.698″ N., longitude 080° 59′ 31.968″ W., NAD 1983-86) and SR-25 (latitude 32° 05′ 02.819″ N., longitude 080° 59′ 12.644″ W., NAD 1983-86), Lower Flats Range through points SR-24 (latitude 32° 04′ 46.375″ N., longitude 080° 59′ 00.631″ W., NAD 1983-86), SR-23 (latitude 32° 04′ 40.209″ N., longitude 080° 58′ 49.947″ W., NAD 1983-86), SR-22 (latitude 32° 04′ 28.679″ N., longitude 080° 58′ 18.895″ W., NAD 1983-86), and SR-21 (latitude 32° 04′ 22.274″ N., longitude 080° 57′ 34.449″ W., NAD 1983-86), Long Island Crossing Range through points SR-20 (latitude 32° 04′ 13.042″ N., longitude 080° 57′ 14.511″ W., NAD 1983-86), and SR-19 (latitude 32° 02′ 30.984″ N., longitude 080° 55′ 30.308″ W., NAD 1983-86) and New Channel Range following the northern boundary of the Rehandling Basin and the northern boundary of the Oyster Bed Island Turning Basin back to the northern edge of the main navigational channel, thence through points SR-17 (latitude 32° 02′ 07.661″ N., longitude 080° 53′

39.379″ W., NAD 1983-86) and SR-16 (latitude 32° 02′ 07.533″ N., longitude 080° 53′ 31.663″ W., NAD 1983-86), to a point at latitude 32° 02′ 08″ N., longitude 080° 53′ 25″ W., NAD 1983-86 (now marked by Navigational Buoy '24') near the eastern end of Oyster Bed Island;

Proceeding thence from a point at latitude 32° 02′ 08″ N., longitude 080° 53′ 25″ W., NAD 1983-86 (now marked by Navigational Buoy R '24') on a true azimuth of 0° 0′ 0″ (true north) to the mean low low-water line of Oyster Bed Island; thence easterly along the said mean low low-water line of Oyster Bed Island to the point at which the said mean low low-water line of Oyster Bed Island intersects the Oyster Bed Island Training Wall;

Proceeding thence easterly along the mean low low-water line of the southern edge of the Oyster Bed Island Training Wall to its eastern end; thence continuing the same straight line to its intersection with the Jones Island Range line;

Proceeding thence southeasterly along the Jones Island Range line until reaching the northern boundary of the main navigational channel as depicted on the Channel Chart;

Proceeding thence southeasterly along the northern boundary of the main navigational channel as depicted on the Channel Chart, via Jones Island Range and Bloody Point Range, to a point at latitude 31° 59′ 16.700″ N., longitude 080° 46′ 02.500″ W., NAD 1983-86 (now marked by Navigational Buoy '6'); and finally,

Proceeding from a point at latitude 31° 59′ 16.700″ N., longitude 080° 46′ 02.500″ W., NAD 1983-86 (now marked by Navigational Buoy '6') extending southeasterly to the federal-state boundary on a true azimuth of 104 degrees (bearing of S76°E), which describes the line being at right angles to the baseline from the southernmost point of Hilton Head Island and the northernmost point of Tybee Island, drawn by the Baseline Committee in 1970.

Should the need for further delimitation arise, the boundary shall further extend southeasterly on above-described true azimuth of 104 degrees (bearing of S76°E).

Provided, further, that nothing in this section in any way shall be considered to govern or affect in any way the division between the states of the remaining assimilative capacity that is, the capacity to receive wastewater and other discharges without violating water quality standards, of the portion of the Savannah River described in this section."

Part II

Revenue and Taxation

Intent

SECTION 3. This part defines the legislative intent and purpose of the amendments and additions in this act to Title 12 of the 1976 Code.

The General Assembly recognizes that the state of a business's location, or portion of it, may change as a result of the boundary clarification and this change can have tax and licensing consequences.

It is the intent of the General Assembly that when, as a result of the boundary clarification, an individual's residence or a business location is determined to be located in South Carolina rather than North Carolina where the residence or business had previously been taxed, the individual or business should not be liable for back taxes to South Carolina solely as a result of the clarification. The intention of this act is only to address the effects on persons whose residences and businesses who are determined to be located in South Carolina rather than North Carolina as a result of the boundary clarification. This act does not apply to persons whose residences and businesses are not affected by the boundary clarification.

New jobs or investments not created

SECTION 4. Chapter 2, Title 12 of the 1976 Code is amended by adding:

"Section 12-2-115. For purposes of all South Carolina tax credits or other tax incentives, 'new jobs' are not created in South Carolina by employees whose work location is changed from North Carolina to South Carolina as a result of the boundary clarification, as contained in the amendments in Section 1-1-10, effective January 1, 2017, nor is there any new investment in South Carolina as a result of property that changes location from North Carolina to South Carolina as a result of the boundary clarification."

Tax liability or refunds

SECTION 5. Chapter 2, Title 12 of the 1976 Code is amended by adding:

"Section 12-2-120. (A) Individuals whose residency or taxpayers whose property or business location is considered to have changed from North Carolina to South Carolina solely as a result of the boundary clarification, as contained in the amendments to Section 1-1-10, effective January 1, 2017, is not liable for any taxes for periods prior to the boundary clarification date based solely on a claim that the individual was a resident or the taxpayer's property or business location was located in South Carolina in the prior year.

(B) Individuals whose residency or taxpayers whose property or business location is considered to have changed from South Carolina to North Carolina solely as a result of the boundary clarification are not entitled to a refund of any state, county, or local taxes or license fees for periods prior to the boundary clarification date based solely on a claim that the individual was not a resident of South Carolina or the taxpayer's property or business location was not in South Carolina in prior years.

(C) Taxpayers who have sold products or services subject to South Carolina taxes to persons whose residence or location is considered to have changed from South Carolina to North Carolina solely as a result of the boundary clarification are not allowed a refund for any taxes paid prior to the boundary clarification as a result of these sales."

Authority to compromise taxes

SECTION 6. Chapter 2, Title 12 of the 1976 Code is amended by adding:

"Section 12-2-130. In the year containing the date of the boundary clarification, as contained in the amendments to Section 1-1-10, effective January 1, 2017, the Department of Revenue has the authority to compromise taxes that result in taxation in both South Carolina and North Carolina solely because of the boundary clarification."

Residency of individuals and businesses

SECTION 7. Article 41, Chapter 6, Title 12 of the 1976 Code is amended by adding:

"Section 12-6-5600. For South Carolina income tax purposes:

(A) An individual whose state of residency changes as a result of the boundary clarification from North Carolina to South Carolina or from South Carolina to North Carolina, as contained in the amendments to

Section 1-1-10, effective January 1, 2017, must be treated as though the individual moved to or from South Carolina on January 1, 2017.

(B) For businesses whose property location changes from North Carolina to South Carolina or from South Carolina to North Carolina as a result of boundary clarification, for income tax purposes, the property is treated as though the property moved into or out of South Carolina on January 1, 2017."

Tax on cigarettes and tobacco products

SECTION 8. Article 5, Chapter 21, Title 12 of the 1976 Code is amended by adding:

"Section 12-21-820. (A) If the location of a retailer that sells cigarettes and tobacco products changes from South Carolina to North Carolina as a result of the boundary clarification, as contained in the amendments to Section 1-1-10, effective January 1, 2017, and the retailer has South Carolina tax-paid cigarettes and tobacco products in inventory on the date of the boundary change, then the retailer is entitled to a refund of South Carolina cigarette and tobacco taxes paid on those cigarette and tobacco products if North Carolina imposes a tax on those cigarette and tobacco products. This refund may be issued to the retailer notwithstanding that the South Carolina tax was paid by the wholesaler from whom the retailer purchased the cigarettes and tobacco products. The retailer must provide proof that the North Carolina cigarette taxes were paid on the same cigarettes and tobacco that was previously taxed by South Carolina.

(B) If North Carolina does not impose a tax on the cigarette and tobacco products in inventory as a result of the boundary clarification, South Carolina shall refund the South Carolina cigarette and tobacco taxes to the extent the South Carolina tax exceeds the North Carolina tax. The refund amount is calculated based on the inventory information required by North Carolina as a result of the boundary clarification.

(C) Any wholesaler who sold South Carolina tax-paid cigarettes to a retail business is not entitled to a refund of these taxes because of a change in the retailer's location from South Carolina to North Carolina as a result of the boundary clarification."

Recording and filing fees

SECTION 9. Chapter 24, Title 12 of the 1976 Code is amended by adding:

"Section 12-24-160. If as a result of the boundary clarification, as contained in the amendments to Section 1-1-10, effective January 1, 2017, property is considered to have changed locations from North Carolina to South Carolina and if solely as a result of this change a deed is filed in South Carolina, no deed recording fees are due on this filing and no county filing fees may be charged."

Motor fuel taxes or user fees

SECTION 10. Article 3, Chapter 28, Title 12 of the 1976 Code is amended by adding:

"Section 12-28-350. A retailer that sells motor fuel whose business location changes from South Carolina to North Carolina as a result of the boundary clarification, as contained in the amendments to Section 1-1-10, effective January 1, 2017, is allowed a refund of South Carolina motor fuel taxes or user fees if North Carolina requires the retailer to pay the North Carolina motor fuel taxes or user fees on that same fuel."

Sales taxes or admission taxes

SECTION 11. Article 25, Chapter 36, Title 12 of the 1976 Code is amended by adding:

"Section 12-36-2695. Any business that is required to collect or pay sales and use taxes or admissions taxes whose business location changes from North Carolina to South Carolina as a result of the boundary clarification, as contained in the amendments to Section 1-1-10, effective January 1, 2017, is required to obtain a South Carolina retail license or admissions tax license for that location before January 1, 2017, and begin collecting and paying South Carolina sales and use taxes or admissions taxes on January 1, 2017. The retailer must apply for a retail or admissions tax license prior to January 1, 2017, and indicate on the license application the date the taxpayer anticipates beginning to collect sales, use, or admissions taxes is January 1, 2017."

Real property taxation and violation

SECTION 12. Article 1, Chapter 37, Title 12 of the 1976 Code is amended by adding:

"Section 12-37-140. (A) On January 1, 2017, any real property which was not on the South Carolina real property tax rolls solely because prior to the boundary clarification, as contained in the amendments in Section 1-1-10, effective January 1, 2017, it was considered located in North Carolina, must be placed on the South Carolina property tax rolls. The real property must be valued based on the latest reassessment date for similar types of property in that location. The fifteen percent cap in Section 12-37-3140 is not applicable to this property in the year that the property is first placed on the tax rolls.

(B) For 2017 only, real property and personal property with a statutory lien date of December thirty-first whose location is considered to have changed from North Carolina to South Carolina as a result of boundary clarification shall have a lien date of January 1, 2017, rather than December thirty-first of the preceding year. For all subsequent property tax years the lien date shall return to December thirty-first of the preceding year.

(C) The lien date for property taxes is the date on which the property tax becomes a fixed liability of the taxpayer.

(D) Any agricultural-use property whose location is considered to have changed from South Carolina to North Carolina as a result of the boundary clarification is not subject to rollback of taxes under Section 12-43-220(d) because of the deemed location change.

(E) Taxpayers affected by the boundary clarification must apply for all property tax exemptions, special valuations, and special assessment ratios in accordance with and by the dates specified in South Carolina law.

(F) If as a result of the differing lien dates for North Carolina and South Carolina, property is subject to property taxes in both states, the taxpayer is liable for property taxes only in the state where the property is deemed located after the boundary clarification."

Motor vehicle registration

SECTION 13. Article 1, Chapter 37, Title 12 of the 1976 Code is amended by adding:

"Section 12-37-145. (A) An individual whose state of residency changes from North Carolina to South Carolina solely as a result of the boundary clarification, as contained in the amendments in Section 1-1-10, effective January 1, 2017, must register his motor vehicle as a new resident of South Carolina in accordance with Section 56-3-210, and pay property taxes in accordance with Chapter 37, Article 21, Title

12. For purposes of this section, an individual's residency must be determined on the date of the boundary clarification, which is January 1, 2017.

(B) A business with motor vehicles whose business location changes from North Carolina to South Carolina solely as a result of the boundary clarification is considered to have moved into South Carolina on January 1, 2017, and must register its motor vehicles in accordance with South Carolina law for moving business property into South Carolina based on the date of the boundary clarification, which is January 1, 2017, and personal property taxes for motor vehicles must be paid in accordance with Article 21, Chapter 37, Title 12.

(C) Refunds for motor vehicle personal property taxes for persons whose residency or business location is changed from South Carolina to North Carolina as a result of the boundary clarification, must be provided, if applicable, on a prorated basis in accordance with Section 12-37-2620."

Tax rebate

SECTION 14. Article 1, Chapter 37, Title 12 of the 1976 Code is amended by adding:

"Section 12-37-150. If as a result of the boundary clarification, as contained in the amendments in Section 1-1-10, effective January 1, 2017, an individual is required to register his personal motor vehicle in South Carolina and, if the property taxes on that motor vehicle would have been less in North Carolina, the individual may receive a tax rebate from the applicable South Carolina county for the difference between the tax the individual was required to pay in South Carolina and the individual was required to pay in North Carolina on that same vehicle based on the latest North Carolina assessment for the motor vehicle. In order to receive this rebate the individual must provide the county with a copy of the last North Carolina county property tax assessment for the same motor vehicle. The individual is entitled to this rebate for two years, including any partial year."

Lien date

SECTION 15. Article 1, Chapter 37, Title 12 of the 1976 Code is amended by adding:

"Section 12-37-155. For 2017 only, the lien date for nonbusiness personal property, other than motor vehicles, is January 1, 2017, for individuals whose state of residency changes from North Carolina to South Carolina solely as a result of the boundary clarification, as contained in the amendments to Section 1-1-10, effective January 1, 2017. For all subsequent years, the lien date shall return to December thirty-first of the preceding tax year."

Part III

Foreclosure

Foreclosure of liens

SECTION 16. Article 7, Chapter 3, Title 29 of the 1976 Code is amended by adding:

"Section 29-3-800. (A) For the counties of this State bordering North Carolina, Oconee, Pickens, Greenville, Spartanburg, Cherokee, York, Lancaster, Chesterfield, Marlboro, Dillon, and Horry, hereinafter referred to as the 'affected counties', the following provisions apply to the foreclosure of liens encumbering affected lands, as further defined and set forth in Section 30-5-270.

(B)(1) In the event a real estate foreclosure proceeding is instituted pursuant to Title 29, Chapter 3 to recover the payment of money secured by mortgages and other liens purporting to encumber property being identified as affected lands, the purported mortgagee, through its attorney of record, shall file with the court a copy of the recorded Notice of Boundary Clarification, along with the attorney's certification that title to the subject real property has been searched in the affected counties and the affected jurisdiction, as further defined and set forth in Section 30-5-270(B)(2) and (3) respectively, and that all parties having an interest in the subject real property pursuant to the muniments of title, as further defined and set forth in Section 30-5-270(B)(9), have been served with notice of the proceeding pursuant to the applicable procedure below. All proceedings in the foreclosure action must be stayed until the attorney's certification is filed with the court.

(2) In all mortgage foreclosure actions pending on the effective date of the boundary clarification legislation, as further defined and set forth in Section 30-5-270(B)(6), before any merits hearing in the case or if an order of foreclosure has been entered before any foreclosure sale, the mortgagee shall, through its attorney of record, serve a copy of the

Notice of Boundary Clarification and filed pleadings upon any party identified on the Notice of Boundary Clarification or known to have an interest in the subject affected lands, not already a party to the action, by mailing the notice via certified mail or overnight delivery to the property addresses of the subject affected lands and to all known addresses of the parties; provided, that the notice also shall state that the party has thirty days from the date of mailing of the Notice of Boundary Clarification to file and serve an answer or other response to the mortgagee's summons and complaint.

(3) In all mortgage foreclosure actions filed after the effective date of the boundary clarification legislation, the mortgagee, through its attorney of record, shall serve along with the summons and complaint a copy of the recorded Notice of Boundary Clarification upon the mortgagor and all parties identified on the Notice of Boundary Clarification or known to have an interest in the subject affected lands.

(C) If within thirty days after having been served with Notice of Boundary Clarification as set forth in subsection (B)(1), any party served has failed, refused, or voluntarily elected not to file a response in the foreclosure proceeding, the mortgagee, through its attorney, shall certify that fact to the court, and the foreclosure action may proceed with the parties being bound as any other party in the action by the judgment and order of the court having jurisdiction over the foreclosure action; provided, however, that all parties shall receive actual notice of any hearings and sales in the foreclosure.

(D) The court having jurisdiction over the foreclosure action shall hear and determine any dispute concerning any party's right, title, or interest in the subject affected lands."

Part IV

Recording

Real property recordings and filings

SECTION 17. Chapter 5, Title 30 of the 1976 Code is amended by adding:

"Section 30-5-270. (A) For the following counties of this State bordering North Carolina, Oconee, Pickens, Greenville, Spartanburg, Cherokee, York, Lancaster, Chesterfield, Marlboro, Dillon, and Horry, hereinafter referred to as the 'affected counties', the following provisions apply to a deed, plat, mortgage, security instrument, right of

way, utility right of way, or other instrument affecting real property in the affected jurisdiction previously believed to be located in whole or in part in North Carolina and which is determined to be located in whole or in part in South Carolina as a result of the boundary clarification legislation.

(B) Unless specifically provided otherwise or the context otherwise requires, and in this chapter:

(1) 'Abutter' means an owner whose property abuts or adjoins the property of another person with no intervening land in between owned by a third party.

(2) 'Affected counties' means any South Carolina county that abuts or adjoins the boundary with an affected jurisdiction.

(3) 'Affected jurisdiction' means a sovereign state whose common boundary with South Carolina has been clarified resulting in a change in the perceived location of the boundary to be that of the actual boundary.

(4) 'Affected lands' means real property of an owner whose perceived location has been clarified pursuant to the boundary clarification legislation.

(5) 'Boundary', as used in this chapter, has the meaning as established in Section 1-1-10 and in accordance with the constitution of this State.

(6) 'Boundary clarification legislation' means the amendments to Section 1-1-10, effective January 1, 2017.

(7) 'Clarification' means the official recognition of the original boundary as confirmed and agreed between an affected jurisdiction and the State of South Carolina pursuant to the boundary clarification legislation.

(8) 'Clarified line' means the officially recognized boundary between an affected jurisdiction and the State of South Carolina pursuant to the boundary clarification legislation.

(9) 'Muniments of title', where the term is used in this chapter, constitutes documents of record setting forth a legal or equitable real property interest or incorporeal hereditament in affected lands of an owner in the respective affected counties or an affected jurisdiction, or both.

(10) 'Notice of State Boundary Clarification', where the term is used in this chapter, constitutes the statutory form of notice to be recorded in South Carolina in the particular affected counties where affected lands now or previously lie.

(11) 'Owner' as used in this chapter means any person or entity owning of record a legal or equitable real property interest or incorporeal hereditament in affected lands as an abutter.

(12) 'Preclarification title' means muniments of title of record in an affected jurisdiction or the affected counties, or both, of an owner prior to the effective date of the boundary clarification legislation.

(C) Notice of State Boundary Clarification:

(1) On the effective date of this section, with respect to preclarification title as defined in this chapter where the instruments disclosing the muniments of title for that land were recorded in the public land records of an affected jurisdiction or the affected counties, or both, prior to the effective date of the clarification, the registers of deeds in the affected counties or the clerks of court in those counties not having registers where the affected lands are now or previously were perceived to be located, shall file the Notice of State Boundary Clarification, as specified in this section, in the record for all affected lands. The purpose of this notice is to alert anyone checking the title to real property that the real property constitutes affected lands that may be affected by the boundary clarification legislation and muniments of title for this land also may be recorded in the public land records of an affected jurisdiction. The notice must be properly indexed, including the correct order of indexing, in the same manner as any instrument conveying or encumbering real property.

(2) On or before the effective date of this section, the registers of deeds or clerks referenced above must inform attorneys and others using their offices of the requirements of this section. The information may be provided by clerks and registers by those means that they would normally utilize to provide general notices to users of their services such as postings on their web pages. This information shall include a copy of or a link to the notice of state boundary clarification form.

(3) The notice form must be substantially in the following format:

'STATE OF SOUTH CAROLINA)
) Notice of South Carolina - North Carolina
COUNTY OF) State Boundary Clarification

The undersigned Register of Deeds/Clerk of Court of the County and State set forth above, does hereby certify, under the penalty of perjury, the following:

(1) The following described tracts or parcels constitute affected lands as defined in Section 30-5-270(B)(4), which may be affected by the boundary clarification legislation effective January 1, 2017.
[Legal description, derivation (if available) and TMS#]

(2) The parties set forth below are an Owner, as defined in Section 30-5-270(B)(11).
[List the name and address of all owners of record]

(3) The muniments of title, as defined in Section 30-5-270(B)(9), providing the basis for this claim of ownership, recorded in the public records of the aforesaid County and State, are as follows:
[List the specific instrument name and recording information]

(4) Muniments of title of those claiming an interest in this land also may be recorded in the public land records of an affected jurisdiction, as defined in Section 30-5-270(B)(3).
Date:

Signature of Register of Deeds / Clerk of Court
Printed Name: _____'

(D) Policies of Title and Casualty Insurance issued prior to the effective date of the boundary clarification legislation are enforceable according to their terms and shall remain in effect regardless of whether the insured property has been determined to be in another state.

(E) Clarification of the boundary does not alter, change, or affect in any manner the sovereignty rights of federally recognized Native American tribes over tribal lands on either side of a confirmed boundary line. Tribal sovereignty rights continue to be established and defined by controlling state and federal law."

Part V

Environmental Permittees

Environmental permits and permittees

SECTION 18. Chapter 1, Title 44 of the 1976 Code is amended by adding:

"Section 44-1-315. (A) For purposes of the section, 'impacted location' means any facility issued or otherwise subject to a permit, license, or approval from the North Carolina Department of Environment and Natural Resources that has now been determined to be located within the jurisdiction of the South Carolina Department of Health and Environmental Control as a result of the amendments to Section 1-1-10, effective January 1, 2017.

(B) Notwithstanding any other provision of law, the South Carolina Department of Health and Environmental Control, in issuing any

environmental permit, license, or approval to an impacted location shall provide a schedule of compliance that allows the permittee a reasonable period of time to be no greater than five years to come into compliance with any South Carolina environmental rule, regulation, or standard established by the department or by law that has no corresponding rule, regulation, or standard under North Carolina law or regulation, or is more stringent than the corresponding rule, regulation, or standard established under North Carolina law or regulation. The department may include increments of progress applicable in each year of the schedule established under this subsection, and may shorten the period of compliance as necessary to prevent an imminent threat to the public health and environment. The department may extend a permittee's compliance schedule under this section beyond five years upon written application by the permittee only if the department determines that circumstances reasonably require such an extension, and the extension of time would pose no threat to public health or the environment."

Part VI

Medicaid Providers

Medicaid providers

SECTION 19. Article 1, Chapter 6, Title 44 of the 1976 Code is amended by adding:

"Section 44-6-110. A Medicaid provider, outside of the geographical boundary of South Carolina but within the South Carolina Medicaid Service Area, as defined by R. 126-300(B) of the Code of State Regulations, prior to the effective date of the amendments to Section 1-1-10, which are effective January 1, 2017, shall not lose status as a Medicaid provider as a result of the clarification of the South Carolina - North Carolina border."

Part VII

Utilities

Utility service

SECTION 20. Title 58 of the 1976 Code is amended by adding:

"CHAPTER 2

Utility Service Where State Boundaries Clarified

Section 58-2-100. Upon the effective date of the amendments to Section 1-1-10, which are effective January 1, 2017, the clarified North Carolina - South Carolina boundary property located in whole or in part in North Carolina immediately prior to that date and receiving utility service from a North Carolina utility as defined under North Carolina law, may continue to receive utility service from that utility or its successors although the property is determined to be located in whole or in part in South Carolina as a result of the boundary clarification. The owners of that property have the option of requesting utility service by a similar South Carolina utility if the property is located within that utility's service area, regardless of whether the property is inside or outside a municipality. For purposes of this section only, the term 'utility' shall encompass the same utilities that are covered by one or more of the various definitions for utilities and utility providers used elsewhere in the general law of this State including, but not limited to, systems owned or operated by or on behalf of a municipality or county; municipal systems as authorized in Chapter 31, Title 5; 'public utility' as defined in Section 58-3-5; 'telephone cooperative' as defined in Section 33-46-20; 'cooperative' as used in Chapter 36, Title 33; 'corporations not for profit' as used in Chapter 49, Title 33; 'special purpose' and 'public service districts' as authorized in Chapter 11, Title 6; 'rural community water districts' as authorized in Chapter 13, Title 6; 'joint municipal water systems' as authorized in Chapter 25, Title 6; 'joint agency' as authorized in Chapter 24, Title 6; 'natural gas authorities' created by act of the General Assembly, or are otherwise similar to utilities defined under North Carolina law."

Part VIII

School Attendance and Tuition

School attendance

SECTION 21. Article 5, Chapter 63, Title 59 of the 1976 Code is amended by adding:

"Section 59-63-550. (A) Upon the effective date of the amendments to Section 1-1-10 which are effective January 1, 2017, enacting the

clarified North Carolina - South Carolina boundary, persons residing on property which is determined to be located in North Carolina as a result of the boundary clarification, may enroll their children residing with them in the South Carolina district in which that property was previously believed to be located or in the statewide public charter school district, without charge, as long as the family maintains residence on that same property. For the purpose of this section regarding the boundary clarification, the word 'children' includes those children who are residing with their legal guardians whose property is determined to be located in North Carolina as a result of the boundary clarification.

(B) This section only applies to those persons residing on the property as of January 1, 2017, and their children who reside with them. Once those persons move from the property or no longer have children at home who are attending or will attend schools in the South Carolina K-12 public education system, then this provision no longer applies to that property. A district may draw down South Carolina state and federal funding for students enrolled under this section.

(C) This section does not require a former South Carolina resident to continue enrollment of their children in school in South Carolina."

School tuition

SECTION 22. Chapter 112, Title 59 of the 1976 Code is amended by adding:

"Section 59-112-150. (A) Notwithstanding any other provision of law, independent persons and their dependents formerly domiciled in South Carolina counties who are residing in North Carolina counties as a result of the clarified North Carolina - South Carolina boundary as contained in the amendments in Section 1-1-10, effective January 1, 2017, may be considered eligible for instate tuition rates for a period of up to ten years from January 1, 2017. To be eligible for instate tuition rates, these persons must have been domiciled and reside on property in South Carolina in accordance with this chapter immediately prior to January 1, 2017, and must maintain residence and domicile on that same property within North Carolina.

(B) Notwithstanding any other provision of law, independent persons and their dependents previously domiciled on property in North Carolina which is located in South Carolina as a result of the North Carolina - South Carolina boundary clarification, for a period of two years from January 1, 2017, are eligible for instate tuition rates without the requirement of residency and domicile for twelve months in this State

provided these independent persons have evidenced the intent to establish domicile in South Carolina in accordance with this chapter. To be eligible under this section, these persons must reside on the same property that was in North Carolina immediately prior to January 1, 2017. To maintain eligibility for instate tuition rates longer than the two years permitted under this section, the independent persons and their dependents must satisfy the requirements of Section 59-112-20.

(C) The provisions established under subsections (A) and (B) are not transferable to persons other than those independent persons and their dependents falling within the scope of those provisions.

(D) Should the domicile and residence of independent persons and their dependents change from the property affected by the boundary clarification, maintenance of eligibility for instate tuition rates must be determined as provided in Section 59-112-20.

(E) Persons eligible for instate tuition rates pursuant to this section may be eligible for state-supported scholarships and grants provided all other eligibility requirements are met."

Part IX

Severability and Time Effective

Severability

SECTION 23. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this , and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 24. This act takes effect January 1, 2017.

Ratified the 6th day of June, 2016.

Approved the 10th day of June, 2016.

No. 271

(R295, S1015)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16-13-165 SO AS TO MAKE UNLAWFUL CERTAIN ACTIONS INVOLVING COUNTERFEIT OR NONFUNCTIONAL AIRBAGS.

Be it enacted by the General Assembly of the State of South Carolina:

Unlawful actions involving counterfeit or nonfunctional airbags

SECTION 1. Article 1, Chapter 13, Title 16 of the 1976 Code is amended by adding:

"Section 16-13-165. (A) It is unlawful for a person to:

(1) knowingly and intentionally import, manufacture, sell, offer for sale, install, or reinstall in a motor vehicle, a counterfeit airbag, a nonfunctional airbag, or an object that the person knows was not designed to comply with Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208), as amended, for the make, model, and year of the motor vehicle;

(2) knowingly and intentionally sell, offer for sale, install, or reinstall in any motor vehicle a device that causes a motor vehicle's diagnostic system to inaccurately indicate that the motor vehicle is equipped with a properly functioning airbag;

(3) knowingly and intentionally sell, lease, trade, or transfer a motor vehicle if the person knows that a counterfeit airbag, a nonfunctional airbag, or an object that the person knows was not designed to comply with Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208), as amended, for the make, model, and year of the motor vehicle has been installed as part of the motor vehicle's inflatable restraint system.

(B)(1) A person who violates the provisions of this section by knowingly and intentionally installing or reinstalling an airbag that is

counterfeit, nonfunctional, does not comply with the federal regulations described in subsection (A), or installs or reinstalls a device that causes a motor vehicle's diagnostic system to inaccurately indicate that the motor vehicle is equipped with a properly functioning airbag is:

(a) for a first offense, guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned for not more than one year, or both;

(b) for a second or subsequent offense, guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

(2) A person who violates the provisions of this section by knowingly and intentionally importing, manufacturing, selling, or offering to sell, an airbag that is counterfeit, nonfunctional, does not comply with the federal regulations described in subsection (A), or a device that causes a motor vehicle's diagnostic system to inaccurately indicate that the motor vehicle is equipped with a properly functioning airbag is:

(a) for a first offense, guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both;

(b) for a second or subsequent offense, guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than ten years, or both.

(3) A person who violates the provisions of this section by knowingly and intentionally selling, leasing, trading, or transferring a motor vehicle when the person knows that the motor vehicle contains an airbag that is counterfeit, nonfunctional, or does not comply with the federal regulations described in subsection (A), is:

(a) for a first offense, guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both;

(b) for a second or subsequent offense, guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than ten years, or both.

(4) A person whose violation of subsection (B)(2) or (B)(3) results in great bodily harm or death is:

(a) for a first offense, guilty of a felony and, upon conviction, must be fined not more than twenty-five thousand dollars or imprisoned for not more than ten years, or both;

(b) for a second or subsequent offense, guilty of a felony and, upon conviction, must be fined not more than one hundred thousand dollars or imprisoned for not more than twenty years, or both.

(5) Persons other than individuals who violate the provisions of subsection (A) are:

(a) for a first offense, guilty of a felony and, upon conviction, must be fined not more than one million dollars or imprisoned subject to the discretion of the judge, or both;

(b) for a second or subsequent offense, guilty of a felony and, upon conviction, must be fined not more than ten million dollars or imprisoned subject to the discretion of the judge, or both.

(C) For purposes of this section:

(1) 'Airbag' means an inflatable restraint system, or portion of an inflatable restraint system including, but not limited to, the cushion material, cover, sensors, controllers, inflators, and wiring that (a) operates in the event of a crash, and (b) is designed in accordance with federal motor vehicle safety standards for the make, model, and year of the motor vehicle in which it is or will be installed.

(2) 'Counterfeit airbag' means an airbag that bears without authorization a mark identical or substantially similar to the genuine mark of the manufacturer of a motor vehicle or a supplier of parts to the manufacturer of a motor vehicle.

(3) 'Nonfunctional airbag' means a replacement airbag that has been previously deployed or damaged or that has an electrical fault that is detected by the vehicle diagnostic system after the installation procedure is completed. A nonfunctional airbag also includes any object, including a counterfeit or repaired airbag, airbag component, or other component intended to deceive a vehicle owner or operator into believing that it is a functional airbag.

(4) 'Person' or 'persons' means an individual, a group of individuals, whether incorporated or not, a corporation, a company, an association, an organization, a partnership, or any other form of legal entity."

Savings

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or

appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 6th day of June, 2016.

Approved the 9th day of June, 2016.

No. 272

(R297, H3147)

AN ACT TO AMEND SECTION 12-6-1170, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE RETIREMENT INCOME TAX DEDUCTION, SO AS TO REDUCE THE DEDUCTION BY THE DEDUCTION CLAIMED PURSUANT TO SECTION 12-6-1171; BY ADDING SECTION 12-6-1171 SO AS TO PROVIDE AN INCOME TAX DEDUCTION FOR CERTAIN ELIGIBLE TAXPAYERS WITH MILITARY RETIREMENT INCOME THAT IS INCLUDED IN SOUTH CAROLINA TAXABLE INCOME, TO SPECIFY THE AMOUNT OF THE DEDUCTION, AND TO PHASE IN THE DEDUCTION OVER FIVE YEARS; AND TO AMEND SECTION 12-65-30, RELATING TO THE TEXTILE REVITALIZATION TAX CREDIT, SO AS TO SPECIFY UNUSED CREDIT MAY BE CARRIED FORWARD AT THE INDIVIDUAL, PARTNERSHIP, OR LIMITED LIABILITY COMPANY LEVEL, AND MAY BE PASSED THROUGH AS PROVIDED BY LAW.

Be it enacted by the General Assembly of the State of South Carolina:

Military retirement income deduction

SECTION 1. A. Section 12-6-1170 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

"( )(1) Notwithstanding any other provision of this section, if a taxpayer claims a deduction pursuant to Section 12-6-1171, then the deduction allowed by this section must be reduced by the amount the taxpayer deducts pursuant to Section 12-6-1171; however, this subsection does not apply if the deduction claimed pursuant to Section 12-6-1171 is claimed by a surviving spouse.

(2) In the case of married taxpayers who file a joint federal income tax return, the reduction required by item (1) applies to each individual separately, so that the reduction only applies to the amount the individual claiming the deduction pursuant to Section 12-6-1171 otherwise could have claimed pursuant to this section if the individual had not filed a joint return."

B. Article 9, Chapter 6, Title 12 of the 1976 Code is amended by adding:

"Section 12-6-1171. (A)(1) An individual taxpayer who has military retirement income, each year may deduct an amount of his South Carolina earned income from South Carolina taxable income equal to the amount of military retirement income that is included in South Carolina taxable income, not to exceed seventeen thousand five hundred dollars. In the case of married taxpayers who file a joint federal income tax return, the deduction allowed by this section shall be calculated separately as though they had not filed a joint return, so that each individual's deduction is based on the same individual's retirement income and earned income. For purposes of this item, 'South Carolina earned income' has the same meaning as provided in Section 12-6-3330.

(2) Notwithstanding item (1), beginning in the year in which an individual taxpayer reaches age sixty-five, an individual taxpayer who has military retirement income may deduct up to thirty thousand dollars of military retirement income that is included in South Carolina taxable income.

(B) The term 'retirement income', as used in this section, means the total of all otherwise taxable income not subject to a penalty for premature distribution received by the taxpayer or the taxpayer's surviving spouse in a taxable year from a qualified military retirement plan. For purposes of a surviving spouse, 'retirement income' also includes a retirement benefit plan and dependent indemnity compensation related to the deceased spouse's military service.

(C) A surviving spouse receiving military retirement income that is attributable to the deceased spouse shall apply this deduction in the same manner that the deduction applied to the deceased spouse. If the

surviving spouse also has another retirement income, an additional retirement exclusion is allowed.

(D) The department may require the taxpayer to provide information necessary for proper administration of this subsection."

C. Notwithstanding the deduction allowed pursuant to Section 12-6-1171(A)(1), beginning in tax year 2016, the amount of the deduction shall be five thousand nine hundred dollars, and it shall increase by two thousand nine hundred dollars every year, until it is completely phased in in 2020. Notwithstanding the deduction allowed pursuant to Section 12-6-1171(A)(2), beginning in tax year 2016, the amount of the deduction shall be eighteen thousand dollars, and it shall increase by three thousand dollars every year, until it is completely phased in in 2020.

Unused textile revitalization credit

SECTION 2. A. Section 12-65-30(C) of the 1976 Code is amended to read:

"(C) If the taxpayer elects to receive the credit pursuant to subsection (A)(2), the following provisions apply:

(1) The amount of the credit is equal to twenty-five percent of the actual rehabilitation expenses made at the textile mill site.

(2) If the taxpayer has acquired the textile mill site after December 31, 2007, the provisions of this item (2) apply to the textile mill site; provided, however, that transfers between affiliated taxpayers of phases of any textile mill site may not be deemed an acquisition for this purpose. The taxpayer shall file with the department a Notice of Intent to Rehabilitate prior to receiving the building permits for the applicable rehabilitation at the textile mill site or phase thereof. Failure to provide the Notice of Intent to Rehabilitate prior to receiving the building permits for the applicable rehabilitation at the textile mill site or phase thereof results in qualification of only those rehabilitation expenses incurred after the notice is provided. If the actual rehabilitation expenses exceed one hundred twenty-five percent of the estimated expenses set forth in the Notice of Intent to Rehabilitate, the taxpayer qualifies for the credit based on one hundred twenty-five percent of the estimated expenses as opposed to the actual expenses incurred in rehabilitating the textile mill site.

(3) The entire credit is earned in the taxable year in which the applicable phase or portion of the textile mill site is placed in service but

must be taken in equal installments over a five-year period beginning with the tax year in which the applicable phase or portion of the textile mill site is placed in service. Unused credit may be carried forward for the succeeding five years, at the individual, partnership or limited liability company level.

(4) If the taxpayer qualifies for both the credit allowed by this subsection and the credit allowed pursuant to Section 12-6-3535, the taxpayer may claim both credits.

(5) The credit allowed by this subsection is limited in use to fifty percent of each of the following:

(a) the taxpayer's income tax liability for the taxable year if taxpayer claims the credit allowed by this section as a credit against income tax imposed pursuant to Chapter 6 or Chapter 11 of this title;

(b) the taxpayer's corporate license fees for the taxable year if the taxpayer claims the credit allowed by this section as a credit against license fees imposed pursuant to Chapter 20; or

(c) the taxpayer's insurance premium taxes imposed by Chapter 7, Title 38.

(6)(a) If the taxpayer leases the textile mill site, or part of the textile mill site, the taxpayer may transfer any applicable remaining credit associated with the rehabilitation expenses incurred with respect to that part of the site to the lessee of the site. The provisions of item (7) of this subsection apply to a lessee that is an entity taxed as a partnership. If a taxpayer sells the textile mill site, or any phase or portion of the textile mill site, the taxpayer may transfer all, or part of the remaining credit, associated with the rehabilitation expenses incurred with respect to that phase or portion of the site to the purchaser of the applicable portion of the textile mill site.

(b) To the extent that the taxpayer transfers the credit, the taxpayer must notify the department of the transfer in the manner the department prescribes.

(7) To the extent that the taxpayer is a partnership or a limited liability company taxed as a partnership, the credit, including the unused credit carryforward, may be passed through to the partners or members and may be allocated by the taxpayer among any of its partners or members on an annual basis including, without limitation, an allocation of the entire credit or unused credit carryforward to any partner or member who was a member or partner at any time during the year in which the credit is allocated."

B. This SECTION shall apply to all projects placed in service after December 31, 2014 and for all tax years for which final returns have not been filed as of April 30, 2016.

Time effective

SECTION 3. This act takes effect upon approval by the Governor and first applies to tax years beginning after 2015.

Ratified the 6th day of June, 2016.

Approved the 7th day of June, 2016.

No. 273

(R230, S973)

AN ACT TO AMEND SECTION 38-7-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO INSURANCE PREMIUM TAXES, SO AS TO EXTEND THE DATE THAT CERTAIN REVENUE MUST BE SENT TO THE SOUTH CAROLINA FORESTRY COMMISSION, TO REQUIRE ONE PERCENT OF PREMIUM TAXES COLLECTED TO BE TRANSFERRED TO THE AID TO FIRE DISTRICTS ACCOUNT WITHIN THE STATE TREASURY, AND TO REQUIRE ONE QUARTER OF ONE PERCENT OF PREMIUM TAXES TO THE AID TO EMERGENCY MEDICAL SERVICES REGIONAL COUNCILS WITHIN THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL.

Be it enacted by the General Assembly of the State of South Carolina:

Insurance premium taxes and revenue disbursements

SECTION 1. Section 38-7-20 of the 1976 Code is amended to read:

"Section 38-7-20. (A) In addition to all license fees and taxes otherwise provided by law, there is levied upon each insurance company licensed by the director or his designee an insurance premium tax based upon total premiums, other than workers' compensation insurance

premiums, and annuity considerations, written by the company in the State during each calendar year ending on the thirty-first day of December. For life insurance, the insurance premium tax levied herein is equal to three-fourths of one percent of the total premiums written. For all other types of insurance, the insurance premium tax levied in this section is equal to one and one-fourth percent of the total premiums written. In computing total premiums, return premiums on risks and dividends paid or credited to policyholders are excluded.

(B) Effective July 1, 2013, through June 30, 2030, of the revenue of the premium taxes collected pursuant to this section:

(1) one percent must be transferred to the South Carolina Forestry Commission and used by that agency for firefighting and firefighting equipment replacement;

(2) one percent must be transferred to the aid to fire districts account within the State Treasury and distributed for firefighting equipment. One-half of the annual allocated funds must be distributed equally to each fire department in the State, and the remaining balance must be used to fund the V-SAFE program pursuant to Section 23-9-25;

(3) one quarter of one percent must be transferred to the aid to emergency medical services regional councils within the Department of Health and Environmental Control and used for grants to fund emergency medical technician and paramedic training; and

(4) the remaining insurance premium taxes collected pursuant to this section must be deposited to the credit of the general fund of the State."

Time effective

SECTION 2. This act takes effect on July 1, 2017, and first applies to Fiscal Year 2017-2018.

Ratified the 2nd day of June, 2016.

Vetoed by the Governor -- 6/6/2016.
Veto overridden by Senate -- 6/15/2016.
Veto overridden by House -- 6/15/2016.

No. 274

(R231, S980)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40-69-300 SO AS TO PROVIDE ALL ANIMAL SHELTERS THAT PROVIDE VETERINARY SERVICES IN THIS STATE ARE SUBJECT TO SUPERVISION AND REGULATION BY THE BOARD OF VETERINARY MEDICAL EXAMINERS, TO REQUIRE ANIMAL SHELTERS AND VETERINARIANS WHO PROVIDE VETERINARY SERVICES IN ANIMAL SHELTERS TO MAINTAIN AND REPORT CERTAIN DATA TO THE DEPARTMENT OF LABOR, LICENSING AND REGULATION, TO REQUIRE THE DEPARTMENT MAKE THESE REPORTS AVAILABLE ON ITS INTERNET WEBSITE, TO PROVIDE THE RANGE OF VETERINARY SERVICES ALLOWED IN ANIMAL SHELTERS, TO PROVIDE CERTAIN RECORD-KEEPING REQUIREMENTS, AND TO PROVIDE NECESSARY DEFINITIONS; BY ADDING SECTION 40-69-305 SO AS TO PROHIBIT DISPENSING PRESCRIPTION DRUGS TO OWNERS OF END-USERS FOR THE TREATMENT OF BODILY INJURIES OR DISEASES OF ANIMALS IN SPECIFIC CIRCUMSTANCES AND TO PROVIDE PENALTIES FOR VIOLATIONS; TO AMEND SECTION 40-69-295, RELATING TO MOBILE VETERINARY FACILITIES, SO AS TO REQUIRE THESE FACILITIES MUST IDENTIFY THE CLOSEST LOCAL EMERGENCY VETERINARY SERVICES FACILITY AND COMMUNICATE IT IN A CERTAIN MANNER, TO PROHIBIT THE OPERATION OF MOBILE VETERINARY FACILITIES WITHIN SPECIFIC DISTANCES OF PRIVATELY OWNED VETERINARY PRACTICES, AND TO DEFINE NECESSARY TERMS; TO AMEND SECTION 56-3-9600, AS AMENDED, RELATING TO "NO MORE HOMELESS PETS" LICENSE PLATES AND A RELATED FUND ESTABLISHED TO SUPPORT LOCAL ANIMAL SPAYING AND NEUTERING EFFORTS, SO AS TO PROVIDE FOR THE OPERATION OF A RELATED GRANTS PROGRAM BY THE SOUTH CAROLINA ANIMAL CARE AND CONTROL ASSOCIATION OR ITS SUCCESSOR, TO REQUIRE THE DEPARTMENT OF AGRICULTURE SHALL PROVIDE AN ANNUAL ACCOUNTING AND SUMMARY OF THIS PROGRAM TO THE

GENERAL ASSEMBLY, AND TO PROVIDE LOCAL NONPROFIT SPAYING AND NEUTERING PROGRAMS MUST PROVIDE CERTAIN INFORMATION TO THE ASSOCIATION BEFORE THEY MAY RECEIVE REIMBURSEMENTS FOR SERVICES FROM THE FUND, AND TO PROVIDE THE ASSOCIATION SHALL PROVIDE THE DEPARTMENT WITH CERTAIN INFORMATION ABOUT THE NUMBER OF INDIVIDUALS WHO BRING IN ANIMALS FOR SPAYING OR NEUTERING AND THE NUMBER OF ANIMALS BROUGHT IN BY EACH OF THESE INDIVIDUALS; AND TO CREATE THE PET CARE AND HUMANE TREATMENT STUDY COMMITTEE, AND TO PROVIDE THE PURPOSES, DUTIES, COMPOSITION, AND REPORTING REQUIREMENTS OF THE COMMITTEE.

Be it enacted by the General Assembly of the State of South Carolina:

Regulation of animal shelters that provide veterinary services

SECTION 1. Article 1, Chapter 69, Title 40 of the 1976 Code is amended by adding:

"Section 40-69-300. (A) For purposes of this section:

(1) 'Animal shelter' means:

(a) a veterinary hospital or clinic operated by a veterinarian or veterinarians which operates for the purpose of impounding, care, adoption or harboring seized, stray, homeless, abandoned, or unwanted dogs, cats, and other animals; or

(b) a facility operated, owned, or maintained by an incorporated humane society, animal welfare society, or other nonprofit organization for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals but for the purpose of impounding, care, adoption or harboring seized, stray, homeless, abandoned, or unwanted dogs, cats, and other animals.

(2) 'Veterinary services' means the examination, diagnosis, and treatment of animal patients, administration of vaccines, diagnostic, imaging, surgery, laboratory, pharmacology, and provision of hospitalization and emergency treatment.

(B) Notwithstanding another provision of law, all animal shelters operating in this State that provide veterinary services are subject to the regulation of the South Carolina Board of Veterinary Medical Examiners.

(C) A veterinarian providing veterinary services in an animal shelter, and each animal shelter itself, shall prepare, or cause to be prepared, a written or electronic record concerning the animals in their respective care. An animal shelter shall maintain records for a minimum of three years after the last entry. A copy of a record relating to an animal whose ownership is being transferred must be provided to the owner at the time of adoption or fostering.

(D) An animal shelter shall prepare and maintain records documenting the number of animals admitted to the facility and the method by which those animals exit the facility, whether by adoption, fostering, natural death, euthanasia, transfer to another state, or other means of discharge. The report also must contain the mailing address and street address of the current place of business, and working telephone number of the animal shelter. The shelter shall compile this data in a report and submit the report to the Department of Labor, Licensing and Regulation before January thirty-first of each year. The department shall make these reports available on its Internet website.

(E) An animal shelter operated by the State or a county, municipal corporation, or other political subdivision of the State is exempt from the provisions of this section and is regulated pursuant to Sections 47-3-10, et al. However, the Department of Labor, Licensing and Regulation is authorized to enter public animal shelters for purposes of regulating the practice of veterinarian medicine or investigating suspicion of unauthorized practice of veterinarian medicine.

(F) The Department of Labor, Licensing and Regulation shall place on its website a list of all emergency veterinarian clinics in each county within six months of the renewal license period after the enactment of this section.

(G) All shelters and emergency veterinarian clinics that provide veterinary services must register with the South Carolina Board of Veterinary Medical Examiners."

Animal drug prescription labels

SECTION 2. Article 1, Chapter 69, Title 40 of the 1976 Code is amended by adding:

"Section 40-69-305. (A) Dispensing a prescription drug to the owner of an end-user for the treatment of a bodily injury or disease of an animal is unlawful unless the prescription is:

(1) labeled with all information required by state and federal law; and

(2) prescribed by a veterinarian licensed under this chapter.

(B) The South Carolina Board of Veterinary Medical Examiners shall regulate the dispensing of prescription drugs as pursuant to subsection (A) to animal owners."

Mobile veterinary facilities, obligations relating to local facilities, location prohibitions, definitions

SECTION 3. Section 40-69-295 of the 1976 Code is amended to read:

"Section 40-69-295. (A) Regardless of mode of transportation, a mobile facility must have a permanent base of operation with a published address and telephone facilities for making appointments or responding to emergency situations. The mobile practice or facility must identify the closest local emergency veterinary services facility to the mobile location. The contact information of the local emergency veterinary services facility must be posted at the mobile location and be included in the paperwork given to the pet owner documenting the services rendered.

(B) A mobile practice affiliated with, operated by, or supported by a public or private nonprofit animal shelter is prohibited from operating within eyesight of the nearest privately owned veterinarian practice.

(C) As used in this section:

(1) 'mobile veterinary practice' means any form of clinical veterinary practice that may be transported or moved from one location to another for delivery of services to a pet; and

(2) 'pet' means a domesticated animal kept as a pet but does not include livestock, as defined in Section 47-9-210(1)."

"No More Homeless Pets" fund grants, coordination and distribution, reporting requirements of Agriculture Department, requirements of entities seeking grant reimbursements

SECTION 4. Section 56-3-9600 of the 1976 Code, as last amended by Act 347 of 2008, is further amended to read:

"Section 56-3-9600. (A) The Department of Motor Vehicles may issue 'No More Homeless Pets' special motor vehicle license plates to owners of private passenger motor vehicles as defined in Section 56-3-630 registered in their names, which may have imprinted on the plate 'No More Homeless Pets'. The special license plate must be issued or revalidated for a biennial period which expires twenty-four months

from the month it is issued. The fee for this special license plate is the regular motor vehicle registration fee contained in Article 5, Chapter 3 of this title and a special motor vehicle license fee of seventy dollars.

(B) Notwithstanding another provision of law, of the fees collected pursuant to this section, the Comptroller General shall place sufficient funds into a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license fee must be deposited in a special account, separate and apart from the general fund, designated for use by the South Carolina Department of Agriculture to support local animal spaying and neutering programs. The South Carolina Department of Agriculture may use up to ten percent of the fees deposited in the special account for the administration of the program. Local private nonprofit tax exempt organizations offering animal spaying and neutering programs may apply for grants from this fund to further their tax exempt purposes. Grants must be awarded not more than once a year, and an applicant must receive as a grant an amount of the total revenues in the fund multiplied by the percentage that the applicant's caseload in the preceding calendar year was of the total caseload of all applicants in that year. The South Carolina Animal Care and Control Association (SCACCA), or its successor organization, on behalf of the tax exempt organizations, shall coordinate the grant program, make the request for reimbursement from the Department of Agriculture, and distribute the individual grants to the participating tax exempt organizations.

(C) Before the Department of Motor Vehicles produces and distributes a special license plate pursuant to this section, it must receive:

(1) four hundred or more prepaid applications for the special license plate or a deposit of four thousand dollars from the individual or organization seeking issuance of the license plate. If a deposit of four thousand dollars is made by an individual or organization pursuant to this section, the department must refund the four thousand dollars once an equivalent amount of license plate fees is collected for that organization's license plate. If the equivalent amount is not collected within four years of the first issuance of the license plate, the department must retain the deposit; and

(2) a plan to market the sale of the special license plate that must be approved by the department.

(D) If the department receives less than three hundred biennial applications and renewals for a particular special license plate authorized under this section, it shall not produce additional special license plates

in that series. The department shall continue to issue special license plates of that series until the existing inventory is exhausted.

(E) The Department of Agriculture annually shall provide an accounting and summary of this program to the Chairman of the Senate Agriculture and Natural Resources Committee and to the Chairman of the House Agriculture, Natural Resources and Environmental Affairs Committee before September first.

(F) A local private nonprofit animal spaying and neutering program that requests reimbursement for services related to this program shall provide to the SCACCA the name and address of each person who brought the animal to the program. Before the Department of Agriculture may send a reimbursement to the SCACCA, the SCACCA shall provide the Department of Agriculture a list of each individual who brought a pet in for spaying or neutering and the number of animals brought in by that individual for spaying or neutering."

Pet Care and Humane Treatment Study Committee

SECTION 5. (A) There is established the Pet Care and Humane Treatment Study Committee to review, study, and make recommendations concerning the need for improved oversight and regulation in the State.

(B) The study committee shall:

(1) identify issues relating to pets including, but not limited to, breeding, adoption, purchase, veterinary care, transportation, and sale of pets out of this State;

(2) identify and categorize a statewide estimate of the historical and current private nonprofit animal shelters in this State, rescue shelters, county animal shelters, and municipal animal shelters;

(3) identify and categorize the range of services offered in an animal shelter including kenneling, grooming, and veterinary services;

(4) identify and categorize any limitations on services based on income status or other poverty measures;

(5) identify any underserved areas of the State for basic veterinary services;

(6) identify concerns related to unhealthy breeding practices;

(7) identify and quantify the sale of pets by animal shelters to out-of-state individuals or organizations;

(8) identify how animals are transported to other states and any regulation that might apply;

(9) review the animal cruelty laws and determine if the enforcement and penalties are working;

(10) review appointments to the Board of Veterinary Medical Examiners to determine if it needs any updating or structural change; and

(11) recommend changes to public policy, regulations, or statutes that would improve the overall health and safety of animal shelters, breeding practices, sale, and transportation of pets.

(C) The study committee must be composed of eleven members.

(1) The Chairman of the Senate Agriculture and Natural Resources Committee shall appoint the following five members:

(a) a member of the Senate;

(b) a licensed doctor of veterinary medicine residing in South Carolina;

(c) a representative from an animal shelter located in this State;

(d) a representative from the American Kennel Club; and

(e) a representative of the Municipal Association of South Carolina.

(2) The Chairman of the House Agriculture, Natural Resources and Environmental Affairs Committee shall appoint the following four members:

(a) a member of the House of Representatives;

(b) a licensed doctor of veterinary medicine residing in South Carolina;

(c) a representative from the National Humane Society; and

(d) a representative of the South Carolina Association of Counties.

(3) The Governor shall appoint one member to represent the South Carolina Department of Labor, Licensing and Regulation.

(4) The Commissioner of Agriculture shall appoint one member.

(D) The appointed Senator shall serve as the study committee chairman. The members of the study committee shall serve without compensation and may not receive mileage or per diem. Staff from the Senate Agriculture and Natural Resources Committee and staff from the House Agriculture, Natural Resources and Environmental Affairs Committee shall provide support for the study committee.

(E) The study committee shall make a report of its findings and recommendations to the General Assembly during the 2017 legislative session, at which time the study committee shall cease to exist.

Severability

SECTION 6. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be

unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this Act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Vetoed by the Governor -- 6/8/2016.
Veto overridden by Senate -- 6/15/2016.
Veto overridden by House -- 6/15/2016.

No. 275

(R246, S1258)

AN ACT TO AMEND ARTICLE 3, CHAPTER 1, TITLE 57, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE COMMISSION OF THE DEPARTMENT OF TRANSPORTATION, SO AS TO RESTRUCTURE THE COMMISSION, TO PROVIDE FOR REVIEW OF APPOINTEES TO THE COMMISSION, TO PROVIDE A MAXIMUM NUMBER OF YEARS A COMMISSIONER MAY SERVE, TO PROVIDE FOR REMOVAL OF A COMMISSIONER, AND TO PROVIDE FOR AUDITING PROCEDURES FOR THE DEPARTMENT OF TRANSPORTATION; TO AMEND SECTION 57-1-410, AS AMENDED, RELATING TO THE SECRETARY OF TRANSPORTATION, SO AS TO PROVIDE THAT THE COMMISSION SHALL APPOINT THE SECRETARY AND TO PROVIDE FOR REVIEW BY THE GENERAL ASSEMBLY; TO AMEND SECTIONS 57-1-720, 57-1-730, AND 57-1-750, RELATING TO THE JOINT TRANSPORTATION REVIEW COMMITTEE, SO AS TO MAKE CONFORMING CHANGES;

TO AMEND SECTION 57-1-740, AS AMENDED, RELATING TO THE JOINT TRANSPORTATION REVIEW COMMITTEE, SO AS TO DELETE THE LANGUAGE; TO AMEND SECTION 57-1-490, AS AMENDED, RELATING TO ANNUAL AUDITS OF THE GENERAL ASSEMBLY, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 11-43-150, RELATING TO THE POWERS OF THE SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK, SO AS TO REQUIRE THE APPROVAL OF THE DEPARTMENT OF TRANSPORTATION COMMISSION BEFORE THE BANK MAY PROVIDE LOANS OR OTHER FINANCIAL ASSISTANCE; TO AMEND SECTION 11-43-180, RELATING TO THE BANK PROVIDING LOANS AND OTHER FINANCIAL ASSISTANCE, SO AS TO REQUIRE THAT THE ELIGIBLE COSTS OF A PROJECT BE AT LEAST TWENTY-FIVE MILLION DOLLARS TO RECEIVE A LOAN OR ASSISTANCE; BY ADDING SECTION 11-43-265 SO AS TO REQUIRE THE BANK TO PRIORITIZE ALL PROJECTS IN ACCORDANCE WITH THE PRIORITIZATION CRITERIA ESTABLISHED IN ACT 114 OF 2007, AND TO PROVIDE AN EXCEPTION; BY ADDING SECTION 11-43-167 SO AS TO DIRECT THE REVENUE FROM CERTAIN FEES AND FINES TO THE STATE HIGHWAY FUND FOR THE RESURFACING PROGRAM AND TRANSFERS TO THE BANK FOR ROAD AND BRIDGE PROJECTS; TO AMEND SECTIONS 12-37-2740, 38-73-470, 56-1-140, AS AMENDED, 56-1-143, AS AMENDED, 56-1-148, AS AMENDED, 56-1-170, AS AMENDED, 56-1-200, AS AMENDED, 56-1-220, 56-1-286, AS AMENDED, 56-1-390, 56-1-395, 56-1-400, AS AMENDED, 56-1-460, AS AMENDED, 56-1-550, 56-1-740, 56-1-746, AS AMENDED, 56-1-1320, AS AMENDED, 56-1-2080, AS AMENDED, 56-1-3350, AS AMENDED, 56-3-210, 56-3-355, 56-3-1290, AS AMENDED, 56-3-1335, 56-3-1920, AS AMENDED, 56-3-2330, AS AMENDED, 56-3-2335, AS AMENDED, 56-3-2340, AS AMENDED, 56-3-3500, AS AMENDED, 56-3-3600, 56-3-3710, 56-3-3950, 56-3-4100, AS AMENDED, 56-3-4200, AS AMENDED, 56-3-4410, AS AMENDED, 56-3-4510, AS AMENDED, 56-3-4600, AS AMENDED, 56-3-4800, AS AMENDED, 56-3-4910, 56-3-5200, AS AMENDED, 56-3-5400, AS AMENDED, 56-3-7200, 56-3-7300, AS AMENDED, 56-3-7310, 56-3-7320, 56-3-7330, AS AMENDED, 56-3-7360, AS AMENDED, 56-3-7700, 56-3-7750, AS AMENDED, 56-3-7780, AS AMENDED, 56-3-7860, AS AMENDED, 56-3-7910, AS AMENDED, 56-3-7950, 56-3-8000, AS AMENDED, 56-3-8100,

AS AMENDED, 56-3-8200, AS AMENDED, 56-3-8300, AS AMENDED, 56-3-8400, 56-3-8600, AS AMENDED, 56-3-8710, AS AMENDED, 56-3-9400, AS AMENDED, 56-3-9600, AS AMENDED, 56-3-9710, 56-3-10010, 56-3-13710, 56-5-750, 56-5-2942, AS AMENDED, 56-5-2951, AS AMENDED, 56-9-330, 56-10-240, 56-10-245, 56-10-260, 56-10-552, AS AMENDED, 56-19-265, AS AMENDED, 56-19-420, AS AMENDED, AND 56-19-520, ALL RELATING TO FEES OR FINES COLLECTED BY THE DEPARTMENT OF MOTOR VEHICLES, SO AS TO PROVIDE THAT ALL OR A PORTION OF THE FEES SHALL BE CREDITED TO THE STATE HIGHWAY FUND; TO AMEND SECTION 12-36-2647, RELATING TO THE TAX REVENUES COLLECTED FROM THE SALE OR LEASE OF A MOTOR VEHICLE, SO AS TO CREDIT ALL THE REVENUES TO THE STATE HIGHWAY FUND EXCEPT FOR CERTAIN AMOUNTS THAT ARE USED FOR THE EDUCATION IMPROVEMENT ACT; AND TO REPEAL SECTION 1-3-240(C)(1)(b) RELATING TO THE REMOVAL OF DEPARTMENT OF TRANSPORTATION COMMISSIONERS BY THE GOVERNOR.

Be it enacted by the General Assembly of the State of South Carolina:

PART I

GOVERNING THE IMPROVEMENT
OF THE
STATE'S TRANSPORTATION INFRASTRUCTURE SYSTEM

Commission of the Department of Transportation

SECTION 1. Article 3, Chapter 1, Title 57 of the 1976 Code is amended to read:

"Article 3
Commission of the Department of Transportation

Section 57-1-310. (A) The congressional districts of this State are constituted and created Department of Transportation Districts of the State, designated by numbers corresponding to the numbers of the respective congressional districts. The Commission of the Department of Transportation shall be composed of one member from each transportation district and one member from the State at large, all

appointed by the Governor, upon the advice and consent of the Senate, subject to the provisions of Section 57-1-325. In making appointments to the commission, the Governor shall take into account race, gender, and other demographic factors, such as residence in rural or urban areas, so as to represent, to the greatest extent possible, all segments of the population of the State; however, consideration of these factors in making an appointment in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed.

(B) The at-large appointment made by the Governor must be transmitted to the Joint Transportation Review Committee.

(C) The qualifications that each commission member must possess, include, but are not limited to:

(1) a baccalaureate or more advanced degree from:

(a) a recognized institution of higher learning requiring face-to-face contact between its students and instructors prior to completion of the academic program;

(b) an institution of higher learning that has been accredited by a regional or national accrediting body; or

(c) an institution of higher learning chartered before 1962; or

(2) a background of at least five years in any combination of the following fields of expertise:

(a) transportation;

(b) construction;

(c) finance;

(d) law;

(e) environmental issues;

(f) management; or

(g) engineering.

(D) A member of the General Assembly or member of his immediate family may not be appointed to the commission while the member is serving in the General Assembly; nor shall a member of the General Assembly or a member of his immediate family be appointed to the commission for a period of four years after the member either:

(1) ceases to be a member of the General Assembly; or

(2) fails to file for election to the General Assembly in accordance with Section 7-11-15.

Section 57-1-320. A county within a Department of Transportation district may not have a resident commission member for more than eight consecutive years and in no event shall any two persons from the same county serve as a commission member simultaneously.

Section 57-1-325. (A) The Governor shall submit his transportation district appointees to the Senate and the House of Representatives for referral to the appropriate legislative delegation. Legislative delegation for these purposes means legislators residing in the congressional district corresponding to the transportation district of the appointee.

(B) Upon receipt of a referral, the legislative delegation shall meet to approve or disapprove the Governor's appointee. The legislative delegation shall report its findings to the House of Representatives, the Senate, and the Governor. If the legislative delegation approves the Governor's appointee, the appointment shall be referred to the Joint Transportation Review Committee. If the delegation disapproves the appointee, the Governor shall make another appointment. If the legislative delegation fails to approve of the Governor's appointee within forty-five days of the appointee's referral to the delegation, the appointee is deemed to have been disapproved.

Section 57-1-330. (A) All commission members are appointed to a term of office of four years which expires on February fifteenth of the appropriate year. However, a commission member may not serve more than two consecutive terms, and may not serve more than twelve years, regardless of when the term was served. Commissioners shall continue to serve until their successors are appointed and confirmed, provided that a commissioner only may serve in a hold-over capacity for a period not to exceed six months. Any vacancy occurring in the office of commissioner shall be filled by appointment in the manner provided in this article for the unexpired term only. Except for the at-large member, a person is not eligible to serve as a commission member who is not a resident of that district at the time of his appointment. Failure by such commission member to maintain residency in the district for which he is appointed shall result in the forfeiture of his office.

(B) The at-large commission member may be appointed from any county in the State unless another commission member is serving from that county. Failure by the at-large commission member to maintain residence in the State shall result in a forfeiture of his office.

Commission members may be removed from office at the discretion of the Governor subject to the prior approval of the appropriate legislative delegation.

Section 57-1-340. Each commission member, within thirty days after his appointment, and before entering upon the discharge of the duties of

his office, shall take, subscribe, and file with the Secretary of State the oath of office prescribed by the Constitution of the State.

Section 57-1-350. (A) The commission may adopt an official seal for use on official documents of the department.

(B) The commission shall elect a chairman and adopt its own rules and procedures and may select such additional officers to serve such terms as the commission may designate.

(C) Commissioners must be reimbursed for official expenses as provided by law for members of state boards and commissions as established in the annual general appropriations act.

(D) All commission members are eligible to vote on all matters that come before the commission.

Section 57-1-360. (A) The State Auditor shall employ an individual to serve as the chief internal auditor of the department, and other professional, administrative, technical, and clerical personnel as the State Auditor determines to be necessary. The State Auditor also must provide professional, administrative, technical, and clerical personnel, as the State Auditor determines to be necessary, for the chief internal auditor to properly discharge his duties and responsibilities authorized by the State Auditor or provided by law. Except as otherwise provided, any employees hired pursuant to this section shall serve at the pleasure of the State Auditor.

(B)(1) The chief internal auditor must be a Certified Public Accountant and possess any other experience the State Auditor may require. The chief internal auditor must establish, implement, and maintain the exclusive internal audit function of all departmental activities. The State Auditor shall set the salary for the chief internal auditor as allowed by statute or applicable law.

(2) The audits performed by the chief internal auditor must comply with recognized governmental auditing standards. The department and any entity contracting with the department must fully cooperate with the chief internal auditor in the discharge of his duties and responsibilities and must timely produce all books, papers, correspondence, memoranda, and other records considered necessary in connection with an internal audit. All final audit reports must be submitted to the commission and the Chairman of the Senate Transportation Committee, the Chairman of the Senate Finance Committee, the Chairman of the House of Representatives Education and Public Works Committee, and the Chairman of the House of Representatives Ways and Means Committee before being made public.

(3) The State Auditor is vested with the exclusive management and control of the chief internal auditor.

(C) The department, at its own expense, must provide appropriate office space within its headquarters, building, and facility service, including janitorial, utility and telephone services, computer and technology services, and related supplies, for the chief internal auditor and his support staff.

Section 57-1-370. (A) The commission must develop the long-range Statewide Transportation Plan, with a minimum twenty-year forecast period at the time of adoption, that provides for the development and implementation of the multimodal transportation system for the State. The plan must be developed in a manner consistent with all federal laws or regulations and in consultation with all interested parties, particularly the metropolitan planning organizations and the nonmetropolitan planning organization area local officials. The plan may be revised from time to time as permitted by and in the manner required by federal laws or regulations.

(B) Concerning the development, content, and implementation of the Statewide Transportation Improvement Program, the commission must:

(1) develop a process for consulting with nonmetropolitan local officials, with responsibility for transportation, that provides an opportunity for their participation in the development of the long-range Statewide Transportation Plan and the Statewide Transportation Improvement Program;

(2) approve the Statewide Transportation Improvement Program and ensure that it is developed pursuant to federal laws and regulations and approve an updated Statewide Transportation Improvement Program from time to time as permitted by and in the manner required by federal laws or regulations;

(3) develop and revise the transportation plan for inclusion in the Statewide Transportation Improvement Program, for each nonmetropolitan planning area in consultation with local officials with responsibility for transportation;

(4) work in consultation with each metropolitan planning organization to develop and revise a transportation improvement program for each metropolitan planning area;

(5) select from the approved Statewide Transportation Improvement Program the transportation projects undertaken in nonmetropolitan areas in consultation with the affected nonmetropolitan local officials with responsibility for transportation;

(6) select projects to be undertaken, in consultation with each metropolitan planning organization, from the metropolitan planning organization's approved transportation improvement plan in metropolitan areas not designated as a transportation management area;

(7) consult with each metropolitan planning organization, in metropolitan areas designated as transportation management areas, concerning the projects selected to be undertaken from the approved transportation improvement program and in accordance with the priorities approved by the transportation improvement program; and

(8) when selecting projects to be undertaken from nontransportation management area metropolitan planning organizations' transportation improvement programs, or selecting the nonmetropolitan area projects to be undertaken that are included in the Statewide Transportation Improvement Program, and when consulting with metropolitan planning organizations designated as transportation management areas, the commission shall establish a priority list of projects to the extent permitted by federal laws or regulations, taking into consideration at least the following criteria:

(a) financial viability including a life cycle analysis of estimated maintenance and repair costs over the expected life of the project;

(b) public safety;

(c) potential for economic development;

(d) traffic volume and congestion;

(e) truck traffic;

(f) the pavement quality index;

(g) environmental impact;

(h) alternative transportation solutions; and

(i) consistency with local land use plans.

(C)(1) To the extent that state funds are available to address the needs of the state highway system, the commission must develop a comprehensive plan specifying objectives and performance measures for the preservation and improvement of the existing system. The projects included in this plan must be supported solely by state funds including the Non-Federal Aid Highway Fund or other state revenue source. When developing the plan required by this subsection, the commission must consider, but is not limited to, considering the criteria in subsection (B)(8).

(2) When state funding is programmed for a project selected from the plan to be undertaken, the department may use federal law, regulations, or guidelines relevant to the type of project being undertaken to be eligible for federal matching funds.

(D) The commission must approve the department's annual budget.

(E) The commission shall have any other rights, duties, obligations, or responsibilities as specifically provided by law."

Secretary of Transportation

SECTION 2. Section 57-1-410 of the 1976 Code, as last amended by Act 114 of 2007, is further amended to read:

"Section 57-1-410. The commission shall appoint, with the advice and consent of the Senate, a Secretary of Transportation who shall serve at the pleasure of the commission. A person appointed to this position shall possess practical and successful business and executive ability and be knowledgeable in the field of transportation. The Secretary of Transportation shall receive such compensation as may be established under the provisions of Section 8-11-160 and for which funds have been authorized in the general appropriations act."

Joint Transportation Review Committee

SECTION 3. A. Section 57-1-730 of the 1976 Code, as added by Act 114 of 2007, and Section 57-1-740, as last amended by Act 253 of 2010, are amended to read:

"Section 57-1-730. The review committee has the following powers and duties:

(1) to screen appointees to the commission;

(2) in screening appointees and making its findings, the review committee must give due consideration to:

(a) ability, area of expertise, dedication, compassion, common sense, and integrity of each appointee; and

(b) the impact that each appointee would have on the racial and gender composition of the commission, and each appointee's impact on other demographic factors represented on the commission, such as residence in rural or urban areas, to assure nondiscrimination to the greatest extent possible of all segments of the population of the State;

(3) to determine if each appointee is qualified and meets the requirements provided by law to serve as a member of the Department of Transportation Commission; and

(4) to submit the names of all qualified appointees to the Senate for advice and consent.

Section 57-1-740. Reserved."

B. Section 57-1-720(C) of the 1976 Code, as added by Act 114 of 2007, is amended to read:

"(C) The review committee must meet as soon as practicable after appointment and organize itself by electing one of its members as chairman and such other officers as the review committee may consider necessary. Thereafter, the review committee must meet as necessary to screen appointees to the commission and at the call of the chairman or by a majority of the members. A quorum consists of six members."

C. Section 57-1-750(B) of the 1976 Code, as added by Act 114 of 2007, is amended to read:

"(B) The expenses associated with the review committee's duties to screen appointees to the Department of Transportation Commission must be paid from the legislative appropriation of the general fund of the State."

Audits of Department of Transportation

SECTION 4. Section 57-1-490 of the 1976 Code, as last amended by Act 114 of 2007, is further amended to read:

"Section 57-1-490. (A) The department shall be audited by a certified public accountant or firm of certified public accountants once each year to be designated by the State Auditor. The designated accountant or firm of accountants shall issue audited financial statements in accordance with generally accepted accounting principles, and such financial statements must be made available annually by October fifteenth to the General Assembly. The costs and expenses of the audit must be paid by the department out of its funds.

(B) The Materials Management Office of the State Fiscal Accountability Authority annually must audit the department's internal procurement operation to ensure that the department has acted properly with regard to the department's exemptions contained in Section 11-35-710. The audit must be performed in accordance with applicable state law, including, but not limited to, administrative penalties for violations found as a result of the audit. The results of the audit must be made available by October fifteenth to the Department of Transportation Commission, the State Auditor, the Governor, the Chairmen of the

Senate Finance and Transportation Committees, and the Chairmen of the House of Representatives Ways and Means and Education and Public Works Committees. The costs and expenses of the audit must be paid by the department out of its funds.

(C) The Legislative Audit Council shall contract for an independent performance and compliance audit of the department's finance and administration division, mass transit division, and construction engineering and planning division. This audit must be completed by January 15, 2010. The Legislative Audit Council may contract for follow-up audits or conduct follow-up audits as needed based upon the audit's initial findings. The costs of these audits, including related administrative and management expenses of the Legislative Audit Council, are an operating expense of the department. The department shall pay directly to the Legislative Audit Council the cost of the audits.

(D) Copies of every audit conducted pursuant to this section must be made available to the Department of Transportation Commission, the State Auditor, the Governor, the Chairmen of the Senate Finance and Transportation Committees, and the Chairmen of the House of Representatives Ways and Means and Education and Public Works Committees."

Approval of Transportation Infrastructure Bank loans

SECTION 5. Section 11-43-150 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

"( ) Before providing a loan or other financial assistance to a qualified borrower on a qualified project, the board of directors must submit the decision to the Department of Transportation Commission for its consideration. The Department of Transportation Commission can approve or reject the board of directors' decisions or request additional information from the board of directors. This requirement does not apply to decisions by the board that relate to any payment or contractual obligations that the Department of Transportation has to the bank that are pledged to any bonds issued by the bank."

Minimum project costs for Transportation Infrastructure Bank loans

SECTION 6. Section 11-43-180 of the 1976 Code is amended by adding an appropriately lettered subsection to read:

"( ) The bank may not provide any loans or other financial assistance, including bond proceeds, to any project unless the eligible costs of the project are at least twenty-five million dollars."

Prioritization of Transportation Infrastructure Bank projects

SECTION 7. Article 1, Chapter 43, Title 11 of the 1976 Code is amended by adding:

"Section 11-43-265. (A) Notwithstanding any other provision of law and subject to the provisions of subsection (B), the bank must prioritize all projects in accordance with the prioritization criteria provided in Section 57-1-370(B)(8).

(B) The General Assembly may enact a joint resolution allowing the bank to fund a project without using the prioritization criteria provided in subsection (A). The joint resolution must be specific as to the project and the amount authorized to be funded."

PART II

FUNDING THE IMPROVEMENT
OF THE
STATE'S TRANSPORTATION INFRASTRUCTURE SYSTEM

Fees and fines credited to the State Highway Fund

SECTION 8. Article 8, Chapter 43, Title 11 of the 1976 Code is amended by adding:

"Section 11-43-167. (A) The fees and fines collected pursuant to Sections 12-37-2740(D), 38-73-470, 56-1-140(B)(2), 56-1-143, 56-1-148(D), 56-1-170(B)(3), 56-1-200, 56-1-220(B), 56-1-286(K)(1), 56-1-390(2), 56-1-395(G), 56-1-400(A), 56-1-460(A)(1)(e)(iii), 56-1-550, 56-1-740(B)(3), 56-1-746(D)(3), 56-1-1320(B), 56-1-2080, 56-1-3350(B)(2), 56-3-210(B), 56-3-355, 56-3-1335, 56-3-1290, 56-3-1920(C), 56-3-2330(B), 56-3-2335(B)(2), 56-3-2340(C), 56-3-3500(B), 56-3-3600(B), 56-3-3710(B), 56-3-3950, 56-3-4100(B), 56-3-4200(C), 56-3-4410(B), 56-3-4510(C), 56-3-4600(B), 56-3-4800(B), 56-3-4910(B), 56-3-5200(B), 56-3-5400(B), 56-3-7200(B), 56-3-7300(B), 56-3-7310, 56-3-7320, 56-3-7330(B)(2), 56-3-7360, 56-3-7700(B), 56-3-7750(B), 56-3-7780(B), 56-3-7860, 56-3-7910(B), 56-3-7950(B), 56-3-8000(C), 56-3-8100(B),

56-3-8100(F), 56-3-8200(A), 56-3-8300(A), 56-3-8400(A), 56-3-8600(B), 56-3-8710(C), 56-3-9400(B), 56-3-9600(B), 56-3-9710(B), 56-3-10010(B), 56-3-13710(B), 56-5-750(G)(3), 56-5-2942(J), 56-5-2951(B)(1), 56-5-2951(H)(3), 56-9-330, 56-10-240(C), 56-10-245, 56-10-552, 56-10-260(B)(3), 56-19-265(D), 56-19-420(C), and 56-19-520(A)(4) must be credited to the State Highway Fund as established by Section 57-11-20, to be distributed as provided in this section.

(B)(1) The Department of Transportation shall allocate the funds credited to the State Highway Fund pursuant to subsection (A) to the state-funded resurfacing program. The Department of Transportation shall develop and implement a needs-based methodology to distribute revenue within the state-funded resurfacing program, which shall include consideration on a county-by-county basis, to ensure that each county in the State is guaranteed funding for resurfacing.

(2) The Department of Transportation shall reduce the allocation to the state-funded resurfacing program required in item (1) in proportion to the amounts transferred to the South Carolina Transportation Infrastructure Bank pursuant to subsection (C).

(C)(1) The Department of Transportation shall identify bridge and road projects to be financed utilizing non-tax revenue transferred to the bank by the Department of Transportation in an amount equal to the financing requirements related to projects selected pursuant to this section.

(2) Funds transferred to the bank pursuant to this section may not be used to finance projects approved by the bank before July 1, 2013. The bank shall submit all projects proposed to be financed pursuant to subsection (B) to the Joint Bond Review Committee as provided in Section 11-43-180, prior to approving a project for financing.

(3) Following consideration by the Joint Bond Review Committee, the bank shall approve the projects to be financed. Upon approval, the bank shall provide the Department of Transportation with written notice that identifies each project selected, the amount of non-tax revenue that must be transferred to the bank for financing each project, a schedule for the transfers, and any other information necessary to carrying out the financing of each project.

(4) Upon receipt of the notice provided in item (3), the Department of Transportation shall transfer non-tax revenue to the bank in the amounts and upon the schedule provided in the notice. The department shall take any other action identified in the notice that is necessary for financing each project.

(5) Projects financed utilizing funds transferred pursuant to this subsection shall not require a local match.

(D) The Secretary of Transportation shall apply funds supplanted by the operation of this section to prioritized bridge and resurfacing needs."

Fees and fines credited to the State Highway Fund

SECTION 9. Section 12-37-2740(D) of the 1976 Code is amended to read:

"(D) Before the reinstatement of a driver's license or vehicle registration suspended pursuant to this section, a fee of fifty dollars must be paid to the Department of Motor Vehicles. An amount equal to the actual departmental direct costs related to suspension and reinstatement actions pursuant to this section must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. Fees collected in excess of actual departmental direct costs related to suspension and reinstatement actions pursuant to this section must be deposited to the credit of the general fund of the State at the end of each fiscal year."

Fees and fines credited to the State Highway Fund

SECTION 10. Section 38-73-470 of the 1976 Code is amended to read:

"Section 38-73-470. Two dollars of the yearly premium for uninsured motorist coverage is directed to be paid to the South Carolina Department of Motor Vehicles to be allocated in the manner provided in Section 56-10-552 on a quarterly basis. Interest earned by the 'Uninsured Fund' must be retained by that fund. There is no requirement for an insurer or an agent to offer underinsured motorist coverage at limits less than the statutorily required bodily injury or property damage limits."

Fees and fines credited to the State Highway Fund

SECTION 11. Section 56-1-140(B)(2) of the 1976 Code, as last amended by Act 147 of 2012, is further amended to read:

"(2) payment of a one dollar fee that must be collected by the department and placed by the Comptroller General into the State

Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 12. Section 56-1-143 of the 1976 Code, as last amended by Act 42 of 2009, is further amended to read:

"Section 56-1-143. An applicant for a new or renewal driver's license, commercial driver's license, motorcycle driver's license, identification card, issuance of a vehicle title or transfer of title, or issuance or renewal of a vehicle license plate must be given an opportunity in writing to make a voluntary contribution of five dollars, more or less, to be credited to Donate Life South Carolina established in Section 44-43-1310. Any voluntary contribution must be added to the driver's license, identification card, title, or license plate fee and must be transferred to the State Treasurer and credited to Donate Life South Carolina as provided for in Section 44-43-1310. An amount equal to the incremental cost of administration of the contribution must be paid by the trust fund from amounts received pursuant to this section to the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167 before funds are expended by the trust fund."

Fees and fines credited to the State Highway Fund

SECTION 13. Section 56-1-148(D) of the 1976 Code, as added by Act 277 of 2010, is amended to read:

"(D) The department shall charge a fee of fifty dollars for affixing the identifying code provided in subsection (B). This fee is in addition to the fee provided for in Section 56-1-140. This fee must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 14. Section 56-1-170(B)(3) of the 1976 Code is amended to read:

"(3) The fee for each special restricted driver's license is one hundred dollars, but no additional fee is due because of changes in the place and hours of employment, education, or residence. Of this fee, twenty dollars

must be distributed to the general fund and eighty dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 15. Section 56-1-200 of the 1976 Code, as last amended by Act 353 of 2008, is further amended to read:

"Section 56-1-200. (A) If a driver's license is lost or destroyed, the person to whom the license was issued, upon payment of a fee of ten dollars, may obtain a duplicate or substitution of it upon furnishing proof satisfactory to the Department of Motor Vehicles that the license has been lost or destroyed.

(B) Three dollars of the revenue from each fee collected pursuant to this section must be credited to the Department of Transportation State Non-Federal Aid Highway Fund based on the actual date of receipt by the Department of Motor Vehicles.

(C) The balance of the revenue from each fee must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 16. Section 56-1-220(B) of the 1976 Code is amended to read:

"(B) During the fifth year of a ten-year license, the licensee must submit by mail to the department a certificate from an ophthalmologist or optometrist licensed in any state or appear in person at a department office to complete a vision screening. If a licensee fails to submit a certificate or fails to appear in person, the licensee must be fined fifty dollars. The department shall waive the fine if the person completes the requirements of this section within ninety days after the end of the fifth year of a ten-year license. This fine must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 17. Section 56-1-286(K)(1) of the 1976 Code, as last amended by Act 264 of 2012, is further amended to read:

"(1) obtain a temporary alcohol license by filing with the Department of Motor Vehicles a form for this purpose. A one hundred dollar fee must be assessed for obtaining a temporary alcohol license. Twenty-five dollars of the fee collected by the Department of Motor Vehicles must be distributed to the Department of Public Safety for supplying and maintaining all necessary vehicle videotaping equipment. The remaining seventy-five dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The temporary alcohol license allows the person to drive a motor vehicle without any restrictive conditions pending the outcome of the contested case hearing provided for in this section or the final decision or disposition of the matter; and"

Fees and fines credited to the State Highway Fund

SECTION 18. Section 56-1-390(2) of the 1976 Code, as last amended by Act 176 of 2005, is further amended to read:

"(2) The fees collected by the Department of Motor Vehicles under this provision must be distributed as follows: seventy dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, and one dollar must be credited to the 'Keep South Carolina Beautiful Fund' established pursuant to Section 56-3-3950. From the 'Keep South Carolina Beautiful Fund', the Department of Transportation shall expend funds necessary to employ, within the Department of Transportation, a person with training in horticulture to administer a program for beautifying the rights-of-way along state highways and roads. The remainder of the fees collected pursuant to this section must be credited to the Department of Transportation State Non-Federal Aid Highway Fund."

Fees and fines credited to the State Highway Fund

SECTION 19. Section 56-1-395(G) of the 1976 Code, as added by Act 273 of 2010, is amended to read:

"(G) The payment program administrative fee of thirty-five dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 20. Section 56-1-400(A) of the 1976 Code, as last amended by Act 158 of 2014, is further amended to read:

"(A) The Department of Motor Vehicles, upon suspending or revoking a license, shall require that the license be surrendered to the department. At the end of the suspension period, other than a suspension for reckless driving, driving under the influence of intoxicants, driving with an unlawful alcohol concentration, felony driving under the influence of intoxicants, or pursuant to the point system, the department shall issue a new license to the person. If the person has not held a license within the previous nine months, the department shall not issue or restore a license which has been suspended for reckless driving, driving under the influence of intoxicants, driving with an unlawful alcohol concentration, felony driving under the influence of intoxicants, or for violations under the point system, until the person has filed an application for a new license, submitted to an examination as upon an original application, and satisfied the department, after an investigation of the person's driving ability, that it would be safe to grant the person the privilege of driving a motor vehicle on the public highways. The department, in the department's discretion, where the suspension is for a violation under the point system, may waive the examination, application, and investigation. A record of the suspension must be endorsed on the license issued to the person, showing the grounds of the suspension. If a person is permitted to operate a motor vehicle only with an ignition interlock device installed pursuant to Section 56-5-2941, the restriction on the license issued to the person must conspicuously identify the person as a person who only may drive a motor vehicle with an ignition interlock device installed, and the restriction must be maintained on the license for the duration of the period for which the ignition interlock device must be maintained pursuant to Sections 56-1-286, 56-5-2945, and 56-5-2947 except if the conviction was for Section 56-5-750, 56-5-2951, or 56-5-2990. For purposes of Title 56, the license must be referred to as an ignition interlock restricted license. The fee for an ignition interlock restricted license is one hundred dollars, which shall be placed by the Comptroller General into the State Highway Fund as established by

Section 57-11-20, to be distributed as provided in Section 11-43-167. Unless the person establishes that the person is entitled to the exemption set forth in subsection (B), no ignition interlock restricted license may be issued by the department without written notification from the authorized ignition interlock service provider that the ignition interlock device has been installed and confirmed to be in working order. If a person chooses to not have an ignition interlock device installed when required by law, the license will remain suspended indefinitely. If the person subsequently decides to have the ignition interlock device installed, the device must be installed for the length of time set forth in Sections 56-1-286, 56-5-2945, and 56-5-2947 except if the conviction was for Section 56-5-750, 56-5-2951, or 56-5-2990. This provision does not affect nor bar the reckoning of prior offenses for reckless driving and driving under the influence of intoxicating liquor or narcotic drugs, as provided in Article 23, Chapter 5 of this title."

Fees and fines credited to the State Highway Fund

SECTION 21. Section 56-1-460(A)(1)(e)(iii) of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

"(iii) The fee for a route restricted driver's license issued pursuant to this item is one hundred dollars, but no additional fee is due when changes occur in the place and hours of employment, education, or residence. Of this fee, eighty dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The remainder of the fees collected pursuant to this item must be credited to the Department of Transportation State Non-Federal Aid Highway Fund."

Fees and fines credited to the State Highway Fund

SECTION 22. Section 56-1-550 of the 1976 Code, as added by Act 353 of 2008, is amended to read:

"Section 56-1-550. The Department of Motor Vehicles may collect a fee not to exceed twenty dollars per document to expedite a request for copies of documents and records it maintains. This fee is in addition to the normal fees associated with the request. Expedited requests must be available within seventy-two hours of receipt of the request and standard requests within thirty days. Nothing in this section may be construed as circumventing the requirements of Section 30-4-30 of the Freedom of

Information Act. The funds collected pursuant to this section must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 23. Section 56-1-740(B)(3) of the 1976 Code, as last amended by Act 176 of 2005, is further amended to read:

"(3) The fee for each special restricted driver's license is one hundred dollars, but no additional fee is due because of changes in the place and hours of employment, education, or residence. Of this fee, eighty dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The remainder of the fees collected pursuant to this section must be credited to the Department of Transportation State Non-Federal Aid Highway Fund."

Fees and fines credited to the State Highway Fund

SECTION 24. Section 56-1-746(D)(3) of the 1976 Code is amended to read:

"(3) The fee for a special restricted driver's license is one hundred dollars, but no additional fee is due because of changes in the place and hours of employment, education, or residence. Twenty dollars of this fee must be deposited in the state general fund and eighty dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 25. Section 56-1-1320(B) of the 1976 Code is amended to read:

"(B) Ninety-five dollars of the collected fee must be credited to the state's general fund for use of the Department of Public Safety in the hiring, training, and equipping of members of the South Carolina Highway Patrol and Transportation Police and in the operations of the South Carolina Highway Patrol and Transportation Police. Five dollars

of the collected fee must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 26. Section 56-1-2080(A)(1) of the 1976 Code, as last amended by Act 353 of 2008, is further amended to read:

"(1) A person may not be issued a commercial driver's license unless that person is a resident of this State and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with the minimum federal standards established by 49 C.F.R. Part 383, subparts F, G, and H and has satisfied all other requirements of the CMVSA as well as any other requirements imposed by state law or federal regulation. The tests must be prescribed and conducted by the department. The first commercial driver's license skills test administered by the department to an individual is free of charge; thereafter, the Department of Motor Vehicles is authorized to charge a fee of twenty-five dollars for each subsequent commercial driver's license skills test administered to that individual. State agency and school district employees who are required to possess a commercial driver's license in the course of their normal job duties are exempt from this requirement. This fee must be placed into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167 by the Comptroller General."

Fees and fines credited to the State Highway Fund

SECTION 27. Section 56-1-3350(B)(2) of the 1976 Code, as last amended by Act 147 of 2012, is further amended to read:

"(2) payment of a one dollar fee that must be collected by the department and placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 28. Section 56-3-210(B) of the 1976 Code is amended to read:

"(B) The Department of Motor Vehicles or the county auditor's office must, upon proper application, issue a temporary license plate designed by the Department of Motor Vehicles to a casual seller or buyer of a vehicle pursuant to subsection (A) of this section. The county auditor's office may obtain temporary license plates from the Department of Motor Vehicles. If the applicant is a casual buyer of a vehicle, the Department of Motor Vehicles or the county auditor's office must insert clearly and indelibly on the face of the temporary license plate the date of expiration and other information the Department of Motor Vehicles may require. If the applicant is the casual seller of a vehicle, at the time of the sale, he must insert clearly and indelibly on the face of the temporary license plate the date of expiration and other information the Department of Motor Vehicles may require. The expiration date may not extend beyond forty-five days from the vehicle's date of purchase. Neither the casual seller nor the casual buyer may place the temporary license plate on the vehicle until the sale has been completed. The bill of sale, title, rental contract, or a copy of either document must be maintained in the vehicle at all times to verify the vehicle's date of purchase to a law enforcement officer. The bill of sale, title, rental contract, or a copy of either document must provide a description of the vehicle, the name and address of both the seller and purchaser of the vehicle, and its date of sale. A casual seller who issues a temporary license plate or allows a temporary license plate to be issued in violation of this subsection is guilty of a misdemeanor and, upon conviction, must be fined one hundred dollars for each occurrence. The Department of Motor Vehicles may charge a five dollar fee for the temporary license plate which the Comptroller General must place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The county auditor's office also may charge a five dollar fee for the temporary license plate to defray the expenses of the county auditor's office associated with the production and issuance of the temporary license plates."

Fees and fines credited to the State Highway Fund

SECTION 29. Section 56-3-355 of the 1976 Code is amended to read:

"Section 56-3-355. The Department of Motor Vehicles must suspend, revoke, or not issue a registration card and license plate to a person for a commercial motor vehicle greater than twenty-six thousand pounds which operates with an apportioned license plate if the commercial motor carrier who is responsible for the safety of the vehicle has been

prohibited from operating by a federal agency. The registrant must promptly surrender to the department any item suspended or revoked under this section. If the registrant unlawfully refuses to surrender the suspended or revoked items as required under this section, the department, through its designated agents or by request to a county or municipal law enforcement agency, shall take possession of the suspended or revoked license plate and registration card. A registration card or license plate may not be reissued for that vehicle until the motor carrier has been allowed to operate by a federal agency or the vehicle is properly transferred to a motor carrier that is not prohibited from operating by a federal agency. Before a suspended vehicle registration card can be reinstated, a fee of fifty dollars for each registration card suspension must be paid to the department. The fifty dollar fee must be placed in the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167 by the Comptroller General."

Fees and fines credited to the State Highway Fund

SECTION 30. Section 56-3-1290 of the 1976 Code, as last amended by Act 353 of 2008, is further amended to read:

"Section 56-3-1290. The Department of Motor Vehicles, upon application and the payment of a fee of ten dollars, shall transfer the license plate assigned for one vehicle to another vehicle of the same general type owned or leased by the same person without a paid tax receipt for the vehicle. However, subsequent transfers of a license plate to the same vehicle may not be processed without a paid tax receipt based upon the value of the vehicle to which the plate is being transferred. Three dollars of the fees paid pursuant to this section must be deposited in the state general fund, and the remaining seven dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 31. Section 56-3-1335 of the 1976 Code, as added by Act 267 of 2006, is amended to read:

"Section 56-3-1335. The Department of Motor Vehicles shall suspend a motor vehicle's current registration and shall not register or

reregister a motor vehicle that was operated when its driver failed to pay a toll and whose owner has an outstanding judgment for failure to pay a toll pursuant to Section 57-5-1495(E) entered against him. The suspension or denial of registration or reregistration shall remain in effect until the judgment is satisfied, evidence of the satisfaction has been provided to the Department of Motor Vehicles, and a reinstatement fee of fifty dollars has been paid. The reinstatement fee collected must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 32. Section 56-3-1920(C) of the 1976 Code, as added by Act 147 of 2012, is amended to read:

"(C) A fee not to exceed five dollars may be charged to each applicant issued a placard in accordance with this section. These fees must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 33. Section 56-3-2330(B) of the 1976 Code is amended to read:

"(B) A motor vehicle manufacturer shall apply for manufacturer license plates on a form prescribed by the department and shall provide proof the applicant is a bona fide motor vehicle manufacturer. The cost of each manufacturer plate issued is two hundred dollars, of which one hundred sixty dollars must be remitted by the department to the county in which the principal facility of the manufacturer is located. Forty dollars of the fee must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. Each plate is valid for two years."

Fees and fines credited to the State Highway Fund

SECTION 34. Section 56-3-2335(B)(2) of the 1976 Code, as last amended by Act 15 of 2011, is further amended to read:

"(2) Application for research and development license plates must be made by the research and development business on a form prescribed by the department and submitted with proof of the applicant's status as a bona fide research and development business. The cost of each research and development license plate issued is two hundred dollars, of which one hundred sixty dollars must be remitted by the department to the county in which the testing facility of the business is located. Forty dollars of the fee must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. Each plate is valid for two years. A maximum of one hundred research and development license plates may be issued for the two-year period."

Fees and fines credited to the State Highway Fund

SECTION 35. Section 56-3-2340(C) of the 1976 Code, as last amended by Act 201 of 2014, is further amended to read:

"(C) The department is authorized to collect a transaction fee from entities who either transmit or retrieve data from the department pursuant to this section. The fee must not exceed the fee authorized in Section 56-19-265(B) for each transaction. These fees must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 36. Section 56-3-3500(B) of the 1976 Code is amended to read:

"(B) Notwithstanding any other provision of law, from the fees collected pursuant to this section, the Comptroller General shall place sufficient funds into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license fee must be distributed to Penn Center, Inc., to support its activities."

Fees and fines credited to the State Highway Fund

SECTION 37. Section 56-3-3600(B) of the 1976 Code is amended to read:

"(B) Of the fees collected pursuant to this section, the Comptroller General shall place sufficient funds into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering this special license plate. The remaining funds collected from the special motor vehicle license fee must be distributed to the South Carolina Nurses Foundation to endow scholarships for all of the state's registered nursing programs."

Fees and fines credited to the State Highway Fund

SECTION 38. Section 56-3-3710(B) of the 1976 Code is amended to read:

"(B) The fees collected pursuant to this section must be distributed to a separate fund for each of the respective colleges, universities, or independent institutions of higher learning. Each fund must be administered by the school and may be used only for academic scholarships. Funds collected for state colleges and universities must be deposited with the State Treasurer. Funds collected for independent institutions must be deposited in an account designated by the respective school. The distribution of the fee is forty dollars to the school for each special license plate sold for the respective school and thirty dollars placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 39. Section 56-3-3950 of the 1976 Code, as last amended by Act 31 of 2005, is further amended to read:

"Section 56-3-3950. The department may issue a special commemorative 'Keep It Beautiful' motor vehicle license plate for use by owners on their private passenger motor vehicles to establish a special fund to be used by the Department of Transportation for the purposes of enhancing the state's roads and highways. These enhancements may

include landscaping, wildflower plantings, scenic easements, or other highway enhancement projects. The Department of Transportation, in implementing this program, may not expend beautification funds for wildflowers without prior approval of the South Carolina Department of Agriculture. The Department of Agriculture shall ensure, before granting approval, that the varieties of wildflowers used in beautification are not harmful to agriculture at or near a proposed project. The biennial fee for the commemorative license plate is fifty-four dollars. Notwithstanding any other provision of law, of the fees collected for this special license plate, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the department's expenses in producing and administering this special license plate. Any remaining funds must be placed in a special 'Highway Beautification Fund' established within and administered by the Department of Transportation. This biennial fee is in addition to the regular motor vehicle registration fee set forth in Article 5, Chapter 7 of this title. The commemorative plate must be of the same size and general design of regular motor vehicle license plates and must be imprinted with the words 'Keep It Beautiful'. The plates must be issued or revalidated for a biennial period which expires twenty-four months from the month they are issued."

Fees and fines credited to the State Highway Fund

SECTION 40. Section 56-3-4100(B) of the 1976 Code is amended to read:

"(B) Notwithstanding any other provision of law, of the fees collected for the special license plate, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special license plate. Any remaining funds must be deposited in a special account, separate and apart from the general fund, designated for use by the South Carolina Elks Association to be used to support its Alzheimer's state project."

Fees and fines credited to the State Highway Fund

SECTION 41. Section 56-3-4200(C) of the 1976 Code is amended to read:

"(C) Notwithstanding another provision of law, from the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the department in producing and administering the plates. The remaining funds collected from the special motor vehicle license fee must be distributed to the South Carolina Department of Parks, Recreation and Tourism and used by the State Park Service for recreational enhancements and improvements."

Fees and fines credited to the State Highway Fund

SECTION 42. Section 56-3-4410(B) of the 1976 Code is amended to read:

"(B) Notwithstanding any other provision of law, from the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license fee must be distributed to the Palmetto Cycling Coalition, Inc., or another nonprofit fund designated by the Palmetto Cycling Coalition, Inc., for the promotion of bicycling safety and education programs. Any remaining funds must be administered by the Palmetto Cycling Coalition, Inc., used only for efforts to promote bicycle safety and education programs, and deposited in an appropriate nonprofit account designated by the Palmetto Cycling Coalition, Inc."

Fees and fines credited to the State Highway Fund

SECTION 43. Section 56-3-4510(C) of the 1976 Code, as last amended by Act 79 of 2009, is further amended to read:

"(C) Of the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the department in producing and administering this special license plate collection. The remaining funds

collected from each special motor vehicle license plate fee must be deposited in the Game Protection Fund provided for in Title 50."

Fees and fines credited to the State Highway Fund

SECTION 44. Section 56-3-4600(B) of the 1976 Code is amended to read:

"(B) Notwithstanding any other provision of law, from the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license fee must be administered by the South Carolina Association of Realtors and deposited in an appropriate nonprofit account designated by the association for distribution to Habitat for Humanity International or another nonprofit fund designated by the association for the construction of new homes for low income families in South Carolina."

Fees and fines credited to the State Highway Fund

SECTION 45. Section 56-3-4800(B) of the 1976 Code is amended to read:

"(B) Of the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the department in producing and administering this special license plate. The remaining funds collected from the special motor vehicle license fee must be distributed to the South Carolina Division of the Sons of Confederate Veterans."

Fees and fines credited to the State Highway Fund

SECTION 46. Section 56-3-4910(B) of the 1976 Code is amended to read:

"(B) The fees collected pursuant to this section must be deposited in a separate fund for the South Carolina Fire Academy. The fund must be administered by the Department of Labor, Licensing and Regulation

Division of State Fire Marshal and must be used only to train in-state public firefighters, paid and volunteer, to comply with state and federal mandated training standards. Funds collected must be deposited with the State Treasurer. The distribution of the funds is based on twenty dollars to the academy for each special license plate sold and fifteen dollars placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 47. Section 56-3-5200(B) of the 1976 Code, as last amended by Act 264 of 2012, is further amended to read:

"(B) The fees collected pursuant to this section must be distributed to a special 'South Carolina: First In Golf' fund established within and administered by the Department of Parks, Recreation and Tourism to promote the South Carolina Junior Golf Association. The distribution is forty dollars to the fund and thirty dollars placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 48. Section 56-3-5400(B) of the 1976 Code is amended to read:

"(B) Of the fees collected pursuant to this section, the Comptroller General shall place the regular motor vehicle license fee into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The remaining funds collected from the special motor vehicle license fee must be distributed to the State Lodge of the Fraternal Order of Police to be used to support the families of officers killed in the line of duty."

Fees and fines credited to the State Highway Fund

SECTION 49. Section 56-3-7200(B) of the 1976 Code, as added by Act 55 of 2005, is amended to read:

"(B) Of the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by

Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the department in producing and administering this special license plate. The remaining funds collected from the special motor vehicle license fee must be deposited in a separate fund for the South Carolina Arts Commission and be used solely to support activities that build a thriving arts environment in South Carolina."

Fees and fines credited to the State Highway Fund

SECTION 50. Section 56-3-7300(B) of the 1976 Code is amended to read:

"(B) Notwithstanding any other provision of law, from the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license fee must be deposited in a special account, separate and apart from the general fund, established within and administered by the Department of Natural Resources to manage and conserve the marine resources of the State."

Fees and fines credited to the State Highway Fund

SECTION 51. Section 56-3-7310 of the 1976 Code, as added by Act 398 of 2006, is amended to read:

"Section 56-3-7310. The Department of Motor Vehicles may issue 'Support Our Troops' special license plates to owners of private passenger motor vehicles registered in their names. The requirements for production and distribution of the plate are those set forth in Section 56-3-8100. The biennial fee for this plate is the regular registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee of thirty dollars. The Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to defray costs of production and distribution. Any portion of the additional thirty dollar fee not placed in the State Highway Fund by the Comptroller General must be distributed to Support Our Troops, Inc."

Fees and fines credited to the State Highway Fund

SECTION 52. Section 56-3-7320 of the 1976 Code, as added by Act 398 of 2006, is amended to read:

"Section 56-3-7320. The Department of Motor Vehicles may issue 'Emergency Medical Service' special license plates to owners of private passenger motor vehicles registered in their names. The requirements for production and distribution of the plate are those set forth in Section 56-3-8100. The biennial fee for this plate is the regular registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee of thirty dollars. The Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the department's costs of production and distribution. Any portion of the additional thirty-dollar fee not placed in the State Highway Fund by the Comptroller General must be distributed to the South Carolina Emergency Medical Services Association."

Fees and fines credited to the State Highway Fund

SECTION 53. Section 56-3-7330(B)(2) of the 1976 Code, as last amended by Act 272 of 2012, is further amended to read:

"(2) Of the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the cost of production. That portion of the fees collected pursuant to this section in excess of the cost of production must be distributed to the South Carolina Indian Waters Council, Boy Scouts of America, to then be distributed to the other five Boy Scout councils serving counties in South Carolina."

Fees and fines credited to the State Highway Fund

SECTION 54. Section 56-3-7360 of the 1976 Code, as last amended by Act 253 of 2012, is further amended to read:

"Section 56-3-7360. The Department of Motor Vehicles may issue 'Korean War Veterans' special license plates to owners of private passenger motor vehicles and motorcycles registered in their names who are Korean War Veterans who served on active duty at anytime during

the Korean War. The applicant must present the department with a DD214 or other official documentation that states that he served on active duty upon initial application for this special license plate. The requirements for production and distribution of the plate are those set forth in Section 56-3-8100. The biennial fee for this plate is the regular registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee of twenty dollars. The Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the cost of production. Any portion of the additional twenty-dollar fee not placed by the Comptroller General into the State Highway Fund must be distributed to the state general fund."

Fees and fines credited to the State Highway Fund

SECTION 55. Section 56-3-7700(B) of the 1976 Code is amended to read:

"(B) Of the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the cost of production and distribution of this special license plate. The fees collected pursuant to this section in excess of those placed in the State Highway Fund, must be distributed to the South Carolina Special Olympics."

Fees and fines credited to the State Highway Fund

SECTION 56. Section 56-3-7750(B) of the 1976 Code, as last amended by Act 90 of 2007, is further amended to read:

"(B) The fees collected pursuant to this section must be distributed to a separate fund for each of the respective fraternities or sororities. Each fund must be administered by the fraternity or sorority and may be used for academic scholarships, or to fund programs that send boys and girls who are at least eight years old and not more than sixteen years old to summer camp, or both. Funds collected for each fraternity or sorority must be deposited in an account designated by the fraternity or sorority. The distribution is forty dollars to the respective fund and thirty dollars placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 57. Section 56-3-7780(B) of the 1976 Code is amended to read:

"(B) Notwithstanding any other provision of law, from the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the department in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license fee must be placed in the state's general fund."

Fees and fines credited to the State Highway Fund

SECTION 58. Section 56-3-7860 of the 1976 Code, as last amended by Act 347 of 2008, is further amended to read:

"Section 56-3-7860. The Department of Motor Vehicles may issue special motor vehicle license plates to members of the Shriners for private motor vehicles and motorcycles registered in their names. The fee for the issuance of this special plate must be the regular motor vehicle registration fee contained in Article 5, Chapter 3 of this title which must be deposited in the state general fund and the special fee required by Section 56-3-2020 which the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The department shall assess the cost of production, administration, and issuance of this plate and provide this information to the General Assembly every five years."

Fees and fines credited to the State Highway Fund

SECTION 59. Section 56-3-7910(B) of the 1976 Code is amended to read:

"(B) The fees collected pursuant to this section must be distributed to the Fund to Save the Hunley created by the Hunley Commission or another nonprofit fund designated by the commission for the continued curation of the Hunley submarine. Any such fund must be administered by the Hunley Commission and may be used only for efforts to raise, restore, and preserve the Hunley submarine. Any funds collected must

be deposited in an appropriate nonprofit account designated by the Hunley Commission. The distribution of these funds is sixty dollars to the Hunley Commission and forty dollars placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 60. Section 56-3-7950(B) of the 1976 Code, as added by Act 287 of 2006, is amended to read:

"(B) Of the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the department in producing and administering this special license plate. The remaining funds collected from the special motor vehicle license fee must be distributed to The Friends of Hunting Island State Park, Inc., for use on projects benefiting Hunting Island State Park."

Fees and fines credited to the State Highway Fund

SECTION 61. Section 56-3-8000(C) of the 1976 Code, as last amended by Act 56 of 2013, is further amended to read:

"(C) The license plates must be issued or revalidated for a biennial period which expires twenty-four months from the month it is issued. The biennial fee for this special license plate is the regular registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee to be requested by the individual or organization seeking issuance of the license plate. The initial fee amount requested may be changed only every five years from the first year the license plate is issued. Of the additional fee collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of producing and administering special license plates. Any of the remaining fee not placed in the restricted account must be distributed to an organization designated by the individual or organization seeking issuance of the license plate."

Fees and fines credited to the State Highway Fund

SECTION 62. A. Section 56-3-8100(B) of the 1976 Code, as last amended by Act 56 of 2013, is further amended to read:

"(B) The Comptroller General shall place the six thousand eight hundred dollar application fee pursuant to subsection (A)(1) into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

B. Section 56-3-8100(F) of the 1976 Code, as last amended by Act 56 of 2013, is further amended to read:

"(F) Of the additional fee collected pursuant to subsections (D) and (E), the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of producing and administering special license plates."

Fees and fines credited to the State Highway Fund

SECTION 63. Section 56-3-8200(A) of the 1976 Code, as last amended by Act 398 of 2006, is further amended to read:

"(A) The Department of Motor Vehicles may issue motor vehicle license plates to members of Rotary International for private passenger motor vehicles registered in their names. The fee for this special license plate must be the regular motor vehicle license fee contained in Article 5, Chapter 3 of this title, and an additional special fee of fifty dollars which must be distributed to the Rotary District in which the purchaser's home club is located in this State. The department must report to the South Carolina Rotary District designee the district chosen as a result of the license plate issuance to which this fee must be distributed. The fee must be deposited in an account designated by each South Carolina Rotary District, and must be distributed properly by each district. Notwithstanding any other provision of law, of the fees collected for the special license plate, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special plate. The license plates issued pursuant to this section must

conform to a design agreed to by the department and the chief executive officer of the organization."

Fees and fines credited to the State Highway Fund

SECTION 64. Section 56-3-8300(A) of the 1976 Code, as last amended by Act 347 of 2008, is further amended to read:

"(A) The Department of Motor Vehicles may issue special motor vehicle license plates to members of the Marine Corps League for private passenger motor vehicles and motorcycles registered in their names. The fee for this license plate is the fee set forth for special license plates in Section 56-3-8100. The Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the cost of production and distribution of this special license plate. Any portion of the additional thirty-dollar fee not placed in the State Highway Fund by the Comptroller General must be distributed to the South Carolina Department of the Marine Corps League. The license plates issued pursuant to this section must conform to a design agreed to by the department and the chief executive officer of the organization."

Fees and fines credited to the State Highway Fund

SECTION 65. Section 56-3-8400(A) of the 1976 Code is amended to read:

"Section 56-3-8400. (A) The Department of Motor Vehicles may issue special motor vehicle license plates to members of the Lions Club for private motor vehicles registered in their names. The fee for this special license plate must be the regular motor vehicle license fee contained in Article 5, Chapter 3 of this title which must be deposited in the state general fund and the special fee required by Section 56-3-2020 which must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The license plates issued pursuant to this section must conform to a design agreed to by the department and the chief executive officer of the organization."

Fees and fines credited to the State Highway Fund

SECTION 66. Section 56-3-8600(B) of the 1976 Code is amended to read:

"(B) Notwithstanding any other provision of law, from the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the department in producing and administering the plates. The remaining funds collected from the special motor vehicle license fee must be distributed to the South Carolina Ducks Unlimited State Committee for wetlands conservation projects in South Carolina. Any remaining funds must be administered by the South Carolina Ducks Unlimited State Committee and deposited in an appropriate nonprofit account designated by the South Carolina Ducks Unlimited State Committee."

Fees and fines credited to the State Highway Fund

SECTION 67. The introductory paragraph of Section 56-3-8710(C) of the 1976 Code is amended to read:

"(C) From the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of producing the special license plates. The remaining funds must be distributed in the following manner:"

Fees and fines credited to the State Highway Fund

SECTION 68. Section 56-3-9400(B) of the 1976 Code is amended to read:

"(B) Notwithstanding any other provision of law, from the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license fee must be distributed to Save the Light, Inc., or another nonprofit fund designated by Save the Light,

Inc., for the restoration and preservation of the Morris Island Lighthouse. Any remaining funds must be administered by Save the Light, Inc., used only for efforts to restore and preserve the Morris Island Lighthouse, and deposited in an appropriate nonprofit account designated by Save the Light, Inc."

Fees and fines credited to the State Highway Fund

SECTION 69. Section 56-3-9600(B) of the 1976 Code, as last amended by Act 158 of 2005, is further amended to read:

"(B) Notwithstanding any other provision of law, of the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license fee must be deposited in a special account, separate and apart from the general fund, designated for use by the South Carolina Department of Agriculture to support local animal spaying and neutering programs. The South Carolina Department of Agriculture may use up to ten percent of the fees deposited in the special account for the administration of the program. Local private nonprofit tax exempt organizations offering animal spaying and neutering programs may apply for grants from this fund to further their tax exempt purposes. Grants must be awarded not more than once a year, and an applicant must receive as a grant an amount of the total revenues in the fund multiplied by the percentage that the applicant's caseload in the preceding calendar year was of the total caseload of all applicants in that year."

Fees and fines credited to the State Highway Fund

SECTION 70. Section 56-3-9710(B) of the 1976 Code is amended to read:

"(B) Of the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering this special license plate. The remaining

funds collected from the special motor vehicle license fee must be distributed to the Heritage Classic Foundation."

Fees and fines credited to the State Highway Fund

SECTION 71. Section 56-3-10010(B) of the 1976 Code, as added by Act 286 of 2006, is amended to read:

"(B) From the fees collected pursuant to this article, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses associated with producing and administering the distribution of the license plate. The remaining funds collected from the special motor vehicle license fee shall be distributed to the South Carolina Parrot Head Club Council, which shall only use the funds to support the Palmetto Chapter of the Alzheimer's Association and the Upstate South Carolina Chapter of the Alzheimer's Association."

Fees and fines credited to the State Highway Fund

SECTION 72. Section 56-3-13710(B) of the 1976 Code, as added by Act 55 of 2015, is amended to read:

"(B) Notwithstanding another provision of law, from the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license plate fee must be disbursed to the American Red Cross."

Fees and fines credited to the State Highway Fund

SECTION 73. Section 56-5-750(G)(3) of the 1976 Code is amended to read:

"(3) The fee for each special restricted driver's license is one hundred dollars, but no additional fee is due because of changes in the place and hours of employment, education, or residence. Of this fee twenty dollars must be distributed to the general fund and eighty dollars must be placed

by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 74. Section 56-5-2942(J) of the 1976 Code, as last amended by Act 201 of 2008, is further amended to read:

"(J) A fee of fifty dollars must be paid to the department for each motor vehicle that was suspended before any of the suspended registrations and license plates may be registered or before the motor vehicle may be released pursuant to subsection (F). This fee must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 75. Section 56-5-2951(B)(1) of the 1976 Code, as last amended by Act 158 of 2014, is further amended to read:

"(1) obtain a temporary alcohol license from the Department of Motor Vehicles. A one hundred dollar fee must be assessed for obtaining a temporary alcohol license. Twenty-five dollars of the fee must be distributed by the Department of Motor Vehicles to the Department of Public Safety for supplying and maintaining all necessary vehicle videotaping equipment. The remaining seventy-five dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The temporary alcohol license allows the person to drive without any restrictive conditions pending the outcome of the contested case hearing provided for in subsection (F) or the final decision or disposition of the matter. If the suspension is upheld at the contested case hearing, the temporary alcohol license remains in effect until the Office of Motor Vehicle Hearings issues the hearing officer's decision and the Department of Motor Vehicles sends notice to the person that the person is eligible to receive a restricted license pursuant to subsection (H); and"

Fees and fines credited to the State Highway Fund

SECTION 76. Section 56-5-2951(H)(3) of the 1976 Code, as last amended by Act 158 of 2014, is further amended to read:

"(3) The fee for a restricted license is one hundred dollars, but no additional fee may be charged because of changes in the place and hours of employment, education, or residence. Twenty dollars of this fee must be deposited in the state's general fund, and eighty dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 77. A. Section 56-9-330 of the 1976 Code is amended to read:

"Section 56-9-330. (1) The Department of Motor Vehicles, upon request and the payment of a fee, shall furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter, which abstract must also fully designate the motor vehicles, if any, registered in the name of that person, and, if there is no record of any conviction of that person for violating any laws relating to the operation of a motor vehicle or of any injury or damage caused by that person, the department shall so certify. The department, upon request and the payment of a reasonable fee, shall furnish a monthly listing by magnetic or other electronic media of all driver's license numbers that had driving violations posted on their records during the previous month. These abstracts are not admissible as evidence in any action for damages or criminal proceedings arising out of motor vehicle accidents.

(2) The department shall, upon request, and the payment of a fee furnish any person a copy of a vehicle accident report. Revenue generated by the fee imposed pursuant to this section must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

B. If the provisions regarding distribution of the fee authorized in this SECTION conflict with the provisions for distribution contained in Proviso 82.4 included in the Fiscal Year 2016-2017 General Appropriations Act, the provisions contained in this act shall control.

Fees and fines credited to the State Highway Fund

SECTION 78. Section 56-10-240(C) of the 1976 Code is amended to read:

"(C) If the vehicle owner unlawfully refuses to surrender the suspended items as required in this article, the department through its designated agents or by request to a county or municipal law enforcement agency shall take possession of the suspended license plates and registration certificates and may not reissue the registration until proper proof of liability insurance coverage is provided and until the owner has paid a reinstatement fee of two hundred dollars. A person who voluntarily surrenders his license plates and registration certificates before their suspension shall not be charged a reinstatement fee. Revenue generated by the fee imposed pursuant to this section must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 79. Section 56-10-245 of the 1976 Code is amended to read:

"Section 56-10-245. Whenever a person furnishes proof of liability insurance, or surrenders or has his registration or license tags confiscated for failure to produce proof of insurance, after the Department of Motor Vehicles receives notice of the lapse or termination of the required liability insurance, the department shall compare the effective date of the lapse or termination with the date of the proof of insurance or the date of the confiscation or surrender. If the department determines there was a lapse in the required coverage, the department shall assess, in addition to other fines or penalties imposed by the law, a per diem fine in the amount of five dollars. The fine provided for in this section and the two hundred dollar reinstatement fee pursuant to Section 56-10-240 of the 1976 Code must not be assessed if the person furnishes proof, as documented by his sworn statement, that the motor vehicle upon which the coverage has lapsed or been terminated has not been operated upon the roads, streets, or highways of this State during the lapse or termination, and the lapse or termination is due to military service or illness as documented by a signed physician's statement. The total amount of the fine provided for in this section may not exceed two

hundred dollars for a first offense. Revenue generated by the fine imposed pursuant to this section must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 80. Section 56-10-260(B)(3) of the 1976 Code is amended to read:

"(3) The fee for each special restricted driver's license is one hundred dollars, but no additional fee is due because of changes in the place and hours of employment, education, or residence. Of this fee, twenty dollars must be distributed to the general fund and eighty dollars must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 81. Section 56-10-552 of the 1976 Code, as last amended by Act 264 of 2012, is further amended to read:

"Section 56-10-552. (A) For each two dollars of the yearly premium for uninsured motorist coverage paid to the Department of Motor Vehicles pursuant to Section 38-73-470, one dollar and twenty cents must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The remaining eighty cents must be placed in a special fund, to be known as the 'Uninsured Enforcement Fund', to be used by the Department of Public Safety for the purpose of enforcement and administration of Article 3, Chapter 10, Title 56.

(B) Fifty percent of the reinstatement fee as provided by Section 56-10-510(1) must be transferred by the Department of Public Safety and recorded to the Uninsured Enforcement Fund to be used by the Department of Public Safety as provided by subsection (A) of this section. The remaining fifty percent of the reinstatement fee as provided by Section 56-10-510 must be retained in the Uninsured Motorist Fund to be used as provided in Sections 56-10-550, 38-77-151, and 38-77-154."

Fees and fines credited to the State Highway Fund

SECTION 82. Section 56-19-265(D) of the 1976 Code, as last amended by Act 201 of 2014, is further amended to read:

"(D) The department is authorized to collect a transaction fee from commercial entities who either transmit or retrieve data from the department pursuant to this section. The fee must not exceed five dollars for each transaction and must be agreed to as part of the program specifications developed by the working group. These fees must be placed by the State Treasurer into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Fees and fines credited to the State Highway Fund

SECTION 83. Section 56-19-420(C) of the 1976 Code is amended to read:

"(C) Notwithstanding any other provision of law, five dollars of the fee contained in this section must be placed in the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167 by the Comptroller General."

Fees and fines credited to the State Highway Fund

SECTION 84. Section 56-19-520(A)(4) of the 1976 Code is amended to read:

"(4) payment of a fee established by the department not to exceed fifty dollars for retirement of the title certificate and, notwithstanding any other provision of law, the fee collected by the department must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

Tax revenue on sales of motor vehicles

SECTION 85. Section 12-36-2647 of the 1976 Code, as added by Act 98 of 2013, is amended to read:

"Section 12-36-2647. (A) Notwithstanding the provisions of Section 59-21-1010, the revenues of sales, use, and casual excise taxes derived pursuant to Sections 12-36-2620(1) and 12-36-2640(1) on the sale, use, or titling of a motor vehicle required to be licensed and registered by the South Carolina Department of Motor Vehicles, otherwise required to be credited as provided pursuant to Section 59-21-1010, instead must be credited to the State Highway Fund as established by Section 57-11-20, to be distributed as provided in this section.

(B)(1) The Department of Transportation shall allocate the funds credited to the State Highway Fund pursuant to subsection (A) to the state-funded resurfacing program. The Department of Transportation shall develop and implement a needs-based methodology to distribute revenue within the state-funded resurfacing program, which shall include consideration on a county-by-county basis, to ensure that each county in the State is guaranteed funding for resurfacing.

(2) The Department of Transportation shall reduce the allocation to the state-funded resurfacing program required in item (1) in proportion to the amounts transferred to the South Carolina Transportation Infrastructure Bank pursuant to subsection (C).

(C)(1) The Department of Transportation shall identify bridge and road projects to be financed utilizing non-tax revenue transferred to the bank by the Department of Transportation in an amount equal to the financing requirements related to projects selected pursuant to this section, provided that:

(a) Fifty million dollars in revenue utilized by the bank shall be used to finance bridge replacement, rehabilitation projects, and expansion and improvements on existing roads in the State Highway System.

(b) Funds in excess of fifty million dollars utilized by the bank shall be used to finance expansion and improvements to existing mainline interstates.

(2) Funds transferred to the bank pursuant to this section may not be used to finance projects approved by the bank before July 1, 2013. The bank shall submit all projects proposed to be financed pursuant to subsection (B) to the Joint Bond Review Committee as provided in Section 11-43-180, prior to approving a project for financing.

(3) Following consideration by the Joint Bond Review Committee, the bank shall approve the projects to be financed. Upon approval, the bank shall provide the Department of Transportation with written notice that identifies each project selected, the amount of non-tax revenue that must be transferred to the bank for financing each project,

a schedule for the transfers, and any other information necessary to carrying out the financing of each project.

(4) Upon receipt of the notice provided in item (3), the Department of Transportation shall transfer non-tax revenue to the bank in the amounts and upon the schedule provided in the notice. The department shall take any other action identified in the notice that is necessary for financing each project.

(5) Projects financed utilizing funds transferred pursuant to this subsection shall not require a local match.

(D) The Secretary of Transportation shall apply funds supplanted by the operation of this section to prioritized bridge and resurfacing needs."

PART III

Transition Provisions
and
Effective Date

Repeal

SECTION 86. Section 1-3-240(C)(1)(b) of the 1976 Code is repealed.

Chief internal auditor of the Department of Transportation

SECTION 87. (A) The chief internal auditor of the Department of Transportation and all associated support staff, and all authorized appropriations associated with the chief internal auditor and associated support staff are transferred to and become part of the State Auditor's Office, State Fiscal Accountability Authority. The chief internal auditor of the Department of Transportation and all associated support staff, whether classified or unclassified personnel, employed by the Department of Transportation on the effective date of this act, either by contract or by employment at will, shall become employees of the State Auditor's Office, State Fiscal Accountability Authority, with the same compensation, classification, and grade level, as applicable.

(B) The chief internal auditor of the Department of Transportation on June 30, 2016, shall continue to serve until the State Auditor employs a successor. Nothing in this section shall prevent the State Auditor from retaining the chief internal auditor of the Department of Transportation as of June 30, 2016, pursuant to the provisions of Section 57-1-360, as amended in this act, found in SECTION 1.

Severability

SECTION 88. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Act constitutes one subject

SECTION 89. The General Assembly finds that the sections presented in this act constitute one subject as required by Section 17, Article III of the South Carolina Constitution, 1895, in particular finding that each change and each topic relates directly to or in conjunction with other sections to the subject of improving the state's transportation infrastructure system as clearly enumerated in the title.

The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

Time effective

SECTION 90. (A) This act takes effect July 1, 2016.

(B) The members of the Commission of the Department of Transportation serving on June 30, 2016, shall continue to serve until their current term expires, and until their successor is appointed and confirmed. If a vacancy occurs in the seat of a member serving on June 30, 2016, before the member's term otherwise expires, the vacancy must be filled in the manner specified in Chapter 1, Title 57 of the 1976 Code, as amended by this act, and the member filling the vacancy shall serve until the term expires. The members serving on June 30, 2016, if otherwise eligible, may be reappointed pursuant to Section 57-1-310, as amended by this act.

(C) The Secretary of Transportation serving on June 30, 2016, shall continue to serve at the pleasure of the commission as provided in this act. No further confirmation proceedings are required. Thereafter, any

new appointee to the office of Secretary of Transportation must be filled in the manner specified in Chapter 1, Title 57 of the 1976 Code, as amended by this act.

(D) Notwithstanding the effective date provided in subsection (A), SECTION 6 and SECTION 7 take effect upon approval by the Governor. The provisions contained in SECTION 6 and SECTION 7 only apply to projects selected by the bank thereafter.

Ratified the 2nd day of June, 2016.

Approved the 8th day of June, 2016.

No. 276

(R268, H4762)

AN ACT TO AMEND SECTION 6-1-320, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE LIMITATION ON MILLAGE RATE INCREASES AND EXCEPTIONS TO THIS LIMITATION, SO AS TO REVISE THE EXCEPTION TO THIS LIMITATION FOR THE PURCHASE OF CAPITAL EQUIPMENT AND OTHER EXPENDITURES IN A COUNTY HAVING A POPULATION OF LESS THAN ONE HUNDRED THOUSAND PERSONS AND HAVING AT LEAST FORTY THOUSAND ACRES OF STATE FOREST LAND BY CHANGING THE TERM "STATE FOREST LAND" IN THIS EXCEPTION TO THE TERM "STATE OR NATIONAL FOREST LAND".

Be it enacted by the General Assembly of the State of South Carolina:

Exception revised

SECTION 1. Section 6-1-320(B)(7) of the 1976 Code, as added by Act 410 of 2008, is amended to read:

"(7) to purchase capital equipment and make expenditures related to the installation, operation, and purchase of the capital equipment including, but not limited to, taxes, duty, transportation, delivery, and transit insurance, in a county having a population of less than one

hundred thousand persons and having at least forty thousand acres of state or national forest land. For purposes of this section, 'capital equipment' means an article of nonexpendable, tangible, personal property, to include communication software when purchased with a computer, having a useful life of more than one year and an acquisition cost of fifty thousand dollars or more for each unit."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Vetoed by the Governor -- 6/6/2016.
Veto overridden by House -- 6/15/6016.
Veto overridden by Senate -- 6/15/2016.

No. 277

(R287, H5270)

AN ACT TO AMEND SECTION 8-11-83, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PAYROLL DEDUCTION FOR STATE EMPLOYEES' ASSOCIATION DUES, SO AS TO ALLOW MEMBERSHIP DUES FOR THE SOCIETY OF FORMER AGENTS OF THE STATE LAW ENFORCEMENT DIVISION TO BE DEDUCTED FROM THE COMPENSATION OF STATE RETIREES AND PAID OVER TO THE ASSOCIATION IN THE SAME MANNER OTHER MEMBERSHIP DUES ARE DEDUCTED AND PAID.

Be it enacted by the General Assembly of the State of South Carolina:

Retirement and payroll deduction for payment of membership dues to the Society of Former Agents of the State Law Enforcement Division

SECTION 1. Section 8-11-83 of the 1976 Code, as last amended by Act 111 of 1995, is further amended to read:

"Section 8-11-83. (A) The Comptroller General and all other state agencies, upon request of employees of the State, shall make deductions from the compensation of the employees for the payment of membership dues for the South Carolina State Employees' Association and for the South Carolina Troopers' Association. The Comptroller General and state agencies shall pay over to the respective associations all amounts so collected or withheld. Retirees from a state agency also may have withheld from their state retirement benefits their membership dues for the South Carolina State Employees' Association and for the South Carolina Troopers' Association. No deduction is permitted if the associations at any time engage in collective bargaining or encourage their members to strike.

(B) Membership dues or any portion of them which are deducted pursuant to this section may not be paid to a national or multistate association or group.

(C) Dues for the South Carolina Law Enforcement Officers' Association also may be deducted from the compensation of state employees and retirees and paid over to this association in the same manner other dues under this section are deducted and paid over. The same restrictions and conditions that apply to the other deductions under this section also apply to the deductions of dues for the South Carolina Law Enforcement Officers' Association.

(D) Membership dues for the Society of Former Agents of the State Law Enforcement Division also may be deducted from the compensation of state retirees and paid over to this association in the same manner other dues are deducted and paid pursuant to this section. The same restrictions and conditions that apply to the other deductions enumerated in this section also apply to the deduction of dues for the Society of Former Agents of the State Law Enforcement Division."

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 2nd day of June, 2016.

Vetoed by the Governor -- 6/8/2016.
Veto overridden by House -- 6/15/2016.
Veto overridden by Senate -- 6/15/2016.

No. 278

(R293, S777)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 62-5-436 SO AS TO PROVIDE ADDITIONAL AND ALTERNATIVE REQUIREMENTS FOR MATTERS INVOLVING PAYMENT OF BENEFITS FROM THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS AND TO DEFINE RELEVANT TERMS; TO AMEND SECTION 62-1-201, AS AMENDED, RELATING TO DEFINITIONS APPLICABLE TO THE SOUTH CAROLINA PROBATE CODE, SO AS TO DEFINE THE TERM "VA" AND TO MAKE OTHER TECHNICAL CORRECTIONS; TO AMEND SECTION 62-5-404, RELATING TO THE ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER, SO AS TO REQUIRE THE PETITION TO SHOW THAT THE PERSON TO BE PROTECTED HAS BEEN RATED INCOMPETENT BY THE VA AND TO PROVIDE THAT THE PETITION SHALL STATE THE NAME AND ADDRESS OF THE PERSON TO BE NOTIFIED ON BEHALF OF THE VA; TO AMEND SECTION 62-5-405, AS AMENDED, RELATING TO SERVICE OF SUMMONS AND PETITIONS, NOTICE OF HEARING, AND WAIVER OF NOTICE BY THE PERSON TO BE PROTECTED, SO AS TO REQUIRE SERVICE UPON THE VA AND NOTICE OF THE HEARING IN CERTAIN CIRCUMSTANCES; TO AMEND SECTION 62-5-407, AS AMENDED, RELATING TO PROCEDURES CONCERNING THE HEARING AND ORDER ON ORIGINAL PETITION, SO AS TO CLARIFY CERTAIN PROVISIONS IN CASES INVOLVING PAYMENT OF BENEFITS FROM THE VA; AND TO REPEAL PART 6, ARTICLE 5, TITLE 62 RELATING TO THE UNIFORM VETERANS' GUARDIANSHIP ACT.

Be it enacted by the General Assembly of the State of South Carolina:

Payment of benefits from U.S. Department of Veterans Affairs to a minor or an incapacitated person

SECTION 1. Part 4, Article 5, Title 62 of the 1976 Code is amended by adding:

"Section 62-5-436. (a) For purposes of this section:

(1) 'Estate' and 'income' include only monies received from the VA, all real and personal property acquired in whole or in part with these monies, and all earnings, interest, and profits.

(2) 'Benefits' means all monies payable by the United States through the VA.

(3) 'Secretary' means the Secretary of the United States Department of Veterans Affairs (VA) or his successor.

(4) 'Protected person' means a beneficiary of the VA.

(5) 'Conservator' has the same meaning as provided in Section 62-1-201 but only as to benefits from the VA.

(b) Whenever, pursuant to a law of the United States or regulation of the VA, the Secretary requires that a conservator be appointed for a protected person before payment of benefits, the appointment must be made in the manner provided in this part, except to the extent this section requires otherwise. The petition shall show that the person to be protected has been rated incapable of handling his estate and monies on examination by the VA in accordance with the laws and regulations governing the VA.

(c) When a petition is filed for the appointment of a conservator and a certificate of the Secretary or his representative is filed setting forth the fact that the appointment of a conservator is a condition precedent to the payment of benefits due the protected person by the VA, the certificate is prima facie evidence of the necessity for the appointment and no examiner's report is required.

(d) Except as provided or as otherwise permitted by the VA, a person may not serve as conservator of a protected person if the proposed conservator at that time is acting simultaneously as conservator for five protected persons. Upon presentation of a petition by an attorney for the VA alleging that a person is serving simultaneously as a conservator for more than five protected persons and requesting that person's termination as a conservator for that reason, upon proof substantiating the petition, the court shall restrain that person from acting as a conservator for the affected protected person and shall require a final accounting from the conservator. After the appointment of a successor conservator if one is warranted under the circumstances, the court shall terminate the appointment of the person as conservator in all requested cases. The limitations of this section do not apply when the conservator is a bank or trust company.

(e) The conservator shall file an inventory, accountings, exhibits or other pleadings with the court and with the VA as provided by law or

VA regulation. The conservator is required to furnish the inventory and accountings to the VA.

(f) Every conservator shall invest the surplus funds in his protected person's estate in securities, or otherwise, as allowed by law, and in which the conservator has no interest. These funds may be invested, without prior court authorization, in direct interest-bearing obligations of this State or of the United States and in obligations in which the interest and principal are both unconditionally guaranteed by the United States Government.

(g) Whenever a copy of a public record is required by the VA to be used in determining the eligibility of a person to participate in benefits made available by the VA, the official charged with the custody of the public record shall provide a certified copy of the record, without charge, to an applicant for the benefits, a person acting on his behalf, or a representative of the VA.

(h) With regard to a minor or a mentally incompetent person to whom, or on whose behalf, benefits have been paid or are payable by the VA, the Secretary is and must be a necessary party in a:

(1) proceeding brought for the appointment, confirmation, recognition, or removal of a conservator;

(2) suit or other proceeding, whether formal or informal, arising out of the administration of the person's estate; and

(3) proceeding which is for the removal of the disability of minority or of mental incompetency of the person.

(i) In a case or proceeding involving property or funds of a protected person not derived from the VA, the VA is not a necessary party but may be an interested party in the proceedings.

(j) For services as conservator of funds paid from the VA, a conservator may be paid an amount not to exceed five percent of the income of the protected person during any year. If extraordinary services are rendered by a conservator, the court may, upon application of the conservator and notice to the VA, authorize additional compensation payable from the estate of the protected person. No compensation is allowed on the corpus of an estate derived from payments from the VA. The conservator may be allowed reimbursement from the estate of the protected person for reasonable premiums paid to a corporate surety upon the bond furnished by the conservator."

REPORTER'S COMMENTS

This section is a distillation of provisions of the Uniform Veterans' Guardianship Act, which was formerly Part 6 of Title 62. This section should be considered whenever the minor or incapacitated person is

receiving or will receive benefits from the Veterans Administration. In general, the requirements for commencing the proceeding remain the same as with a person who is not receiving VA benefits except that a certificate of the Secretary or his representative that the appointment is necessary replaces the necessity for an examiner. Additionally, this section imposes a limit on the number of persons for whom an individual conservator may act, unless permitted by the VA. The VA is a necessary party in some proceedings and an interested party in other proceedings.

"VA" defined

SECTION 2. Section 62-1-201(51) and (52) of the 1976 Code, as last amended by Act 100 of 2013, is further amended to read:

"(51) 'VA' means the United States Department of Veterans Affairs or its successor.

(52) 'Ward' is as defined in Section 62-5-101.

(53) 'Will' includes codicil and any testamentary instrument that merely appoints an executor or revokes or revises another will."

REPORTER'S COMMENTS

The definitions set out in this section are applicable throughout this Code. Of interest is the definition of "claims" in item (4) which includes claims arising out of tort.

Also see Sections 62-4-101, 62-5-101, and 62-6-101 for additional definitions for Articles 4, 5, and 6.

The 2010 amendment revised certain definitions in Section 62-1-201, i.e., "application" in item (1), "formal proceedings" in item (17), "informal proceedings" in item (22), "petition" in item (34), and "testacy proceeding" in item (48), as well as other relevant sections throughout the Probate Code, to clarify that the law requires a summons in formal proceedings and the rules of civil procedure adopted for the circuit court and other rules of procedure in this title apply to and govern formal proceedings in probate court. See S.C. Code Sections 14-23-280, 62-1-304, and Rules 1 and 81, SCRCP; also see, Weeks v. Drawdy, 495 S.E. 2d 454 (Ct. App. 1997) (the rules of probate court governing procedure address only a limited number of issues and in the absence of a specific probate court rule, the rules of civil procedure applicable in the court of common pleas shall be applied in the probate court unless to do so would be inconsistent with the provisions of the Code).

Prior to the 2010 amendments, certain confusion existed regarding the requirement of a summons in a formal proceeding and how the South

Carolina Rules of Civil Procedure apply to formal proceedings in the probate court. The 2010 amendments in this section and throughout other portions of the Probate Code are intended to minimize such confusion and to expressly clarify that a "formal proceeding" is commenced by a summons and petition and governed by the rules of civil procedure adopted for the circuit court and other rules of procedure in this title, and that an "application" does not require a summons and is not governed by or subject to the rules of civil procedure adopted for the circuit court. Where applicable and appropriate, the 2010 amendments expand the matters in which an application may be utilized.

The 2013 amendment added definitions for "Fair Market Value" and "Probate Estate". The 2013 amendment also made changes to the definitions of "Guardian", "Person", and "State". The definition of "Stepchild" has been removed as a result of changes to Section 62-2-103(6).

Effect of Amendment

The 2010 amendment rewrote the definitions of "Application", "Formal proceedings", "Informal proceedings", and "Petition", and added "formal" preceding "proceeding" in the definition of "Testacy proceeding".

The 2013 amendment added subsection (14), definition of "Fair market value"; rewrote subsection (18), definition of "Guardian"; rewrote subsection (32), definition of "Person"; added subsection (35), definition of "Probate estate"; added subsection (40), definition of "SCACR"; rewrote subsection (45), definition of "State"; deleted former subsection (40), definition of "Stepchild"; and renumbered the subsections accordingly.

The 2016 amendment added a definition of "VA" as (51) and renumbered "Ward" as (52) and "Will" as (53).

Petition for appointment or protective order

SECTION 3. Section 62-5-404(b) of the 1976 Code is amended to read:

"(b) The petition shall set forth to the extent known, the interest of the petitioner; the name, age, residence, and address of the person to be protected; the name and address of his guardian, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of the value of the property, including any compensation, insurance, pension, or allowance to which he is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is

requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment. The petition shall set forth whether the person to be protected has been rated incapable of handling his estate and monies on examination by the VA and, if so, shall state the name and address of the person to be notified on behalf of the VA."

REPORTER'S COMMENTS

With the repeal of Part 6 of Article 5, the Uniform Veterans' Guardianship Act, the requirement contained in former Section 62-5-605 that the petition show that the ward has been rated incompetent by the VA is now included in the contents of the initial conservatorship petition. Additionally, since the VA is entitled to notification in the proceeding, the name and address of the person to be notified on behalf of the VA is also to be included.

Additional service and notice requirements

SECTION 4. Section 62-5-405 of the 1976 Code, as last amended by Act 244 of 2010, is further amended to read:

"Section 62-5-405. (a) After filing of the summons and the petition for appointment of a conservator or other protective order, the person to be protected must be served personally with the summons and petition. The following persons also must be properly served: the spouse and the adult children of the person to be protected, or if none, his parents or nearest adult relatives if there are no parents, and other persons as the court may direct.

(b) Notice of hearing on a petition for appointment of a conservator or other initial protective order, and of a subsequent hearing, must be given to the person to be protected, to a person who has filed a request for notice under Section 62-5-406, to interested persons, and to other persons as the court may direct. Notice must be given pursuant to Section 62-1-401. Waiver of notice of hearing by the person to be protected is not effective unless he attends the hearing or waiver of notice is given by his attorney.

(c) In addition to the requirements of subsections (a) and (b), if the petition is for the purpose of receiving benefits from the VA and is not brought by or on behalf of the VA, service must be effected upon the VA and notice of the hearing must be given to the VA."

REPORTER'S COMMENTS

This section sets up a tiered system for giving notice. The petition is served first on the spouse and, if none, the parents. Section 62-5-405(b) provides that notice of a petition must be given to a person who has filed a request for notice and to interested persons or those whom the court may choose. Section 62-5-405 specifically establishes a twenty-day period between service and a hearing.

The 2010 amendment extensively revised the first sentence of subsection (a) to delete "On a" and replace it with "After filing of the summons and the," delete "notice of the proceedings at least twenty days before the date of hearing" and replace it with "the summons and petition," revise the second sentence of subsection (a) to add "following persons also must be properly served: the," and delete the remainder of the second sentence after "parents," and add "and other persons as the court may direct." The 2010 amendment also revised subsection (b) to add "hearing on," "the person to be protected, to," delete "Except as otherwise provided in (a), notice shall" and replace it with "Notice must." The intention of the foregoing amendments was to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding for appointment of a conservator or other protective order. See 2010 amendments to certain definitions in S.C. Code Section 62-1-201 and also see Sections 14-23-280, 62-1-304, and Rules 1 and 81, SCRCP. The 2010 amendment also added a new last sentence regarding waiver by the person to be protected. The latter amendment and new sentence were added to clarify and provide that waiver of notice of hearing by the protected person is not effective unless he attends the hearing or waiver of notice is given by his attorney.

The 2016 amendment added subsection (c) to continue the requirement set out in former Section 62-5-620 that the VA be a necessary party when appointing a conservator to receive VA benefits.

Examination exception in certain cases relating to VA benefits

SECTION 5. Section 62-5-407(b) of the 1976 Code, as last amended by Act 244 of 2010, is further amended to read:

"(b) Upon the filing of a summons and petition for appointment of a conservator or other protective order for reasons other than minority, and after service of the summons and the petition, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the protected person

already has representation by an attorney, that attorney shall act as his guardian ad litem. Except in cases governed by Section 62-5-436 relating to benefits from the VA, if the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court shall direct that the person to be protected be examined by one or more physicians designated by the court, preferably physicians who are not connected with an institution in which the person is a patient or is detained."

REPORTER'S COMMENTS

The 2010 amendment revised subsections (a) and (b) to delete certain language and replace it with language to clarify that a summons and petition are required to commence a formal proceeding, including a formal proceeding seeking appointment of a conservator or other protective order. See 2010 amendments to certain definitions in S.C. Code Section 62-1-201 and also see Sections 14-23-280, 62-1-304, and Rules 1 and 81, SCRCP.

The 2016 amendment recognized the repeal of Part 6 of Article 5, the Uniform Veterans' Guardianship Act, and the enactment of new Section 62-5-436 to provide an overlay to proceedings involving the appointment of a conservator to receive VA benefits.

Repeal

SECTION 6. Part 6 of Article 5, Title 62 of the 1976 Code is repealed.

Time effective

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 6th day of June, 2016.

Approved the 9th day of June, 2016.

No. 279

(R294, S778)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 8 TO TITLE 62 SO AS

TO ENACT THE "SOUTH CAROLINA UNIFORM POWER OF ATTORNEY ACT"; TO DEFINE APPLICABLE TERMS; TO OUTLINE THE ARTICLE'S REQUIREMENTS AND APPLICABILITY, AND TO PROVIDE EXCEPTIONS; AND TO AMEND PART 5, ARTICLE 5, TITLE 62, RELATING TO POWERS OF ATTORNEY, SO AS TO ENACT THE "SOUTH CAROLINA STATUTORY HEALTH CARE POWER OF ATTORNEY ACT"; TO DEFINE APPLICABLE TERMS; TO OUTLINE THE PART'S REQUIREMENTS AND APPLICABILITY; TO PROVIDE EXECUTION AND WITNESS REQUIREMENTS; AND TO SPECIFY THE PROPER FORM OF A HEALTH CARE POWER OF ATTORNEY.

Be it enacted by the General Assembly of the State of South Carolina:

South Carolina Uniform Power of Attorney Act

SECTION 1. Title 62 of the 1976 Code is amended by adding:

"Article 8

South Carolina Uniform Power of Attorney Act

Part 1

Section 62-8-101. This article may be cited as the 'South Carolina Uniform Power of Attorney Act'.

Reporter's Comment

This article incorporates much of the Uniform Power of Attorney Act and retains some of the prior provisions of the South Carolina Code Sections 62-5-501 through 62-5-503, including the recording of a durable power of attorney. It does not, however, incorporate the option for a statutory power of attorney found in the Act.

The concept of a "power of attorney" was first incorporated into the Uniform Probate Code in 1969 to offer an inexpensive method of surrogate decision making to those whose modest assets did not justify pre-incapacity planning with a trust or post-incapacity property management with a guardianship. After more than three decades, the durable power of attorney is now used by both the wealthy and the non-wealthy for incapacity planning as well as convenience. The Uniform Power of Attorney Act (2006) (UPOAA) is necessary because

over the years many states adopted non-uniform provisions to deal with issues on which the Uniform Probate Code and the original Uniform Durable Power of Attorney Act are silent. The UPOAA, which provides uniformity on these issues, enhances the usefulness of durable powers while protecting the principal, the agent, and those who deal with the agent.

A national study of durable powers of attorney, conducted in 2002, revealed the need to address numerous issues not contemplated in the original Uniform Durable Power of Attorney Act such as the authority of multiple agents, the authority of later-appointed guardians, and the impact of dissolution or annulment of the principal's marriage to the agent. The study also revealed other topics about which the states had legislated, although not necessarily in a divergent manner, including: successor agents, execution requirements, portability, sanctions for dishonor of a power of attorney, and restrictions on powers that alter a principal's estate plan. In a national survey, trust and estate lawyers' responses demonstrated a high degree of consensus about the need to improve portability and acceptance of powers of attorneys as well as the need to better protect incapacitated principals.

The UPOAA, which supersedes the Uniform Durable Power of Attorney Act, the Uniform Statutory Form Power of Attorney Act, and Article 5, Part 5 of the Uniform Probate Code, consists of four articles. South Carolina's version of the Act is generally based on three of the articles, which are included in the South Carolina Act as parts of Article 8 of Title 62. Although the South Carolina version generally follows the UPOAA, some provisions are different.

The first article of the UPOAA contains all of the general provisions that pertain to creation and use of a power of attorney. While most of these provisions are default rules that can be altered by the power of attorney, certain mandatory provisions in Article 1 serve as safeguards for the protection of the principal, the agent, and persons who are asked to rely on the agent's authority. Article 2 of the UPOAA provides default definitions for the various areas of authority that can be granted to an agent. The genesis for most of these definitions is the Uniform Statutory Form Power of Attorney Act (1988); however, the language is updated where necessary to reflect modern day transactions. Article 2 also identifies certain areas of authority that must be granted with express language because of the propensity of such authority to dissipate the principal's property or alter the principal's estate plan. Article 3 of the UPOAA contains an optional statutory form that is designed for use by lawyers as well as lay persons. Step-by-step prompts are given for designation of the agent, successor agents, and the grant of authority.

The South Carolina version of the Act does not adopt an optional statutory form and reserves Part 3 of Article 8 of Title 62 for possible later use. Article 3 of the UPOAA also contains a sample agent certification form. The South Carolina version provides a sample certification form at Section 62-8-119(f). Article 4 of the UPOAA contains miscellaneous provisions concerning the relationship of the Act to other law and pre-existing powers of attorney.

The UPOAA seeks to preserve the durable power of attorney as a low-cost, flexible, and private form of surrogate decision making while deterring use of the power of attorney as a tool for financial abuse of incapacitated individuals. It contains provisions that encourage acceptance of powers of attorney by third persons, safeguard incapacitated principals, and provide clearer guidelines for agents.

The UPOAA provides broad protection for good faith acceptance or refusal of an acknowledged power of attorney, consequences for unreasonable refusal of an acknowledged power of attorney, and recognition of the portability of powers of attorney validly created under other law. The UPOAA seeks to address the problem of arbitrary refusals of powers of attorney by entities such as banks, brokerage houses, and insurance companies.

Protections for the principal under the UPOAA are multi-faceted and include: mandatory as well as default fiduciary duties for the agent; liability for agent misconduct; broad standing provisions for judicial review of the agent's conduct; and the requirement of express language to grant certain authority that could dissipate the principal's property or alter the principal's estate plan. Mandatory duties include acting in good faith, within the scope of the authority granted and according to the principal's reasonable expectations (or, if unknown, the principal's best interest). Default duties that can be varied in the power of attorney include the duty to preserve the principal's estate plan (subject to certain qualifications) and the duty to cooperate with the person who has the principal's health-care decision making authority.

The UPOAA recognizes that many agents are family members who have inherent conflicts of interest, but that these conflicts may not, in and of themselves, prevent an agent from acting competently for the principal's benefit. While it is well-accepted that an agent under a power of attorney is a fiduciary, most state statutes do not specify what that means. The UPOAA addresses this dilemma in a default provision which recognizes that an agent who acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has conflicting interests. Furthermore, the Uniform Act permits the principal to include in the

power of attorney an exoneration clause for the benefit of the agent. Another provision that operates to the benefit of both the principal and the agent is one requiring notice of an agent's resignation. If the agent cannot effectively notify the principal because the principal is incapacitated, the provision gives a hierarchy of persons to whom the agent may give notice, including a governmental agency having authority to protect the welfare of the principal.

In the final analysis, there may be no perfect solution to meet the surrogate decision making needs of our aging society, but the UPOAA balances the competing interests at stake with legislative reforms that enhance the usefulness of durable powers while at the same time protecting the principal, the agent, and those who deal with the agent.

Section 62-8-102. For purposes of this article:

(1) 'Agent' means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, coagent, successor agent, and a person to whom an agent's authority is delegated. An agent is a fiduciary.

(2) 'Durable,' with respect to a power of attorney, means not terminated by the principal's incapacity.

(3) 'Electronic' means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(4) 'Good faith' means honesty in fact.

(5) 'Incapacity' means inability of an individual to manage property or business affairs because the individual:

(A) has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or

(B) is:

(i) missing;

(ii) detained, including incarcerated in a penal system; or

(iii) outside the United States and unable to return.

(6) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited-liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or another legal or commercial entity.

(7) 'Power of attorney' means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term 'power of attorney' is used.

(8) 'Presently exercisable general power of appointment', with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will.

(9) 'Principal' means an individual with contractual capacity who grants authority to an agent in a power of attorney.

(10) 'Property' means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right in the property.

(11) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(12) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or a territory or insular possession subject to the jurisdiction of the United States.

(13) 'Stocks and bonds' means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in another manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

Reporter's Comment

Although most of the definitions in Section 62-8-102 are self-explanatory, a few of the terms warrant further comment.

"Agent" replaces the term "attorney in fact" used in prior Sections 62-5-501 through 62-5-503, which this Act replaces. This change was made to avoid confusion about the meaning of the term and the difference between an attorney in fact and an attorney at law.

"Incapacity" replaces the term "disability" used in the replaced sections in recognition that disability does not necessarily render an individual incapable of property and business management. The definition of incapacity stresses the operative consequences of the individual's impairment-inability to manage property and business affairs-rather than the impairment itself. The definition of incapacity in the Act is also consistent with the standard for appointment of a

conservator under Section 401 of the Uniform Guardianship and Protective Proceedings Act as amended in 1997.

The definition of "power of attorney" clarifies that the term applies to any grant of authority in a writing or other record from a principal to an agent which appears from the grant to be a power of attorney, without regard to whether the words "power of attorney" are actually used in the grant.

"Presently exercisable general power of appointment" is defined to clarify that where the phrase appears in the Act it does not include a power exercisable by the principal in a fiduciary capacity or exercisable only by will. Cf. Restatement (Third) of Property (Wills and Don. Trans.) § 19.8 cmt. d (Tentative Draft No. 5, approved 2006) (noting that unless the donor of a presently exercisable power of attorney has manifested a contrary intent, it is assumed that the donor intends that the donee's agent be permitted to exercise the power for the benefit of the donee). Including in a power of attorney the authority to exercise a presently exercisable general power of appointment held by the principal is consistent with the objective of giving an agent comprehensive management authority over the principal's property and financial affairs. The term appears in Section 62-8-211 (Estates, Trusts, and Other Beneficial Interests) in the context of authority to exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal (see Section 62-8-211(b)(3)), and in Section 62-8-217 (Gifts) in the context of authority to exercise for the benefit of someone else a presently exercisable general power of appointment held by the principal (see Section 62-8-217(b)(1)). If a principal wishes to delegate authority to exercise a power that the principal holds in a fiduciary capacity, Section 62-8-201(a)(7) requires that the power of attorney contain an express grant of such authority. Furthermore, delegation of a power held in a fiduciary capacity is possible only if the principal has authority to delegate the power, and the agent's authority is necessarily limited by whatever terms govern the principal's ability to exercise the power.

"Principal" is defined to incorporate South Carolina's requirement that the person executing the power of attorney or a revocation of a power of attorney must have contractual capacity. See In re Thames, 344 S.C. 564, 544 S.E. 2d 854 (Ct. App. 2001); see also, Gaddy v. Douglass, 359 S.C. 329, 597 S.E.2d 12 (Ct. App. 2004).

Section 62-8-103. This article applies to all powers of attorney except a:

(1) power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

(2) proxy or other delegation to exercise voting rights or management rights with respect to an entity;

(3) power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose;

(4) power created on a form provided by a financial institution or brokerage firm that relates to the account at the financial institution or brokerage firm and is intended for use solely by the financial institution or brokerage firm.

Reporter's Comment

The South Carolina Uniform Power of Attorney Act is intended to be comprehensive with respect to delegation of surrogate decision making authority over an individual's property and property interests, whether for the purpose of incapacity planning or mere convenience. Given that an agent will likely exercise authority at times when the principal cannot monitor the agent's conduct, the Act specifies minimum agent duties and protections for the principal's benefit. These provisions, however, may not be appropriate for all delegations of authority that might otherwise be included within the definition of a power of attorney. This section lists delegations of authority that are excluded from the Act because the subject matter of the delegation, the objective of the delegation, the agent's role with respect to the delegation, or a combination of the foregoing, would make application of the Act's provisions inappropriate.

Subsection (a)(1) excludes a power to the extent that it is coupled with an interest in the subject of the power. This exclusion addresses situations where, due to the agent's interest in the subject matter of the power, the agent is not intended to act as the principal's fiduciary. See Restatement (Third) of Agency § 3.12 (2006) and M.T. Brunner, Annotation, What Constitutes Power Coupled with Interest within Rule as to Termination of Agency, 28 A.L.R.2d 1243 (1953). Common examples of powers coupled with an interest include powers granted to a creditor to perfect or protect title in, or to sell, pledged collateral. While the example of "a power given to or for the benefit of a creditor in connection with a credit transaction" is highlighted in subsection (a)(1), it is not meant to exclude application of subsection (a)(1) to other contexts in which a power may be coupled with an interest, such as a power held by an insurer to settle or confess judgment on behalf of an insured. See, e.g., Hayes v. Gessner, 52 N.E.2d 968 (Mass. 1944).

Subsection (a)(2) excludes from the Act a proxy or other delegation to exercise voting rights or management rights with respect to an entity. The rules with respect to those rights are typically controlled by entity-specific statutes within a jurisdiction. See, e.g., Model Bus. Corp. Act § 7.22 (2002); Unif. Ltd. Partnership Act § 118 (2001); and Unif. Ltd. Liability Co. Act § 404(e) (1996). Notwithstanding the exclusion of such delegations from the operation of this Act, Section 62-8-209 contemplates that a power granted to an agent with respect to operation of an entity or business includes the authority to "exercise in person or by proxy . . . a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds . . . ."(see paragraph (5) of Section 62-8-209). Thus, while a person that holds only a proxy pursuant to an entity voting statute will not be subject to the provisions of this Act, an agent that is granted Section 62-8-209 authority is subject to the Act because the principal has given the agent authority that is greater than that of a mere voting proxy. In fact, typical entity statutes contemplate that a principal's agent or "attorney in fact" may appoint a proxy on behalf of the principal. See, e.g., Model Bus. Corp. Act § 7.22 (2002); Unif. Ltd. Partnership Act § 118 (2001); and Unif. Ltd. Liability Co. Act § 404(e) (1996).

Subsection (a)(3) excludes from the Act any power created on a governmental form for a governmental purpose. Like the excluded powers in subsections (1) and (2), the authority for a power created on a governmental form emanates from other law and is generally for a limited purpose. Notwithstanding this exclusion, the Act specifically provides in paragraph (7) of Section 62-8-203 that a grant of authority to an agent includes, with respect to that subject matter, authority to "prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or governmental regulation." Section 62-8-203, paragraph (8), further clarifies that the agent has the authority to "communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal." The intent of these provisions is to minimize the need for a special power on a governmental form with respect to any subject matter over which an agent is granted authority under the Act.

Subsection (a)(4) excludes from the Act any power created on a financial institution form for internal purposes. Like the excluded powers in subsections (1), (2), and (3), the authority for a power created on a financial institution form emanates from other law and is generally for a limited purpose. The intent of these provisions is to not interfere

with the private business relationship which exists between the financial institution and the principal.

Sections 62-5-501 through 62-5-518 deal with health care powers of attorney and replace former Section 62-5-504, but the new sections merely renumber the former provisions and do not change the substance of former Section 62-5-504. Section 62-5-502, formerly Section 62-5-504(B), provides that "[s]tatutory provisions that refer to a durable power of attorney or judicial interpretations of the law relating to durable powers of attorney apply to a health care power of attorney to the extent that they are not inconsistent with this Part" (Sections 62-5-501 through 62-5-518). The Act recognizes that matters of financial management and health-care decision making are often interdependent. The Act consequently provides in Section 62-8-114(b)(5) a default rule that an agent under the Act must cooperate with the principal's health-care decision maker.

Section 62-8-104. A power of attorney created pursuant to this part after the effective date is durable unless it expressly provides that it is terminated by the incapacity of the principal.

Reporter's Comment

Section 62-8-104 establishes that a power of attorney created after the effective date of the Act is durable unless it expressly states otherwise. This default rule is the reverse of South Carolina's previous approach and is based on the assumption that most principals prefer durability as a hedge against the need for conservatorship or guardianship. See also Section 62-8-107 Reporter's Comment (noting that the default rules of the jurisdiction's law under which a power of attorney is created, including the default rule for durability, govern the meaning and effect of a power of attorney).

Section 62-8-105. A power of attorney must be:

(1) signed by the principal or in the principal's presence by another individual directed by the principal to sign the principal's name on the power of attorney;

(2) attested with the same formality and with the same requirements as to witnesses as a will in South Carolina; and

(3) acknowledged or proved pursuant to Section 30-5-30.

Reporter's Comment

This section retains the requirement that the principal's act of signing the power of attorney must be witnessed in the same manner as a will in

South Carolina and also either acknowledged by the principal in the presence of a notary or attested to by one of the witnesses in the presence of a notary and, under Section 62-8-102(9), the principal must have contractual capacity. As a practical matter, these requirements are also necessary to create a valid power of attorney that may be recorded as described in Section 62-8-109(c).

Section 62-8-106. (a) A power of attorney executed on or after the effective date of this article is valid if its execution complies with Section 62-8-105.

(b) A power of attorney executed before the effective date of this article is valid if its execution complied with the law of this State as it existed at the time of execution.

(c) A power of attorney executed other than in this State that is not otherwise valid under subsection (a) or (b) is valid in this State if, when the power of attorney was executed, the execution complied with the:

(1) law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to Section 62-8-107; or

(2) requirements for a military power of attorney pursuant to 10 U.S.C. Section 1044b, as amended.

(d) Except as otherwise provided by statute other than this part, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

Reporter's Comment

One of the purposes of the South Carolina Uniform Power of Attorney Act is promotion of the portability and use of powers of attorney. This section makes clear that the Act does not affect the validity of pre-existing powers of attorney executed under prior law in South Carolina, powers of attorney validly created under the law of another jurisdiction, and military powers of attorney. While the effect of this section is to recognize the validity of powers of attorney created under other law, it does not abrogate the traditional grounds for contesting the validity of execution such as lack of contractual capacity, forgery, fraud, or undue influence.

This section also provides that unless otherwise required, a photocopy or electronically transmitted copy has the same effect as the original.

Section 62-8-107. The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

Reporter's Comment

This section recognizes that a foreign power of attorney, or one executed before the effective date of the South Carolina Uniform Power of Attorney Act, may have been created under different default rules than those in this Act. Section 62-8-107 provides that the meaning and effect of a power of attorney is to be determined by the law under which it was created. For example, the law in another jurisdiction may provide for different default rules with respect to durability of a power of attorney (see Section 62-8-104), the authority of coagents (see Section 62-8-111) or the scope of specific authority such as the authority to make gifts (see Section 62-8-217). Section 62-8-107 clarifies that the principal's intended grant of authority will be neither enlarged nor narrowed by virtue of the agent using the power in a different jurisdiction. For a discussion of the issues that can arise with inter-jurisdictional use of powers of attorney, see Linda S. Whitton, Crossing State Lines with Durable Powers, Prob. & Prop., Sept./Oct. 2003, at 28.

This section also establishes an objective means for determining what jurisdiction's law the principal intended to govern the meaning and effect of a power of attorney. The phrase, "the law of the jurisdiction indicated in the power of attorney," is intentionally broad, and includes any statement or reference in a power of attorney that indicates the principal's choice of law. Examples of an indication of jurisdiction include a reference to the name of the jurisdiction in the title or body of the power of attorney, citation to the jurisdiction's power of attorney statute, or an explicit statement that the power of attorney is created or executed under the laws of a particular jurisdiction. In the absence of an indication of jurisdiction in the power of attorney, Section 62-8-107 provides that the law of the jurisdiction in which the power of attorney was executed controls. The distinction between "the law of the jurisdiction indicated in the power of attorney" and "the law of the jurisdiction in which the power of attorney was executed" is an important one. The common practice of property ownership in more than one jurisdiction increases the likelihood that a principal may execute in one jurisdiction a power of attorney that was created and intended to be interpreted under the laws of another jurisdiction. A clear indication of the jurisdiction's law that is intended to govern the meaning and effect of a power of attorney is therefore advisable in all powers of attorney.

Section 62-8-108. (a) In a power of attorney, a principal may nominate a conservator or guardian for consideration by the court if protective proceedings for the principal's estate or person are begun after

the principal executes the power of attorney. Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.

(b) If, after a principal executes a power of attorney, a court appoints a conservator or guardian of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. Unless the power of attorney provides otherwise, appointment of a guardian terminates all or part of the power of attorney that relates to matters within the scope of a guardianship, and appointment of a conservator terminates all or part of the power of attorney that relates to matters within the scope of the conservatorship.

Reporter's Comment

This article gives deference to the principal's choice of agent by providing that the agent's authority continues, notwithstanding the later court appointment of a fiduciary, unless the court acts to limit or terminate the agent's authority. This approach assumes that the later-appointed fiduciary's authority should supplement, not truncate, the agent's authority. If, however, a fiduciary appointment is required because of the agent's inadequate performance or breach of fiduciary duties or for other reasons such as family discord, the court, having considered this evidence during the appointment proceedings, may limit or terminate the agent's authority contemporaneously with appointment of the fiduciary. Section 62-8-108(b) is consistent with the Uniform Health-Care Decisions Act § 6(a) (1993), which provides that a guardian may not revoke the ward's advance health-care directive unless the court appointing the guardian expressly so authorizes. Furthermore, it is consistent with the Uniform Guardianship and Protective Proceedings Act (1997), which provides that a guardian or conservator may not revoke the ward's or protected person's power of attorney for health-care or financial management without first obtaining express authority of the court. See Unif. Guardianship & Protective Proc. Act § 316(c) (guardianship), § 411(d) (protective proceedings).

Deference for the principal's autonomous choice is evident both in the presumption that an agent's authority continues unless limited or terminated by the court, and in the directive that the court shall appoint a fiduciary in accordance with the principal's most recent nomination (see subsection (a)). Typically, a principal will nominate as conservator or guardian the same individual named as agent under the power of attorney. Favoring the principal's choice of agent and nominee, an approach consistent with most statutory hierarchies for guardian

selection (see Unif. Guardianship & Protective Proc. Act § 310(a)(2) (1997)), also discourages guardianship petitions filed for the sole purpose of thwarting the agent's authority to gain control over a vulnerable principal. See Unif. Guardianship & Protective Proc. Act § 310 cmt. (1997). See also Linda S. Ershow-Levenberg, When Guardianship Actions Violate the Constitutionally-Protected Right of Privacy, NAELA News, Apr. 2005, at 1 (arguing that appointment of a guardian when there is a valid power of attorney in place violates the alleged incapacitated person's constitutionally protected rights of privacy and association). See also In re Thames, 344 S.C. 564, 544 S.E. 2d 854 (Ct. App. 2001).

Section 62-8-109. (a) Except as provided in subsection (c), a power of attorney is effective when executed pursuant to Sections 62-8-105 and 62-8-106 unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

(1) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

(2) If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:

(A) a physician or licensed psychologist that the principal is incapacitated within the meaning of Section 62-8-102(5)(A); or

(B) attorney at law, court of competent jurisdiction, or an appropriate governmental official that the principal is incapacitated within the meaning of Section 62-8-102(5)(B).

(b) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. Section 1320d, as amended, and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider.

(c) After the principal's incapacity, an agent may exercise the authority granted unto the agent under the power of attorney only if the power of attorney has been recorded in the same manner as a deed in the county where the principal resides at the time the instrument is recorded.

If the principal resides out of State, the power of attorney may be recorded in any county where property of the principal is located at the time the instrument is recorded. The power of attorney may be recorded before or after the principal's incapacity. After the principal's incapacity and before recordation, the agent's authority cannot be exercised.

(d) An agent may exercise a power of attorney executed in another jurisdiction if its execution complies with Section 62-8-106 if, after the principal's incapacity, it is recorded as required in subsection (c). Notwithstanding the provisions of Section 30-5-30, a valid power of attorney as provided for pursuant to this part, which is executed in another jurisdiction, may be recorded as though it complies with the provisions of Section 30-5-30.

Reporter's Comment

This section establishes a default rule that a power of attorney is effective when executed. If the principal chooses to create what is commonly known as a "springing" or contingent power of attorney-one that becomes effective at a future date or upon a future event or contingency-the principal may authorize the agent or someone else to provide written verification that the event or contingency has occurred. Because the person authorized to verify the principal's incapacitation will likely need access to the principal's health information, subsection (b) qualifies that person to act as the principal's "personal representative" for purposes of the Health Insurance Portability and Accountability Act (HIPAA). See 45 C.F.R. § 164.502(g)(1)-(2) (2006) (providing that for purposes of disclosing an individual's protected health information, "a covered entity must treat a personal representative as the individual"). Section 62-8-109(b) does not, however, empower the agent to make health-care decisions for the principal.

The default rule reflects a "best practices" philosophy that any agent who can be trusted to act for the principal under a springing power of attorney should be trustworthy enough to hold an immediate power. Survey evidence suggests, however, that a significant number of principals still prefer springing powers, most likely to maintain privacy in the hope that they will never need a surrogate decision maker. See Linda S. Whitton, National Durable Power of Attorney Survey Results and Analysis, National Conference of Commissioners on Uniform State Laws, 5-7 (2002), http://www.law.upenn.edu/bll/ulc/dpoaa/surveyoct2002.htm (reporting that 23% of lawyer respondents found their clients preferred springing powers, 61% reported a preference for immediate powers, and 16% saw

no trend; however, 89% stated that a power of attorney statute should authorize springing powers).

If the principal's incapacity is the trigger for a springing power of attorney and the principal has not authorized anyone to make that determination, or the authorized person is unable or unwilling to make the determination, this section provides a default mechanism to trigger the power. Incapacity based on the principal's impairment may be verified by a physician or licensed psychologist, and incapacity based on the principal's unavailability (i.e., the principal is missing, detained, or unable to return to the United States) may be verified by an attorney at law, judge, or an appropriate governmental official. Examples of appropriate governmental officials who may be in a position to determine that the principal is incapacitated within the meaning of Section 62-8-109(a)(1)(B) include an officer acting under authority of the United States Department of State or uniformed services of the United States or a sworn federal or state law enforcement officer. The default mechanism for triggering a power of attorney is available only when no incapacity determination has been made in accordance with the terms of the power of attorney. It is not available to challenge the determination made by the principal's authorized designee.

Section 62-8-110. (a) A power of attorney terminates when the:

(1) principal dies;

(2) principal becomes incapacitated, if the power of attorney is not durable;

(3) principal revokes the power of attorney;

(4) power of attorney provides that it terminates;

(5) purpose of the power of attorney is accomplished; or

(6) principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

(b) An agent's authority terminates when the:

(1) principal revokes the authority;

(2) agent dies, becomes incapacitated, or resigns;

(3) agent's authority is revoked pursuant to Section 62-2-507, unless the power of attorney otherwise provides; or

(4) power of attorney terminates.

(c) Unless the power of attorney otherwise provides and subject to Section 62-8-109, an agent's authority is exercisable until the agent's authority terminates under subsection (b), notwithstanding a lapse of time since the execution of the power of attorney.

(d) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(e) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(f) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

(g) Unless otherwise provided in the power of attorney, a revocation of a power of attorney must be executed in accordance with Sections 62-8-105 and 62-8-106 and, if the power of attorney has been recorded, then the revocation also must be recorded in the same county as the recorded power of attorney.

Reporter's Comment

This section addresses termination of a power of attorney or an agent's authority under a power of attorney. It first lists termination events (see subsections (a) and (b)), and then lists circumstances that, in contrast, either do not invalidate the power of attorney (see subsections (c) and (f)) or the actions taken pursuant to the power of attorney (see subsections (d) and (e)).

Subsection (c) provides that a power of attorney under the Act does not become "stale." Unless a power of attorney provides for termination upon a certain date or after the passage of a period of time, lapse of time since execution is irrelevant to validity, a concept carried over from the Uniform Durable Power of Attorney Act. See Unif. Durable Power of Atty. Act § 1 (as amended in 1987). Similarly, subsection (f) clarifies that a subsequently executed power of attorney will not revoke a prior power of attorney by virtue of inconsistency alone. To effect a revocation of a previously executed power of attorney, a subsequently executed power of attorney must expressly revoke a previously executed power of attorney or state that all other powers of attorney are revoked. The requirement of express revocation prevents inadvertent revocation when the principal intends for one agent to have limited authority that

overlaps with broader authority held by another agent. For example, the principal who has given one agent a very broad power of attorney, including general authority with respect to real property, may later wish to give another agent limited authority to execute closing documents with respect to out-of-town real estate.

Subsections (d) and (e) emphasize that even a termination event is not effective as to the agent or person who, without actual knowledge of the termination event, acts in good faith under the power of attorney. For example, the principal's death terminates a power of attorney (see subsection (a)(1)), but an agent who acts in good faith under a power of attorney without actual knowledge of the principal's death will bind the principal's successors in interest with that action (see subsection (d)). The same result is true if the agent knows of the principal's death, but the person who accepts the agent's apparent authority has no actual knowledge of the principal's death. See Restatement (Third) of Agency § 3.11 (2006) (stating that "termination of actual authority does not by itself end any apparent authority held by an agent"). See also Section 62-8-119(b) (stating that "[a] person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is . . . terminated . . . may rely upon the power of attorney as if the power of attorney were . . . still in effect . . . ."). These concepts are also carried forward from the Uniform Durable Power of Attorney Act. See Unif. Durable Power Atty. Act § 4 (1987).

Of special note in the list of termination events is subsection (b)(3) which provides that, unless the power of attorney provides otherwise, a spouse-agent's authority is revoked pursuant to Section 62-2-507, the so-called revocation-by-divorce statute.

Section 62-8-111. (a) A principal may designate two or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

(b) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney otherwise provides, a successor agent:

(1) has the same authority as that granted to the original agent; and

(2) may not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

(c) Except as otherwise provided in the power of attorney and subsection (d), an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

(d) An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

Reporter's Comment

This section provides several default rules that merit careful consideration by the principal. Subsection (a) states that if a principal names coagents, each coagent may exercise its authority independently unless otherwise directed in the power of attorney. The Act adopts this default position to discourage the practice of executing separate, co-extensive powers of attorney in favor of different agents, and to facilitate transactions with persons who are reluctant to accept a power of attorney from only one of two or more named agents. This default rule should not, however, be interpreted as encouraging the practice of naming coagents. For a principal who can still monitor the activities of an agent, naming coagents multiplies monitoring responsibilities and significantly increases the risk that inconsistent actions will be taken with the principal's property. For the incapacitated principal, the risk is even greater that coagents will use the power of attorney to vie for control of the principal and the principal's property. Although the principal can override the default rule by requiring coagents to act by majority or unanimous consensus, such a requirement impedes use of the power of attorney, especially among agents who do not share close physical or philosophical proximity. A more prudent practice is generally to name one original agent and one or more successor agents. If desirable, a principal may give the original agent authority to delegate the agent's authority during periods when the agent is temporarily unavailable to serve (see Section 62-8-201(a)(5)).

Subsection (b) states that unless a power of attorney otherwise provides, a successor agent has the same authority as that granted to the original agent. While this default provision ensures that the scope of authority granted to the original agent can be carried forward by successors, a principal may want to consider whether a successor agent

is an appropriate person to exercise all of the authority given to the original agent. For example, authority to make gifts, to create, amend, or revoke an inter vivos trust, or to create or change survivorship and beneficiary designations (see Section 62-8-201(a)) may be appropriate for a spouse-agent, but not for an adult child who is named as the successor agent.

Subsection (c) provides a default rule that an agent is not liable for the actions of another agent unless the agent participates in or conceals the breach of fiduciary duty committed by that other agent. Consequently, absent specification to the contrary in the power of attorney, an agent has no duty to monitor another agent's conduct. However, subsection (d) does require that an agent that has actual knowledge of a breach or imminent breach of fiduciary duty must notify the principal, and if the principal is incapacitated, take reasonably appropriate action to safeguard the principal's best interest. Subsection (d) provides that if an agent fails to notify the principal or to take action to safeguard the principal's best interest, that agent is liable only for the reasonably foreseeable damages that could have been avoided had the agent provided the required notification.

Section 62-8-112. Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances.

Reporter's Comment

This section provides a default rule that an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to reasonable compensation. While it is unlikely that a principal would choose to alter the default rule as to expenses, a principal's circumstances may warrant including limitations in the power of attorney as to the categories of expenses the agent may incur; likewise, the principal may choose to specify the terms of compensation rather than leave that determination to a reasonableness standard. Although many family-member agents serve without compensation, payment of compensation to the agent may be advantageous to the principal in circumstances when the principal needs to spend down income or resources to meet qualifications for public benefits.

Section 62-8-113. Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of

attorney by exercising authority or performing duties as an agent or by another assertion or conduct indicating acceptance.

Reporter's Comment

This section establishes a default rule for agent acceptance of appointment under a power of attorney. Unless a different method is provided in the power of attorney, an agent's acceptance occurs upon exercise of authority, performance of duties, or any other assertion or conduct indicating acceptance. Acceptance is the critical reference point for commencement of the agency relationship and the imposition of fiduciary duties (see Section 62-8-114(a)). Because a person may be unaware that the principal has designated the person as an agent in a power of attorney, clear demarcation of when an agency relationship commences is necessary to protect both the principal and the agent. See Karen E. Boxx, The Durable Power of Attorney's Place in the Family of Fiduciary Relationships, 36 Ga. L. Rev. 1, 41 (2001) (noting that "fiduciary duties should be imposed only to the extent the attorney-in-fact knows of the role, is able to accept responsibility, and affirmatively accepts"). The Act also provides a default method for agent resignation (see Section 62-8-118), which terminates the agency relationship (see Section 62-8-110(b)(2)).

Section 62-8-114. (a) An agent that has accepted appointment shall act:

(1) in accordance with the principal's reasonable expectations to the extent actually known by the agent and in the principal's best interest;

(2) in good faith; and

(3) only within the scope of authority granted in the power of attorney.

(b) Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

(1) act loyally for the principal's benefit;

(2) act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

(3) act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;

(4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(5) cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable

expectations to the extent actually known by the agent and act in the principal's best interest; and

(6) attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

(A) the value and nature of the principal's property;

(B) the principal's foreseeable obligations and need for maintenance;

(C) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and

(D) eligibility for a benefit, a program, or assistance under a statute or regulation.

(c) Except as provided in Section 62-7-602(A) an agent that acts in good faith is not liable to a beneficiary of the principal's estate plan for failure to preserve the plan.

(d) An agent that complies with subsection (a) is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(e) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

(f) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

(g) An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(h) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within thirty days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional thirty days unless otherwise specified by the court.

Reporter's Comment

This section clarifies an agent's duties by articulating minimum mandatory duties (subsection (a)) as well as default duties that can be modified or omitted by the principal (subsection (b)).

The mandatory duties-acting in accordance with the principal's reasonable expectations, if known, and otherwise in the principal's best interest; acting in good faith; and acting only within the scope of authority granted-may not be altered in the power of attorney. Establishing the principal's reasonable expectations as the primary guideline for agent conduct is consistent with a policy preference for "substituted judgment" over "best interest" as the surrogate decision-making standard that better protects an incapacitated person's self-determination interests. See Wingspan-The Second National Guardianship Conference, Recommendations, 31 Stetson L. Rev. 595, 603 (2002). See also Unif. Guardianship & Protective Proc. Act § 314(a) (1997).

This act does not require, nor does common practice dictate, that the principal state expectations or objectives in the power of attorney. In fact, one of the advantages of a power of attorney over a trust or guardianship is the flexibility and informality with which an agent may exercise authority and respond to changing circumstances. However, when a principal's subjective expectations are potentially inconsistent with an objective best interest standard, good practice suggests memorializing those expectations in a written and admissible form as a precaution against later challenges to the agent's conduct (see Section 62-8-116).

If a principal's expectations potentially conflict with a default duty under this act, then stating the expectations in the power of attorney, or altering the default rule to accommodate the expectations, or both, is advisable. For example, a principal may want to invest in a business owned by a family member who is also the agent in order to improve the economic position of the agent and the agent's family. Without the principal's clear expression of this objective, investment by the agent of the principal's property in the agent's business may be viewed as breaching the default duty to act loyally for the principal's benefit (subsection (b)(1)) or the default duty to avoid conflicts of interest that impair the agent's ability to act impartially for the principal's best interest (subsection (b)(2)).

Two default duties in this section protect the principal's previously-expressed choices. These are the duty to cooperate with the person authorized to make health-care decisions for the principal (subsection (b)(5)) and the duty to preserve the principal's estate plan

(subsection (b)(6)). However, an agent has a duty to preserve the principal's estate plan only to the extent the plan is actually known to the agent and only if preservation of the estate plan is consistent with the principal's reasonable expectations and best interest. Factors relevant to determining whether preservation of the estate plan is in the principal's best interest include the value of the principal's property, the principal's need for maintenance, minimization of taxes, and eligibility for public benefits. The act protects an agent from liability for failure to preserve the estate plan if the agent has acted in good faith (subsection (c)), subject to Section 62-7-602(A).

Subsection (d) provides that an agent acting with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has a conflict of interest. This position is a departure from the traditional common law duty of loyalty which required an agent to act solely for the benefit of the principal. See Restatement (Second) of Agency § 387 (1958); see also Section 62-7-802(a) (requiring a trustee to administer a trust "solely in the interests" of the beneficiary). Subsection (d) is modeled after state statutes which provide that loyalty to the principal can be compatible with an incidental benefit to the agent. The Restatement (Third) of Agency § 8.01 (2006) also contemplates that loyal service to the principal may be concurrently beneficial to the agent (see Reporter's note a). See also John H. Langbein, Questioning the Trust Law Duty of Loyalty: Sole Interest or Best Interest?, 114 Yale L.J. 929, 943 (2005) (arguing that the sole interest test for loyalty should be replaced by the best interest test). The public policy which favors best interest over sole interest as the benchmark for agent loyalty comports with the practical reality that most agents under powers of attorney are family members who have inherent conflicts of interest with the principal arising from joint property ownership or inheritance expectations.

Subsection (e) provides additional protection for a principal who has selected an agent with special skills or expertise by requiring that such skills or expertise be considered when evaluating the agent's conduct. If a principal chooses to appoint a family member or close friend to serve as an agent, but does not intend that agent to serve under a higher standard because of special skills or expertise, the principal should consider including an exoneration provision within the power of attorney (see comment to Section 62-8-115).

Subsections (f) and (g) state protections for an agent that are similar in scope to those applicable to a trustee. Subsection (f) holds an agent harmless for decline in the value of the principal's property absent a breach of fiduciary duty (cf. Section 62-7-1003(b)). Subsection (g)

holds an agent harmless for the conduct of a person to whom the agent has delegated authority, or who has been engaged by the agent on the principal's behalf, provided the agent has exercised care, competence, and diligence in selecting and monitoring the person (cf. Section 62-7-807(c).

Subsection (h) codifies the agent's common law duty to account to a principal (see Restatement (Third) of Agency § 8.12 (2006); Restatement (First) of Agency § 382 (1933)). Rather than create an affirmative duty of periodic accounting, subsection (h) states that the agent is not required to disclose receipts, disbursements or transactions unless ordered by a court or requested by the principal, a fiduciary acting for the principal, or a governmental agency with authority to protect the welfare of the principal. If the principal is deceased, the principal's personal representative or successor in interest may request an agent to account. While there is no affirmative duty to account unless ordered by the court or requested by one of the foregoing persons, subsection (b)(4) does create a default duty to keep records.

The narrow categories of persons that may request an agent to account are consistent with the premise that a principal with capacity should control to whom the details of financial transactions are disclosed. If a principal becomes incapacitated or dies, then the principal's fiduciary or personal representative may succeed to that monitoring function. The inclusion of a governmental agency (such as Adult Protective Services) in the list of persons that may request an agent to account is patterned after state legislative trends and is a response to growing national concern about financial abuse of vulnerable persons. See generally Donna J. Rabiner, David Brown & Janet O'Keeffe, Financial Exploitation of Older Persons: Policy Issues and Recommendations for Addressing Them, 16 J. Elder Abuse & Neglect 65 (2004). As an additional protective counter-measure to the narrow categories of persons who may request an agent to account, the Act contains a broad standing provision for seeking judicial review of an agent's conduct. See Section 62-8-116 and Reporter's Comment.

Section 62-8-115. A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

(1) relieves the agent of liability for breach of duty committed:

(A) dishonestly;

(B) in bad faith;

(C) with reckless indifference to the purposes of the power of attorney;

(D) through wilful misconduct;
(E) through gross negligence; or
(F) with actual fraud; or
(2) was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

Reporter's Comment

This section permits a principal to exonerate an agent from liability for breach of fiduciary duty, but prohibits exoneration for a breach committed dishonestly, willfully, with gross negligence, with reckless indifference or actual fraud or through a provision inserted through undue influence. The mandatory minimum standard of conduct required of an agent is equivalent to the good faith standard applicable to trustees. A trustee's failure to adhere to that standard cannot be excused by language in the trust instrument. See Section 62-7-1008 cmt. (2003) (noting that "a trustee must always act in good faith with regard to the purposes of the trust and the interests of the beneficiaries"). See also Section 62-8-102(4) (defining good faith for purposes of the Act as "honesty in fact"). Section 62-8-115 provides, as an additional measure of protection for the principal, that an exoneration provision is not binding if it was inserted as the result of abuse of a confidential or fiduciary relationship with the principal. While as a matter of good practice an exoneration provision should be the exception rather than the rule, its inclusion in a power of attorney may be useful in meeting particular objectives of the principal. For example, if the principal is concerned that contentious family members will attack the agent's conduct in order to gain control of the principal's assets, an exoneration provision may deter such action or minimize the likelihood of success on the merits.

Section 62-8-116. (a) The following persons may petition a court to construe a power of attorney or review the agent's conduct, and grant appropriate relief:
(1) the principal or the agent;
(2) a guardian, conservator, or other fiduciary acting for the principal;
(3) a person authorized to make health care decisions for the principal;
(4) the principal's spouse, parent, or adult descendant;
(5) an individual who would qualify as a presumptive heir of the principal;

(6) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;

(7) a governmental agency having regulatory authority to protect the welfare of the principal;

(8) the principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and

(9) a person asked to accept the power of attorney.

(b) Upon motion by the principal, the court shall dismiss a petition filed pursuant to this section if the court determines that dismissal is in the best interest of the principal.

Reporter's Comment

The primary purpose of this section is to protect vulnerable or incapacitated principals against financial abuse. Subsection (a) sets forth broad categories of persons who have standing to petition the court for construction of the power of attorney or review of the agent's conduct, including in the list a "person that demonstrates sufficient interest in the principal's welfare" (subsection (a)(8)).

In addition to providing a means for detecting and redressing financial abuse by agents, this section protects the self-determination rights of principals. Subsection (b) states that the court must dismiss a petition upon the principal's motion if the court finds that dismissal is in the best interest of the principal. Contrasted with the breadth of Section 62-8-116 is Section 62-8-114(h) which narrowly limits the persons who can request an agent to account for transactions conducted on the principal's behalf. The rationale for narrowly restricting who may request an agent to account is the preservation of the principal's financial privacy. See Section 62-8-114, Reporter's Comment. Section 62-8-116 operates as a check-and-balance on the narrow scope of Section 62-8-114(h) and provides what, in many circumstances, may be the only means to detect and stop agent abuse of an incapacitated principal.

Section 62-8-117. An agent that violates this article is liable to the principal or the principal's successors in interest for the amount required to:

(1) restore the value of the principal's property to what it would have been had the violation not occurred; and

(2) reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf.

Reporter's Comment

This section provides that an agent's liability for violating the Act includes not only the amount necessary to restore the principal's property to what it would have been had the violation not occurred, but also any amounts for attorney's fees and costs advanced from the principal's property on the agent's behalf. This section does not, however, limit the agent's liability exposure to these amounts. Pursuant to Section 62-8-123, remedies under the Act are not exclusive. If a jurisdiction has enacted separate statutes to deal with financial abuse, an agent may face additional civil or criminal liability. For a discussion of state statutory responses to financial abuse, see Carolyn L. Dessin, Financial Abuse of the Elderly: Is the Solution a Problem?, 34 McGeorge L. Rev. 267 (2003).

Section 62-8-118. (a) Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving written notice to:

(1) the principal;

(2) a coagent or successor agent;

(3) the principal's conservator if one has been appointed for the principal; and

(4) the principal's guardian if one has been appointed for the principal.

(b) If there is no person described in subsection (a)(1) through (4), then the agent shall provide written notice to:

(1) the principal's health care agent, if there is a health care agent; or

(2) another person reasonably believed by the agent to have sufficient interest in the principal's welfare, if there is no health care agent.

(c) If the power of attorney has been recorded then the resignation also must be recorded in the same location as the recorded power of attorney.

Reporter's Comment

This section provides a default procedure for an agent's resignation. An agent who no longer wishes to serve should formally resign to establish a clear demarcation of the end of the agent's authority and to minimize gaps in fiduciary responsibility before a successor accepts the office. This section requires that the agent give notice to the principal and to the successor agent and, if a court has appointed a conservator or guardian, to the court appointed fiduciary. Subsection (2)(b) requires

the resigning agent to give notice to the principal's caregiver or to a person reasonably believed to have sufficient interest in the principal's welfare which could include a governmental agency having authority to protect the welfare of the principal if there is no one available to give notice to under subsection (1). The choice among these options listed in paragraph (2)(b) is intentionally left to the agent's discretion and is governed by the same standards as apply to other agent conduct. See Section 62-8-114(a) (requiring the agent to act in accordance with the principal's reasonable expectations, if known, and otherwise in the principal's best interest). Subsection (3) requires that, if the power of attorney has been recorded, the resignation must also be recorded.

Section 62-8-119. (a) For purposes of this section and Section 62-8-120, 'acknowledged' means purportedly executed pursuant to Section 62-8-105.

(b) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect, and the agent had not exceeded and had properly exercised the authority.

(c) A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation an:

(1) agent's certification under penalty of perjury of a factual matter concerning the principal, agent, or power of attorney; and

(2) English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and

(3) opinion of counsel as to a matter of law concerning the power of attorney if the power of attorney does not appear to be effective pursuant to Section 62-8-109. Such a request must provide a reason and be in writing.

(d) An English translation or an opinion of counsel requested pursuant to this section must be provided at the principal's expense unless the request is made more than seven business days after the power of attorney is presented for acceptance.

(e) For purposes of this section and Section 62-8-120, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal, or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

(f) The following optional form may be used by an agent to certify facts concerning a power of attorney:

AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT'S AUTHORITY

State of _____
[County] of_____

I, _____ (Name of Agent), [certify] under penalty of perjury that _____(Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated _____.

I further [certify] that to my knowledge:

(1) the Principal is alive and has not revoked the Power of Attorney or my authority to act under the Power of Attorney and the Power of Attorney and my authority to act under the Power of Attorney have not terminated;

(2) the action I desire to take is within the scope of my authority granted under the Power of Attorney.

(3) if the Power of Attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(4) if I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(5) _____
_____
_____
_____
_____

(Insert Other Relevant Statements)

SIGNATURE AND ACKNOWLEDGMENT

_____
Agent's Signature Date_____

_____