ACTS

AND

JOINT RESOLUTIONS

OF THE

General Assembly

OF THE

State of South Carolina

MARK SANFORD, Governor; ANDRÉ BAUER, Lieutenant Governor and ex officio President of the Senate; GLENN F. McCONNELL, President Pro Tempore of the Senate; ROBERT W. HARRELL JR., Speaker of the House of Representatives; HARRY F. CATO, 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

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2009 REGULAR SESSION

Acts and Joint Resolutions

of the

GENERAL ASSEMBLY
OF THE STATE OF SOUTH CAROLINA

Numbers in parenthesis to left of act numbers (numbers in bold face) refer as follows: number with R before it refers to ratification number, number with S before it refers to bill number in Senate, and number with H before it refers to bill number in House of Representatives.

STEPHEN T. DRAFFIN, Code Commissioner, P.O. Box 11489,
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No. 1

(R15, H3463)

AN ACT TO AMEND SECTION 56-7-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO HANDWRITTEN AND ELECTRONIC TRAFFIC TICKETS, SO AS TO DELETE THE PROVISIONS THAT REQUIRE ELECTRONIC TRAFFIC TICKETS TO BE PRINTED IN SPECIFIC COLORS.

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

Electronic traffic tickets

SECTION 1. Section 56-7-20 of the 1976 Code, as last amended by Act 68 of 2005, 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."

Time effective

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

Ratified the 2nd day of April, 2009.

Approved the 7th day of April, 2009.

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No. 2

(R21, H3664)

AN ACT TO AMEND SECTION 59-147-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ISSUANCE OF REVENUE BONDS UNDER THE PROVISIONS OF THE HIGHER EDUCATION REVENUE BOND ACT, SO AS TO CLARIFY THOSE ELIGIBLE FACILITIES WHICH MAY BE FINANCED UNDER THE ACT; AND TO REPEAL SECTION 59-147-120 RELATING TO LIMITATIONS ON THE ISSUANCE OF CERTAIN REVENUE BONDS.

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

Eligible facilities, financing of

SECTION 1. Section 59-147-30 of the 1976 Code is amended to read:

"Section 59-147-30. Subject to the approval of the State Budget and Control Board by resolution duly adopted, the university may issue revenue bonds of the university for the purpose of financing or refinancing in whole or in part the cost of acquisition, construction, reconstruction, renovation and improvement of land, buildings, and other improvements to real property and equipment for the purpose of providing facilities serving the needs of the university including, but not limited to:

(1) dormitories, apartment buildings, dwelling houses, bookstores and other university operated stores, laundries, dining halls, cafeterias, parking facilities, student recreational, entertainment and fitness related facilities, inns, conference and other nondegree educational facilities and similar auxiliary facilities of the university and any other facilities which are auxiliary to any of the foregoing excluding, however, athletic department projects which primarily serve varsity athletic teams of the university; and

(2) those academic facilities as may be authorized by joint resolution of the General Assembly."

Repeal

SECTION 2. Section 59-147-120 of the 1976 Code is repealed.

Time effective

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

Ratified the 2nd day of April, 2009.

Became law without the signature of the Governor -- 4/9/09.

No. 3

(R11, S483)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 9 TO CHAPTER 10, TITLE 4 ENACTING THE "LOCAL OPTION TOURISM DEVELOPMENT FEE ACT" SO AS TO ALLOW A MUNICIPALITY LOCATED IN A COUNTY IN WHICH AT LEAST FOURTEEN MILLION DOLLARS OF STATE ACCOMMODATIONS TAX REVENUES HAVE BEEN COLLECTED IN A FISCAL YEAR TO IMPOSE A FEE NOT TO EXCEED ONE PERCENT OF AMOUNTS SUBJECT TO TAX PURSUANT TO CHAPTER 36, TITLE 12, THE SOUTH CAROLINA SALES AND USE TAX ACT, FOR NOT MORE THAN TEN YEARS, TO PROVIDE THAT THE MUNICIPALITY MAY IMPOSE THE FEE BY ORDINANCE OR BY REFERENDUM IN THE MUNICIPALITY, TO PROVIDE FOR THE ADMINISTRATION OF THE FEE, AND TO PROVIDE USES FOR WHICH THE FEE REVENUE MUST BE APPLIED, INCLUDING TOURISM PROMOTION, PROPERTY TAX ROLLBACK, AND CAPITAL PROJECTS PROMOTING TOURISM CAUSES.

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

Local Option Tourism Development Fee Act

SECTION 1. Chapter 10, Title 4 of the 1976 Code is amended by adding:

"Article 9

Local Option Tourism Development Fee

Section 4-10-910. This article may be cited as the 'Local Option Tourism Development Fee Act'.

Section 4-10-920. For purposes of this article:

(1) 'County' means a county in which revenues of the state accommodations tax imposed pursuant to Section 12-36-920 have aggregated at least fourteen million dollars in a fiscal year.

(2) 'Fee' means the local option tourism development fee allowed to be imposed as provided in this article.

(3) 'Municipality' means a municipal corporation created pursuant to Chapter 1, Title 5 or a municipal government as the use of the term dictates, located in a county as defined by subsection (1).

Section 4-10-930. (A) Subject to the requirements of this article, a municipality may impose in the municipality a fee not to exceed one percent for not more than ten years for the purposes provided in Section 4-10-970 by:

(1) an ordinance adopted by a supermajority of the municipal council which must be at least two-thirds of the members of a municipal council; or

(2) the approval of a majority of qualified electors voting in a referendum held pursuant to this section called by a majority of the members of the municipal council.

(B)(1) Upon the adoption of a resolution calling for a referendum by the municipal council, the municipal election commission in each municipality shall conduct a referendum on the first Tuesday ninety days after the adoption of the resolution on the question of implementing the fee within the municipality. The state election laws apply to the referendum, mutatis mutandis. The municipal election commission shall publish the results of the referendum and certify them to the municipal council. The fee must not be imposed in the municipality, unless a majority of the qualified electors voting in the referendum approve the question.

(2) The ballot must read substantially as follows:

'Must a one percent fee on the gross proceeds of sales or sales price of all amounts subject to the sales and use tax imposed pursuant to Chapter 36, Title 12, but not the gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 and the gross

proceeds of sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons, be levied in _____ for the purpose of tourism advertisement and promotion directed at non-South Carolina residents?

Yes ☐

No ☐'

(3) If the question is not approved at the initial referendum, the municipal council may call for another referendum on the question. However, following the initial referendum, a referendum for this purpose must not be held more often than once in a twenty-four month period on the Tuesday following the first Monday in November in even-numbered years.

(4) Two weeks before the referendum, the municipal council shall publish in a newspaper of general circulation within the jurisdiction a description of and the uses for the fee.

(C)(1) Upon the adoption of a resolution calling for a referendum to rescind the fee by the municipal council, the municipal election commission shall conduct a referendum in the same manner provided in subsection (B) on the question of rescinding the fee imposed by this section. The state election laws apply to the referendum, mutatis mutandis. The municipal election commission shall publish the results of the referendum and certify them to the municipal council. The fee must be rescinded in the municipality upon the certification of the results if a majority of the qualified electors voting in the referendum vote in favor of rescinding the fee.

(2) The ballot must read substantially as follows:

'Must the one percent local fee levied in _____ pursuant to Section 4-10-930 of the 1976 Code be rescinded?

Yes ☐

No ☐'

(3) A referendum for rescission of this fee may not be held earlier than two years after the fee has been levied in the municipality. If a majority of the qualified electors voting in the rescission referendum vote against rescinding the fee, no further rescission referendums may be held for a period of twenty-four months on the first Tuesday following the first Monday in November of

even-numbered years. If a majority of the qualified electors vote in favor of rescinding the tax, the fee may not be reimposed in the municipality for a period of two years.

(D) The imposition date of the fee allowed pursuant to this article is the first day of the first month beginning more than sixty days after the municipality files a certified copy of the imposition ordinance or the certification of the results of the referendum with the South Carolina Department of Revenue.

(E) Once a certified copy of the ordinance or referendum results is filed with the Department of Revenue, for the period of imposition provided in that ordinance or referendum, the department may not accept as filed any additional ordinance or referendum results from the municipality that in any way relates to the fee allowed to be imposed pursuant to this chapter except an ordinance or the referendum results reducing or repealing the existing fee. The department shall accept for filing a certified copy of an ordinance or referendum results reducing or repealing the fee and that reduction or repeal applies in the manner provided in Section 4-10-930(D) for imposition.

Section 4-10-940. (A) The fee allowed by this article is an amount not to exceed one percent of the gross proceeds of sales or sales price of all amounts subject to the sales and use tax imposed pursuant to Chapter 36, Title 12.

(B) The fee imposed pursuant to this article must be administered and collected by the Department of Revenue in the same manner that sales and use taxes are collected. The department may prescribe amounts that may be added to the sales price because of the fee.

(C) The fee authorized by this article is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable area that is subject to the tax imposed by Chapter 36, Title 12 and the enforcement provisions of Chapter 54, Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 and the gross proceeds of sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons are exempt from the fee imposed by this article. The fee imposed by this article also applies to tangible personal property subject to the use tax in Article 13, Chapter 36, Title 12.

(D) The provisions of subsections (C), (D), (E), (F), and (G) of Section 4-10-350 apply for fee payors and the fee allowed to be imposed pursuant to this article, including further identification of point of sale jurisdictions, mutatis mutandis.

(E) The revenues of the fee imposed pursuant to this article must be remitted to the Department of Revenue and placed on deposit with the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of any refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues and interest quarterly based on point of collection to the treasurer of the municipality in which the fee is imposed and the revenues must be used only for the purposes provided in Section 4-10-970. The State Treasurer may correct misallocations by adjusting subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocations. However, allocations made as a result of municipal code errors must be corrected prospectively.

Section 4-10-960. The Department of Revenue shall furnish data to the State Treasurer and to the municipal treasurers receiving revenues for the purpose of calculating distributions and estimating revenues. The information that must be supplied to municipalities upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12-54-240. A person violating this section is subject to the penalties provided in Section 12-54-240.

Section 4-10-970. (A)(1) Except as provided in item (2) of this subsection, all revenues and interest of the fee must be used exclusively for tourism advertisement and promotion directed at non-South Carolina residents.

(2) Revenues received in the third and subsequent years of imposition must be used as provided in item (1) except that up to twenty percent may be used for property tax rollbacks on owner-occupied real property or tourism-related capital projects, or a combination of these purposes, but no less than twenty percent of these funds must be used for property tax rollback on owner-occupied property. No capital project is eligible to be funded directly or indirectly with fee revenues unless the project consists of construction of new or renovation of existing tourism-related facilities intended to grow or maintain the overnight tourism market in the city.

(B) The municipality shall designate no more than two organizations within the county to receive the revenues and interest and conduct the promotional activities provided pursuant to subsection

(A)(1). These organizations must be nonprofit destination marketing organizations representing a broad cross-section of tourism interests within the county. In addition, before an organization may be designated, it must certify to the imposing municipality that:

(1) its promotional and advertising programs are based on research based outcomes;

(2) the organization has a proven record of success in creating new and repeat visitation to the county;

(3) it has sufficient resources to create, plan, implement, and measure the marketing program generated by the fee revenues;

(4) it will use the funds only for the purposes provided pursuant to subsection (B)(1) of this section.

(C) Municipalities located in the same county that are imposing a fee pursuant to this article jointly may designate a regional tourism promoter located in the county to jointly promote tourism in the municipalities imposing the fee. The regional tourism promoter must be designated in the manner provided in subsection (B) and only may promote tourism to non-South Carolina residents."

Time effective

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

Ratified the 2nd day of April, 2009.

Became law without the signature of the Governor -- 4/9/09.

No. 4

(R24, S407)

AN ACT TO AMEND ARTICLE 1, CHAPTER 43, TITLE 44, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DONATION OF HUMAN BODIES, PARTS OF THE HUMAN BODY AND HUMAN TISSUE, SO AS TO CONFORM CROSS REFERENCES TO THE REVISED UNIFORM ANATOMICAL GIFT ACT, TO DELETE THE PROVISION STATING THAT A DONOR DESIGNATION ON A DRIVER'S LICENSE DOES NOT CONSTITUTE EXECUTION OF GIFT UNDER THE UNIFORM ANATOMICAL GIFT ACT; TO

AMEND ARTICLE 5, CHAPTER 43, TITLE 44, RELATING TO THE UNIFORM ANATOMICAL GIFT ACT, SO AS TO CHANGE THE ACT NAME TO THE REVISED UNIFORM ANATOMICAL GIFT ACT, AND, AMONG OTHER THINGS, TO REVISE DEFINITIONS, DONOR ELIGIBILITY, DONATION AMENDMENT AND REVOCATION PROCEDURES, THE PRIORITY ORDER TO GIVE CONSENT, SUBSTITUTE DONOR PROCEDURES, DONEE QUALIFICATIONS, AND ALTERNATIVE DONEE PROCEDURES; TO ESTABLISH PROCEDURES FOR REFUSAL TO MAKE AN ANATOMICAL GIFT; TO PROVIDE THAT A PERSON WHO IS IN POSSESSION OF A DOCUMENT OF AN ANATOMICAL GIFT, OR REFUSAL OF A GIFT, SHALL SEND THE DOCUMENT TO THE HOSPITAL IF THE INDIVIDUAL EXECUTING OR REFUSING THE GIFT IS BELIEVED TO BE DECEASED OR NEAR DEATH; TO PROVIDE THAT A PROCUREMENT AGENCY RECEIVING A REFERRAL OF AN INDIVIDUAL AT OR NEAR DEATH SHALL SEARCH THE SOUTH CAROLINA ORGAN AND TISSUE DONOR REGISTRY TO ASCERTAIN IF AN ANATOMICAL GIFT WAS MADE; TO PROVIDE THAT A PHYSICIAN WHO ATTENDED A PERSON AT DEATH OR WHO DETERMINES THE TIME OF DEATH MAY NOT PARTICIPATE IN REMOVAL OR TRANSPLANTATION PROCEDURES; TO ESTABLISH CRIMINAL PENALTIES FOR SELLING OR PURCHASING ORGANS AND FOR OBTAINING FINANCIAL GAIN BY FALSIFYING OR DEFACING A DONATION DOCUMENT; TO ESTABLISH CRITERIA FOR THE VALIDITY OF AN ORGAN DONATION; TO ESTABLISH PROCEDURES TO RESOLVE ISSUES WHEN CERTAIN CONFLICTS EXIST BETWEEN A DECLARATION OF AN ORGAN DONATION AND THE MEDICAL SUITABILITY OF THE ORGAN DONATION; TO REQUIRE CORONERS TO COOPERATE WITH PROCUREMENT ORGANIZATIONS TO MAXIMIZE THE OPPORTUNITY TO RECOVER ANATOMICAL GIFTS AND TO PROVIDE THAT A BODY PART MAY NOT BE REMOVED DURING A POST-MORTEM EXAMINATION FOR TRANSPLANTATION, THERAPY, RESEARCH, OR EDUCATION UNLESS THE PART IS THE SUBJECT OF AN ANATOMICAL GIFT; AND TO AMEND ARTICLE 11, CHAPTER 43, TITLE 44, RELATING TO HOSPITAL POLICY AND PROTOCOL FOR ORGAN AND

TISSUE DONATION, SO AS TO REVISE DEFINITIONS AND PROCEDURES FOR CONTACTING PERSONS AUTHORIZED TO CONSENT TO ORGAN DONATION.

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

Disposition of human bodies and parts

SECTION 1. Article 1, Chapter 43, Title 44 of the 1976 Code is amended to read:

"Article 1

General Provisions

Section 44-43-10. The implied warranties of merchantability and fitness are not applicable to a contract for the sale, procurement, processing, distribution, or use of human tissues including, but not limited to, corneas, bones or organs, whole blood, plasma, blood products, or blood derivatives. Human tissue, whole blood, plasma, blood products, and blood derivatives must not be considered commodities subject to sale or barter, and the transplanting, injection, transfusion, or other transfer of these substances into the human body are considered a medical service.

Section 44-43-20. (A) A person may lawfully donate blood if he is:

(1) at least seventeen years of age; or

(2) sixteen years of age and has the written consent of his parent or guardian.

(B) A person under eighteen years of age may not sell blood.

Section 44-43-30. Whenever a person applies for the issuance, reissuance, or renewal of any class of driver's license, the Department of Motor Vehicles is authorized to furnish that person with a form, sufficient under the provisions of Article 5, the Revised Uniform Anatomical Gift Act, for the gift of all or part of the donor's body conditioned upon the donor's death and a document containing a summary description and explanation of the act. If a person who is legally authorized desires to execute such a gift, the department may provide that person with appropriate assistance and the presence of the legally required number of witnesses.

Section 44-43-40. Donations and gifts of all or part of a person's body made at the time of application, issuance, reissuance, or renewal of a driver's license pursuant to this chapter must be noted on the person's driver's license. After a driver's license has been issued, reissued, or renewed, the department shall issue to each person who has notified the department that he is a donor under the Revised Uniform Anatomical Gift Act a suitable emblem embedded within the person's driver's license to indicate his status as a donor. The department is not the registry of anatomical gifts.

Section 44-43-50. The Department of Motor Vehicles, its officers, and employees are immune from any civil liability for any acts or omissions in carrying out the provisions of Section 44-43-40."

Revised Anatomical Gift Act

SECTION 2. Article 5, Chapter 43, Title 44 of the 1976 Code is amended to read:

"Article 5

Revised Uniform Anatomical Gift Act

Section 44-43-300. This article may be cited as the 'Revised Uniform Anatomical Gift Act'.

Section 44-43-305. As used in this article:

(1) 'Adult' means an individual who is at least eighteen years of age.

(2) 'Agent' means an individual:

(a) authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or

(b) expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(3) 'Anatomical gift' means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(4) 'Decedent' means a deceased individual whose body or part is or may be the source of an anatomical gift.

(5) 'Disinterested witness' means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an

anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under Section 44-43-350.

(6) 'Document of gift' means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry.

(7) 'Donor' means an individual whose body or part is the subject of an anatomical gift.

(8) 'Donor registry' means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(9) 'Driver's license' means a license or permit issued by the Department of Motor Vehicles to operate a vehicle, whether or not conditions are attached to the license or permit.

(10) 'Eye bank' means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(11) 'Guardian' means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(12) 'Hospital' means a hospital licensed, accredited, or approved under the laws of this State and includes a hospital operated by the United States or the State or its subdivisions, although not required to be licensed under state law.

(13) 'Identification card' means an identification card issued by the Department of Motor Vehicles.

(14) 'Know' means to have actual knowledge.

(15) 'Minor' means an individual who is under eighteen years of age.

(16) 'Organ procurement organization' means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.

(17) 'Parent' means a parent whose parental rights have not been terminated.

(18) 'Part' means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(19) '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 any other legal or commercial entity.

(20) 'Physician' means an individual authorized to practice medicine or osteopathy under the law of any state.

(21) 'Procurement organization' means an eye bank, organ procurement organization, or tissue bank.

(22) 'Prospective donor' means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.

(23) 'Reasonably available' means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(24) 'Recipient' means an individual into whose body a decedent's part has been or is intended to be transplanted.

(25) '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.

(26) 'Refusal' means a record created under Section 44-43-330 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(27) 'Sign' means, with the present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(28) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(29) 'Technician' means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(30) 'Tissue' means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(31) 'Tissue bank' means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(32) 'Transplant hospital' means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

Section 44-43-310. This article applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

Section 44-43-315. Subject to Section 44-43-335, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in Section 44-43-320 by:

(1) the donor, if the donor is an adult or if the donor is a minor and is at least sixteen years of age;

(2) an agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

(3) a parent of the donor, if the donor is less than sixteen years of age; or

(4) the donor's guardian.

Section 44-43-320. (A) A donor may make an anatomical gift:

(1) by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;

(2) in a will;

(3) during a terminal illness or injury of the donor, by any form of oral or written communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(4) as provided in subsection (B).

(B) A donor or other person authorized to make an anatomical gift under Section 44-43-315 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) state that it has been signed and witnessed as provided in item (1).

(C) Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(D) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

Section 44-43-325. (A) Subject to Section 44-43-335, a donor or other person authorized to make an anatomical gift under Section 44-43-315 may amend or revoke an anatomical gift by:

(1) a record signed by:

(a) the donor;

(b) the other person; or

(c) subject to subsection (B), another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(2) a later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(B) A record signed pursuant to subsection (A)(1)(c) must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) state that it has been signed and witnessed as provided in item (1).

(C) Subject to Section 44-43-335, a donor or other person authorized to make an anatomical gift under Section 44-43-315 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(D) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(E) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (A).

Section 44-43-330. (A) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) a record signed by:

(a) the individual; or

(b) subject to subsection (B), another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(3) any form of communication made by the individual while competent during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(B) A record signed pursuant to subsection (A)(1)(b) must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(2) state that it has been signed and witnessed as provided in item (1).

(C) An individual who has made a refusal may amend or revoke the refusal:

(1) in the manner provided in subsection (A) for making a refusal;

(2) by subsequently making an anatomical gift pursuant to Section 44-43-320 that is inconsistent with the refusal; or

(3) by destroying or cancelling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(D) Except as otherwise provided in Section 44-43-335(H), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

Section 44-43-335. (A) Except as otherwise provided in subsection (G) and subject to subsection (F), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under Section 44-43-320 or an amendment to an anatomical gift of the donor's body or part under Section 44-43-325.

(B) A donor's revocation of an anatomical gift of the donor's body or part under Section 44-43-325 is not a refusal and does not bar another person specified in Section 44-43-315 or 44-43-340 from making an anatomical gift of the donor's body or part under Section 44-43-320 or 44-43-345.

(C) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under Section 44-43-320 or an amendment to an anatomical gift of the donor's body or part under

Section 44-43-325, another person may not make, amend, or revoke the gift of the donor's body or part under Section 44-43-345.

(D) A revocation of an anatomical gift of a donor's body or part under Section 44-43-325 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under Section 44-43-320 or 44-43-345.

(E) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 44-43-315, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(F) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 44-43-315, an anatomical gift of a part for one or more of the purposes set forth in Section 44-43-315 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under Section 44-43-320 or 44-43-345.

(G) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(H) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

Section 44-43-340. (A) Subject to subsections (B) and (C) and unless barred by Section 44-43-330 or 44-43-335, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) an attorney-in-fact appointed by the decedent in a durable power of attorney executed pursuant to Section 62-5-501, if the decision is within the scope of his authority;

(2) a spouse of the decedent unless the spouse and the decedent 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;

(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 spouse and the decedent;

(3) adult children of the decedent;
(4) parents of the decedent;
(5) adult siblings of the decedent;
(6) adult grandchildren of the decedent;
(7) grandparents of the decedent;
(8) an adult who exhibited special care and concern for the decedent;
(9) the persons who were acting as the guardians of the person of the decedent at the time of death; and
(10) any other person authorized or under obligation to dispose of the body.

(B) If there is more than one member of a class listed in subsection (A)(1), (3), (4), (5), (6), (7), or (9) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under Section 44-43-350 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(C) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (A) is reasonably available to make or to object to the making of an anatomical gift.

Section 44-43-345. (A) A person authorized to make an anatomical gift under Section 44-43-340 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(B) Subject to subsection (C), an anatomical gift by a person authorized under Section 44-43-340 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under Section 44-43-340 may be:

(1) amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(C) A revocation under subsection (B) is effective only if, before an incision has been made to remove a part from the donor's body or

before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, physician, or technician knows of the revocation.

Section 44-43-350. (A) An anatomical gift may be made to the following persons named in the document of gift:

(1) a hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education;

(2) subject to subsection (B), an individual designated by the person making the anatomical gift if the individual is the recipient of the part;

(3) an eye bank or tissue bank.

(B) If an anatomical gift to an individual under item (2) of subsection (A) cannot be transplanted into the individual, the part passes in accordance with subsection (G) in the absence of an express, contrary indication by the person making the anatomical gift.

(C) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (A), but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(4) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(D) For the purpose of subsection (C), if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(E) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (A) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (G).

(F) If a document of gift specifies only a general intent to make an anatomical gift by words such as 'donor', 'organ donor', or 'body donor', or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (G).

(G) For purposes of subsections (B), (E), and (F) the following rules apply:

(1) If the part is an eye, the gift passes to the appropriate eye bank.

(2) If the part is tissue, the gift passes to the appropriate tissue bank.

(3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(H) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under item (2) of subsection (A), passes to the organ procurement organization as custodian of the organ.

(I) If an anatomical gift does not pass pursuant to subsections (A) through (H) or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(J) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under Section 44-43-320 or 44-43-345, or if the person knows that the decedent made a refusal under Section 44-43-330, that was not revoked. For purposes of the subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(K) Except as otherwise provided in item (2) of subsection (A), nothing in this article affects the allocation of organs for transplantation or therapy.

Section 44-43-355. (A) A person who finds or is in possession of a document of gift or of refusal that was executed by an individual who the person reasonably believes is dead or near death shall, if the individual is taken to a hospital, send the document of gift or refusal to the hospital.

(B) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

Section 44-43-360. (A) A document of gift need not be delivered during the donor's lifetime to be effective.

(B) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under Section 44-43-350.

Section 44-43-365. (A) When a hospital refers an individual at or near death to a procurement organization, the organization shall cause a reasonable search to be made of the records of the South Carolina Organ and Tissue Donor Registry to ascertain whether the individual has made an anatomical gift.

(B) A procurement organization must be allowed reasonable access to information in the records of the South Carolina Organ and Tissue Donor Registry to ascertain whether an individual at or near death is a donor.

(C) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(D) Unless prohibited by law other than this article, at any time after a donor's death, the person to which a part passes under Section 44-43-350 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(E) Unless prohibited by law other than this article, an examination under subsection (C) or (D) may include an examination of all medical and dental records of the donor or prospective donor.

(F) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(G) Upon referral by a hospital under subsection (A), a procurement organization shall make a reasonable search for any person listed in Section 44-43-340 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it promptly shall advise the other person of all relevant information.

(H) Subject to Sections 44-43-350(I) and 44-43-405, the rights of the person to which a part passes under Section 44-43-350 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this article, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under Section 44-43-350, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(I) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(J) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

Section 44-43-370. Each hospital in this State shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

Section 44-43-375. (A) Except as otherwise provided in subsection (B), a person that for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death commits a felony and, upon conviction, must be fined not more than fifty thousand dollars or imprisoned not more than five years, or both.

(B) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

Section 44-43-380. A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal commits a felony and, upon conviction, must be fined not

more than fifty thousand dollars or imprisoned not more than five years, or both.

Section 44-43-385. (A) A person that acts in good faith in accord with the terms of this article, or under the anatomical gift laws of another state, is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act. However, immunity from civil liability does not extend to cases of provable malpractice on the part of a physician, surgeon, or technician.

(B) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(C) In determining whether an anatomical gift has been made, amended, or revoked under this article, a person may rely upon representations of an individual listed in Section 44-43-340 (A)(2), (3), (4), (5), (6), (7), or (8) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

Section 44-43-390. (A) A document of gift is valid if executed in accordance with:

(1) this article;

(2) the laws of the state or country where it was executed; or

(3) the laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(B) If a document of gift is valid under this section, the law of this State governs the interpretation of the document of gift.

(C) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

Section 44-43-395. (A) For purposes of this section:

(1) 'Advance health care directive' means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor.

(2) 'Declaration' means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(3) 'Health care decision' means any decision regarding the health care of the prospective donor.

(B) If a prospective donor has a declaration or advance health care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than this article to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 44-43-340. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

Section 44-43-400. (A) A coroner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education.

(B) A part may not be removed from the body of a decedent under the jurisdiction of a coroner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift. The body of a decedent under the jurisdiction of the coroner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift. This subsection does not preclude a coroner from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the coroner.

Section 44-43-405. (A) Upon request of a procurement organization, a coroner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the coroner. If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, the coroner shall release post-mortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the post-mortem

examination results or other information received from the coroner only if relevant to transplantation or therapy.

(B) The coroner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the coroner which the coroner determines may be relevant to the investigation.

(C) A person that has any information requested by a coroner pursuant to subsection (B) shall provide that information as expeditiously as possible to allow the coroner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.

(D) If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the coroner and a post-mortem examination is not required, or the coroner determines that a post-mortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the coroner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research, or education.

(E) If an anatomical gift of a part from the decedent under the jurisdiction of the coroner has been or might be made, but the coroner initially believes that the recovery of the part could interfere with the post-mortem investigation into the decedent's cause or manner of death, the coroner shall consult with the forensic pathologist and the procurement organization about the proposed recovery. After consultation, the coroner may allow the recovery.

(F) If the coroner or designee allows recovery of a part under subsection (D), or (E), the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the coroner with a record describing the condition of the part, a biopsy, a photograph, and any other information and observations that would assist in the post-mortem examination.

Section 44-43-410. 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. This article must be liberally construed to effectuate the wishes of the donor.

Section 44-43-415. This article modifies, limits, and 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(A) of that act, 15 U.S.C. Section 7001, or authorize electronic delivery of any of the notices described in Section 103(B) of that act, 15 U.S.C. Section 7003(B).”

Hospital policy and protocol for organ and tissue donation

SECTION 3. Article 11, Chapter 43, Title 44 of the 1976 Code is amended to read:

“Article 11

Hospital Policy and Protocol for Organ and Tissue Donation

Section 44-43-910. As used in this article:

(1) ‘Hospital’ means a hospital licensed, accredited, or approved under the laws of this State and includes a hospital operated by the United States or the State or its subdivisions, although not required to be licensed under state law.

(2) ‘Potential organ or tissue donor’ means a person who has died or is dying.

(3) ‘Organ and Tissue Procurement Organization’ means the organ procurement organization designated to perform organ recovery services in South Carolina by the United States Department of Health and Human Services which also has the capability to procure tissue.

Section 44-43-920. A hospital shall establish policies on organ and tissue donation, as well as on related continuing education, in accordance with applicable federal and state laws and regulations.

Section 44-43-930. When death is imminent or has occurred, the hospital shall notify the organ procurement organization in a timely manner in accordance with applicable federal and state laws and regulations.

Section 44-43-940. All relevant hospital administration and staff shall collaborate with the organ and tissue procurement organization in a cooperative effort to support and promote the donation process.

Section 44-43-945. (A) If upon referral of a potential organ or tissue donor, the organ and tissue procurement organization determines that the donation is not appropriate based on established medical criteria, this determination must be noted by hospital personnel on the patient's record. Within two hours of this determination and the deceased patient's next-of-kin designating a funeral director, the hospital shall notify the funeral director of this designation and when the body of the deceased will be made available to the funeral director.

(B) If the organ and tissue procurement organization determines that the patient is a suitable candidate for organ or tissue donation, a representative of the organ and tissue procurement organization shall contact the appropriate person authorized to consent to the donation pursuant to Section 44-43-340.

(C) Discretion and sensitivity to family circumstances and religious beliefs must be used in all contacts with family members regarding organ and tissue donation.

Section 44-43-950. As provided in Section 44-43-340, persons in the stated order of priority may give consent for organ or tissue donation.

Section 44-43-960. If a death is under the jurisdiction of the coroner or medical examiner, as provided in Section 17-5-530, written or verbal permission must be obtained by the organ and tissue procurement organization from the coroner or medical examiner before organ or tissue recovery. A coroner or medical examiner should refer to the designated organ and tissue procurement organization in South Carolina as a potential donor a person whose death occurs outside of a hospital.

Section 44-43-970. (A) LifePoint, Inc. within the territory designated pursuant to federal law, is the exclusive agency to receive potential organ donor referrals and organ donations and tissue referrals and tissue donations so long as this entity remains and is certified by the Centers for Medicare and Medicaid Services and abides by the regulations of the Organ Procurement Transplantation Network and the United Network for Organ Sharing or its successor.

(B) LifePoint, Inc. annually by April first shall submit a report to the General Assembly concerning its activities and the incidence of organ and tissue donation.

Section 44-43-985. The organ and tissue procurement organization may not assess a charge, fee, or cost against another procurement

agency for referral of an organ or tissue donor. However, reasonable charges for related services pursuant to contractual relationships are permissible.

Section 44-43-1000. The following must be documented in the medical records of patients identified as potential organ or tissue donors:

(1) why a family is not contacted to request organ or tissue donation;

(2) when a family is contacted to request organ or tissue donation and the outcome of the contact;

(3) disposition of a referral to a procurement agency, including acceptance or rejection by the agency. The appropriate procurement agency shall notify the referring hospital of the disposition;

(4) other documentation as may be required by federal or state law or regulation.

Section 44-43-1010. All hospital and physician charges following declaration of death that pertain to organ and tissue donation must be paid by the appropriate procurement agency and must not be charged to the donor's estate. Procurement costs incurred by the agency must not be charged to the donor's estate.

Section 44-43-1015. Each hospital shall work collaboratively with the organ and tissue procurement organization in conducting periodic death record reviews."

Time effective

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

Ratified the 30th day of April, 2009.

Approved the 6th day of May, 2009.

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No. 5

(R25, S420)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 56-5-4975 SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR CERTAIN PERSONS TO OPERATE A VEHICLE THAT IS UPFITTED AS AN AMBULANCE OR NO LONGER PERMITTED AND LICENSED AS AN AMBULANCE UNLESS CERTAIN EXTERIOR ITEMS THAT DISTINGUISH IT AS AN AMBULANCE ARE REMOVED, AND TO PROVIDE PENALTIES FOR VARIOUS VIOLATIONS OF THIS PROVISION.

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

Unlawful operation of an ambulance

SECTION 1. Article 35, Chapter 5, Title 56 of the 1976 Code is amended by adding:

"Section 56-5-4975. (A) It is unlawful for a person to operate a vehicle that is upfitted as an ambulance or no longer permitted and licensed as an ambulance pursuant to Article 1, Chapter 61, Title 44, unless the vehicle's exterior equipment and markings including, but not limited to, emergency lights, sirens, and decals that distinguish it as an ambulance are removed. A person who violates this subsection, except as provided in subsections (B) and (C), is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

(B) A person who operates a vehicle in violation of subsection (A) with the intent to commit a felony, or in the commission of a felony, is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

(C) A person who operates a vehicle in violation of subsection (A) with the intent to commit a terrorist act, or in the commission of a terrorist act, is guilty of a felony and, upon conviction, must be fined ten thousand dollars and imprisoned for a mandatory minimum of ten years, no part of which may be suspended nor probation granted. For purposes of this section, 'terrorist act' means activities that:

(1) involve acts dangerous to human life, which are a violation of the criminal laws of this State;

(2) appear to be intended to:

(a) intimidate or coerce a civilian population;

(b) influence the policy of a government by intimidation or coercion; or

(c) affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(3) occur primarily within the territorial jurisdiction of this State.

(D) The provisions of this section do not apply to:

(1) eleemosynary or not-for-profit organizations that operate an ambulance that is no longer permitted and licensed and whose exterior markings have been removed for use in parades, fundraising activities, and other official functions;

(2) a person operating a vehicle that is going from the place of purchase to his home or his fixed place of business;

(3) a person operating a vehicle going to a location for the purpose of removing the vehicle's exterior equipment or markings; or

(4) a person operating an antique vehicle as defined by Section 56-3-2210."

Time effective

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

Ratified the 30th day of April, 2009.

Approved the 6th day of May, 2009.

No. 6

(R30, H3121)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 50-15-75 SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON OR A GROUP OF INDIVIDUALS TRAVELING IN ONE VEHICLE TO REMOVE, OR ATTEMPT TO REMOVE, FROM THIS STATE MORE THAN A SPECIFIED NUMBER OF CERTAIN NAMED SPECIES OF TURTLES, TO PROVIDE EXCEPTIONS, AND TO PROVIDE PENALTIES FOR VIOLATIONS.

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

Removal of turtle species unlawful

SECTION 1. Chapter 15, Title 50 of the 1976 Code is amended by adding:

"Section 50-15-75. (A) It is unlawful for a person, or a group of individuals traveling in one vehicle, to remove, or attempt to remove from this State more than ten, either in one species or a combination of species, of the named species of turtles at one time with a maximum of twenty turtles of these species, either individually or in combination in any one year: yellowbelly turtle (Trachemys scripta), Florida cooter (Pseudemys floridana), river cooter (Pseudemys concinna), chicken turtle (Deirochelys reticularia), eastern box turtle (Terrapene carolina), eastern painted turtle (Chrysemys picta), spiny softshell turtle (Apalone spinifera), Florida softshell turtle (Apalone ferox), and common snapping turtle (Chelydra serpentina).

(B) The provisions of this section do not prohibit the sale, offer for sale, or purchase of the yellowbelly turtle (Trachemys scripta) species and the common snapping turtle (Chelydra serpentina) species if these turtles were taken from a permitted aquaculture facility or a private pond pursuant to a permit issued by the department at the request of the owner or owner's agent. Any person transporting more than ten yellowbelly turtle (Trachemys scripta) species or common snapping turtle (Chelydra serpentina) species must be in possession of a permit pursuant to which the turtles were taken or acquired and, upon request, must provide it to authorized agents of the department. A person selling, offering to sell, or purchasing these species must have documentation from the aquaculture facility as to the origin of the turtles. The department may charge twenty-five dollars for a permit.

(C) A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be punished by a fine of up to two hundred dollars or up to thirty days in jail, or both. A violator also must have his permit permanently revoked and may never be issued another one. Each turtle removed or in possession of a person attempting to remove them is a separate violation of this section."

Time effective

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

Ratified the 30th day of April, 2009.

Approved the 6th day of May, 2009.

No. 7

(R32, H3299)

AN ACT TO AMEND SECTION 58-9-576, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ELECTION BY AND DUTIES OF THE LOCAL EXCHANGE CARRIER AND ALTERNATIVE FORMS OF REGULATION, SO AS TO ENACT THE "CUSTOMER CHOICE AND TECHNOLOGY INVESTMENT ACT OF 2009", AND TO PROVIDE FOR THE CONTINUED REGULATION BY THE PUBLIC SERVICE COMMISSION OF CERTAIN LOCAL EXCHANGE CARRIERS WHEN PROVIDING CERTAIN TELECOM SERVICES, AND TO ALLOW OTHER LOCAL EXCHANGE CARRIERS TO OPT OUT OF REGULATION WHEN PROVIDING CERTAIN SERVICES.

Whereas, the technology used to provide communications services has evolved and continues to evolve at an ever-increasing pace; and

Whereas, the resulting competition between traditional telephone service providers, cable companies offering communications services, Voice over Internet Protocol (VoIP) providers, wireless communications service providers, and other communications service providers promotes and continues to promote additional customer choices for these services; and

Whereas, competition tends to lower prices for competitive services, but in more rural areas it also may have the unintended consequence of adversely impacting the availability of affordable basic local exchange telephone service to all South Carolina citizens; and

Whereas, current state and federal mechanisms for providing universal service funding to carriers of last resort in rural areas have helped to ensure that customers in rural areas continue to have access to basic

local exchange telephone service at affordable rates, in furtherance of important state and national telecommunications goals; and

Whereas, traditional telephone service providers remain subject to certain statutory restrictions that do not apply to other communications service providers; and

Whereas, this disparity may deprive customers of traditional telephone services of the full range of timely and competitive options and offerings that otherwise would be available to them; and

Whereas, the General Assembly finds that relaxing certain restrictions will relieve customers of unnecessary costs and burdens, encourage investment, and promote timely deployment of more innovative offerings at more competitive prices for customers; and

Whereas, in order to make the full range of competitive options and offerings available to customers of communications services while maintaining inflation-based price controls for those existing customers who currently receive and wish to continue receiving only stand-alone basic residential lines from traditional telephone companies, and at the same time ensuring that customers in rural areas of the State continue to have access to basic local exchange service at affordable rates, the General Assembly hereby enacts the "Customer Choice and Technology Investment Act of 2009". Now, therefore,

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

Certain rates of a local exchange carrier

SECTION 1. Section 58-9-576 of the 1976 Code, as last amended by Act 318 of 2006, is further amended by adding:

"(C) Notwithstanding any other provision of this chapter, upon the effective date of this subsection, a LEC that is operating pursuant to subsection (B) based on having complied with subsection (A)(1) or (A)(2), or a LEC that complies with subsection (A)(1) or (A)(2), may elect to have its rates, terms, and conditions for its services determined pursuant to the plan described in this subsection. If at the time of this election the LEC is operating pursuant to subsection (B) based on having complied with subsection (A)(1) or (A)(2), the election becomes effective five days after the notice of the election is filed with

the commission. Otherwise, the election becomes effective in the same manner as provided for in subsection (B)(1).

(1) As used in this subsection:

(a) 'Single-line basic residential service' means single-line residential flat rate basic voice grade local service with touch tone 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).

(b) 'Stand-alone basic residential line' means single-line basic residential service that is billed on a billing account that does not also contain another service, feature, or product that is sold by the LEC or an affiliate of the LEC and that is billed on a recurring basis on the LEC's bill.

(c) 'Preelection date' means the date immediately before the effective date of the LEC's election under this subsection.

(d) 'LEC's preelection state USF withdrawal' means the amount of annual distributions or payments the LEC receives from the state USF as of the preelection date.

(e) 'LEC's state USF reduction' means an amount equal to twenty percent of the LEC's preelection state USF withdrawal.

(f) 'LEC's preelection Interim LEC fund withdrawal' means the amount of annual distributions or payments the LEC receives from the Interim LEC Fund as of the preelection date.

(g) 'LEC's Interim LEC fund reduction' means twenty percent of the LEC's preelection Interim LEC fund withdrawal.

(h) 'LEC' has the same meaning as provided for in Section 58-9-10(12).

(2) 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 co-tenant 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:

(a) 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

(b) otherwise regulate any of the LEC's stand-alone basic residential lines that were in service on the preelection date.

(3) Except to the extent provided for in item (2), beginning on the date that the LEC's election, pursuant to this subsection, becomes effective, the commission must not:

(a) impose any requirements related to the terms, conditions, rates, or availability of any of the LEC's retail services; or

(b) otherwise regulate any of the LEC's retail services, including without limitation any stand-alone basic residential lines put into service after the preelection date.

(4) Beginning on the date that the LEC's election, pursuant to this subsection, becomes effective, the commission must not:

(a) impose any requirements related to the terms, conditions, rates, or availability of any retail interexchange services offered by the LEC or any of its affiliated entities; or

(b) otherwise regulate any of the retail interexchange services of the LEC or any of its affiliates.

(5) Beginning on the date that the LEC's election, pursuant to this subsection, becomes effective, the LEC is not required to file schedules as required by Section 58-9-230 for any of its billing and collection services. Nothing in this subsection otherwise diminishes, and nothing in this subsection expands the commission's jurisdiction as it exists on the effective date of this subsection over wholesale services, including without limitation switched access services, carrier-to-carrier agreements, and carrier-to-carrier complaints regarding nonretail services.

(6) A LEC's election, pursuant to this subsection, does not affect obligations of an incumbent local exchange carrier, as defined by Section 251(h) of the federal Telecommunications Act of 1996, pursuant to Sections 251 and 252 of the federal act or any Federal Communications Commission regulation relating to Sections 251 and 252 of the federal act.

(7) A LEC's election, pursuant to the provisions of this subsection, does not affect the commission's jurisdiction to enforce federal requirements on the LEC's marketing activities. The commission must not adopt, impose, or enforce other requirements on the LEC's marketing activities, including without limitation any

requirements of Orders No. 2001-1036 and 2002-2 the South Carolina Public Service Commission entered in Docket No. 2000-378C.

(8) Nothing in this section affects the commission's certification authority pursuant to Section 58-9-280(A) or (B), or the commission's authority under federal or state law to make appropriate determinations with respect to market entry or other matters in areas served by small LECs.

(9) Nothing in this subsection affects any obligation of the LEC and its affiliates to provide contributions to the state USF and Interim LEC fund, and the commission must ensure that contributions to the state USF and Interim LEC fund, pursuant to the provisions of Section 58-9-280(E), (L), and (M), are maintained at appropriate levels.

(a) For the one-year period beginning on the date that the LEC's election, pursuant to this subsection, becomes effective, the LEC is entitled to withdraw from the Interim LEC fund an amount equal to the LEC's preelection Interim LEC fund withdrawal less the LEC's Interim LEC fund reduction. For the subsequent one-year period, the amount the LEC is entitled to withdraw from the Interim LEC fund is reduced by the LEC's Interim LEC fund reduction. Beginning at the expiration of the second year after the date that the LEC's election, pursuant to this subsection, becomes effective, the LEC is no longer entitled to withdraw any funds from the Interim LEC fund.

(b) Except as otherwise provided in subitem (c) of this item, for the one-year period beginning on the date that the LEC's election, pursuant to this subsection, becomes effective, the LEC is entitled to withdraw from the state USF an amount equal to the LEC's preelection state USF withdrawal less the LEC's state USF reduction. For the subsequent one-year period, the amount the LEC is entitled to withdraw from the state USF is reduced by the LEC's state USF reduction amount. At the end of the second year after the date that the LEC's election, pursuant to this subsection, becomes effective, the LEC is no longer entitled to withdraw any funds from the state USF.

(c) Before the end of the second year after the date that the LEC's election, pursuant to this subsection, becomes effective, the LEC may petition the commission to withdraw from the state USF an amount that differs from the amount determined pursuant to subitem (b) of this item. Upon the filing of this petition, the commission, after notice and opportunity for a hearing, must determine the amount of distributions or payments from the state USF the LEC is entitled to receive, based only on the LEC's stand-alone basic residential lines that were in service on the preelection date and that remain in service

as of the date of the LEC's petition. The commission also must establish a process for annually reducing the amount of distributions or payments from the state USF based on the LEC's stand-alone basic residential lines that were in service on the preelection date and that remain in service as of the adjustment date.

(d) In addition to any amounts the LEC is entitled to withdraw pursuant to subitems (a), (b), and (c) of this item, the LEC also is entitled to withdraw from the state USF all amounts needed to fund any state Lifeline match that is necessary to ensure that persons enrolled in the Lifeline program receive the maximum federally funded Lifeline credit amounts available, including without limitation, federal baseline credit amounts and federal supplemental credit amounts.

(10) For those LECs that have not elected to have rates, terms, and conditions for their services determined pursuant to the plan described in this subsection, the Interim LEC fund and state USF shall continue to operate in accordance with Sections 58-9-280(E), (L), and (M).

(11) For those LECs that have not elected to operate under this section, nothing contained in this section or any subsection shall affect the current administration of the state USF nor does any provision thereof constitute a determination or suggestion that only stand-alone basic residential lines should be entitled to support from the state USF.

(12)(a) In order to transition to the changes effectuated by items (2), (3), and (4), the rates, terms, and conditions for products and services no longer subject to regulation by the commission, which were in effect with a specific term on the preelection date, remain in effect for the duration of the specific term as to customers who subscribed to those products or services on or before the preelection date. If no term applied to the products or services as of the preelection date, then the rates, terms, and conditions governing those products or services remain in effect until a written customer service agreement becomes effective as provided for in subitem (b) of this item.

(b) Except as provided in subitem(a) of this item, the LEC and the LEC's affiliates offering interexchange services must offer existing and new customers a written customer service agreement, which in the case of new customers must be delivered no later than thirty days after the initiation of service. The customer service agreement must include a provision advising the customer that he has thirty days from receipt in which to elect to:

(i) terminate service with the LEC or the LEC's affiliates offering interexchange services by contacting the entity within the thirty-day time period, in which case the customer has the right to pay off the account in the same manner and under the same rates, terms,

and conditions as set forth in the written customer service agreement provided to the customer, which written customer service agreement must relate back in its entirety to the date of a new customer's request for service or the date the agreement was sent to an existing customer, as applicable, and is in effect until termination through pay off. The written customer service agreement must not impose termination charges, transfer charges, or similar charges or limitations that did not apply to the customer's service on the preelection date; or

(ii) use the services of the LEC or the LEC's affiliates offering interexchange services, or to otherwise continue the account with the LEC or the LEC's affiliates offering interexchange services after the thirty-day time period has elapsed, either of which constitutes the customer's assent to all the rates, terms, and conditions of the written customer service agreement. The written customer service agreement must not impose a term commitment, termination charges, transfer charges, or similar charges or limitations that did not apply to the customer's service on the preelection date. The customer service agreement is deemed received three business days after deposit in the United States mail, first-class delivery.

(13) The LEC's assessments pursuant to Sections 58-3-100, 58-3-540, and 58-4-60, and the assessments of the LEC's affiliates offering interexchange services pursuant to Sections 58-3-100, 58-3-540, and 58-4-60, continue to be based upon gross income from operation in this State in the same manner as such assessments were calculated before the effective date of this subsection.

(14) With respect to electing LECs, the Office of Regulatory Staff must maintain copies of all written complaints it receives regarding the following: (a) allegations regarding the inability of residential and business customers to obtain the functional equivalent of basic local exchange service; (b) allegations of anticompetitive practices; and (c) allegations regarding violations of contract terms and conditions by an electing LEC.

(15) No later than five years from the effective date of this act and every five years following the submission of the first report, the Office of Regulatory Staff must submit to the General Assembly a report examining the effect of this act on residential and business consumers in areas served by the LECs that elect to operate under this subitem. These reports shall include details of any pattern or practice by the electing LEC of violating the terms and conditions of its contract with residential or commercial customers or engaging in anticompetitive activities. These reports must be based on all records in the possession of the Office of Regulatory Staff, including without limitation,

information obtained by the Office of Regulatory Staff pursuant to Section 58-4-55. The reports must not disclose any proprietary or confidential information about individual providers.

(16) When considered in the public interest by the Executive Director of the Office of Regulatory Staff, the Office of Regulatory Staff may file an action, in the name of the State and in any court of competent jurisdiction, against a LEC that elects to have its rates, terms, and conditions for its services determined pursuant to the plan described in Section 58-9-576(C), seeking to restrain by temporary restraining order, temporary injunction, or permanent injunction, a pattern or practice by the electing LEC of violating the terms and conditions of its contract with residential or business customers or of engaging in anticompetitive activities."

Time effective

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

Ratified the 30th day of April, 2009.

Approved the 6th day of May, 2009.

No. 8

(R33, H3378)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 8-11-192 SO AS TO PROVIDE FOR THE TERMS AND CONDITIONS OF MANDATORY STATE AGENCY FURLOUGH PROGRAMS, TO REQUIRE CERTAIN CONSULTATION AND GUIDANCE SERVICES BY THE OFFICE OF HUMAN RESOURCES OF THE STATE BUDGET AND CONTROL BOARD, AND TO DELETE THE PROVISIONS OF PARAGRAPH 89.120, PART IB, OF ACT 310 OF 2008, RELATING TO STATE AGENCY FURLOUGHS.

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

State agency furloughs

SECTION 1. Article 1, Chapter 11, Title 8 of the 1976 Code is amended by adding:

"Section 8-11-192. In a fiscal year in which the general funds appropriated for a state agency are less than the general funds appropriated for that agency in the prior fiscal year, or in a fiscal year in which an agency that is funded by other funds projects other funds collections to be less than in the prior fiscal year, or whenever the General Assembly or the State Budget and Control Board implements a midyear across-the-board budget reduction, agency heads may institute employee furlough programs of not more than ten working days in the fiscal year in which the deficit is projected to occur.

The furlough program must be:

(1) inclusive of all employees in an agency or within a designated department or program regardless of source of funds or place of work, including all classified and unclassified employees in the designated area; or

(2) based upon pay band for classified employees and based upon pay rate for unclassified employees within the agency or designated department respectively.

If the state agency will incur costs for overtime under the federal Fair Labor Standards Act, law enforcement employees and correctional employees may be exempted from a mandatory furlough. Employees who provide direct patient or client care and front-line employees who deliver direct customer services may be exempted from a mandatory furlough. The mandatory furlough must include the agency head. Constitutional officers are exempt from mandatory furlough. Scheduling of furlough days, or portions of days, shall be at the discretion of the agency head, but under no circumstances should the agency close completely.

During this furlough, affected employees shall be entitled to participate in the same state benefits as otherwise available to them except for receiving their salaries. As to those benefits that require employer and employee contributions including, but not limited to, contributions to the South Carolina Retirement System or the optional retirement program, the state agencies, institutions, and departments are responsible for making both employer and employee contributions if coverage would otherwise be interrupted; and as to those benefits which require only employee contributions, the employee remains solely responsible for making those contributions.

Placement of an employee on furlough under this provision does not constitute a grievance or appeal under the State Employee Grievance Procedure Act.

In the event the reduction for the state agency, institution, or department is due solely to the General Assembly transferring or deleting a program, this section does not apply. The implementation of a furlough program authorized by this section shall be on an agency-by-agency basis. Agencies may allocate the employee's reduction in pay over the balance of the fiscal year for payroll purposes regardless of the pay period within which the furlough occurs. In the event that an agency implements both a voluntary furlough program and a mandatory furlough program during the fiscal year, furlough days taken voluntarily shall count toward furlough days required by the mandatory furlough.

The State Budget and Control Board shall promulgate guidelines and policies, as necessary, to implement the provisions of this section. State agencies shall report information regarding furloughs to the Office of Human Resources of the State Budget and Control Board.

The Office of Human Resources of the State Budget and Control Board must provide consultation and guidance to each state agency implementing a furlough or reduction in force regarding the long term career development of its employees and the potential financial benefit of implementing a furlough program or reduction in force.

The provisions of this section do not apply to employees of those state agencies or institutions covered by Section 8-11-193, and Section 8-11-193, rather than this section continues to apply to those employees in the manner provided by law."

Deletion

SECTION 2. Paragraph 89.120, Part IB, of Act 310 of 2008, as added by Act 414 of 2008, is deleted.

Time effective

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

Ratified the 30th day of April, 2009.

Approved the 6th day of May, 2009.

No. 9

(R34, H3380)

AN ACT TO AMEND SECTION 7-7-340, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN KERSHAW COUNTY, SO AS TO REDESIGNATE A MAP NUMBER ON WHICH LINES OF THESE PRECINCTS ARE DELINEATED AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD.

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

Kershaw precincts, map number redesignated

SECTION 1. Section 7-7-340(B) of the 1976 Code, as last amended by Act 216 of 2008, is further amended to read:

"(B) The precinct lines defining the above precincts in Kershaw County are as shown on the official map prepared by and on file with the Office of Research and Statistics of the State Budget and Control Board designated as document P-55-09 and as shown on copies of the official map provided to the Kershaw County Board of Voter Registration by the office."

Time effective

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

Ratified the 30th day of April, 2009.

Approved the 6th day of May, 2009.

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No. 10

(R35, H3428)

AN ACT TO AMEND SECTION 2-7-80, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PRINTING AND DISTRIBUTION OF ACTS, SO AS TO PROVIDE FOR THE MAILING OF ACTS NOT PLACED ON THE DESKS OF MEMBERS OF THE GENERAL ASSEMBLY WHEN THE MEMBER REQUESTS THE SERVICES, REQUIRE THE CLERKS OF THE GENERAL ASSEMBLY TO MAKE ALL ACTS AVAILABLE TO THE PUBLIC AFTER APPROVAL BY THE GOVERNOR, AND GENERALLY RESTRUCTURE THE DISTRIBUTION OF ACTS; TO AMEND SECTION 2-13-190, RELATING TO PRINTING IN SIGNATURES AND DISTRIBUTION OF PAGE PROOFS OR ADVANCE SHEETS, SO AS TO DELETE THE REQUIREMENT THAT THE CODE COMMISSIONER SEND A COPY OF EACH ADVANCE SHEET TO A DELINEATED LIST OF PERSONS, PROVIDE FOR PRINTING BY THE OFFICE OF LEGISLATIVE PRINTING, INFORMATION AND TECHNOLOGY SYSTEMS (LPITS) OF NOT MORE THAN TWENTY-FIVE COPIES OF THE ADVANCE SHEETS AS THE CODE COMMISSIONER ORDERS, AND TO DIRECT LPITS TO PUBLISH THE ADVANCE SHEETS ONLINE AS DIRECTED BY THE CODE COMMISSIONER; TO AMEND SECTION 8-15-40, RELATING TO THE DELIVERY OF THE CODE AND SUPPLEMENTS TO SUCCESSORS IN OFFICE, SO AS TO ALLOW THE CODE COMMISSIONER TO DETERMINE THE VALUE OF THE SET; TO AMEND SECTION 11-25-640, AS AMENDED, RELATING TO PERSONS ENTITLED TO RECEIVE ACTS AND JOINT RESOLUTIONS, SO AS TO NARROW THE LIST OF THOSE PERSONS RECEIVING THE ACTS AND JOINT RESOLUTIONS; AND TO AMEND SECTION 11-25-650, RELATING TO DISTRIBUTION OF COPIES AND PUBLICATIONS TO THE UNIVERSITY OF SOUTH CAROLINA LAW LIBRARY, SO AS TO DECREASE THE NUMBER OF COPIES PROVIDED OF THE ACTS AND JOINT RESOLUTIONS, THE CODE, AND THE REPORTS OF THE SUPREME COURT.

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

Printing and distribution of Acts, copies

SECTION 1. Section 2-7-80 of the 1976 Code is amended to read:

"Section 2-7-80. The clerks of the two houses of the General Assembly are to make available to the public all acts after their approval by the Governor, not later than two weeks after the approval date. A copy of these acts must be mailed to the house of those members of the General Assembly who request these services. After Sine Die adjournment each year, the clerks of the two houses of the General Assembly are directed to mail a copy of all acts not placed on the members' desks during the session to the home address of each member of the General Assembly who requests these services. In addition, three copies must be mailed to the head of each state department and institution, to the Chief Justice and associate justices and Clerk of the Supreme Court, to the Chief Judge and associate judges and Clerk of the Court of Appeals, and each judge and clerk of the judicial circuits who requests these services. The Secretary of State shall notify the respective clerks immediately upon receipt of all acts available to them for proofreading."

Publication of Advance Sheets, distribution online

SECTION 2. Section 2-13-190 of the 1976 Code is amended to read:

"Section 2-13-190. After receiving the page proofs corrected from the Code Commissioner, the Office of Legislative Printing, Information and Technology Systems (LPITS) shall print the same and shall deliver not more than twenty-five copies to the Code Commissioner as the commissioner orders. LPITS shall publish the advance sheets online as directed by the Code Commissioner and in accordance with applicable law. Dissemination of advance sheets to previous recipients will be accomplished by making them available online only and will not be provided in printed form."

Delivery of Code of Laws, Code Commissioner to determine value

SECTION 3. Section 8-15-40 of the 1976 Code is amended to read:

"Section 8-15-40. An officer receiving a set of the Code and its supplements, upon leaving office, shall deliver to his successor in

office the codes and supplements which he received as an officer. An officer leaving office without turning over to his successor the sets of the codes and supplements delivered to him by virtue of his office is liable for them on his official bond. The Code Commissioner shall determine the value of the set. The codes and supplements after distribution to officers are and remain the property of the State and must be returned to the State Librarian by a person who is not authorized by law to retain them. The Attorney General shall enforce the provisions of this section and Section 8-15-30."

Copies of Acts and Joint Resolutions, distribution

SECTION 4. Section 11-25-640 of the 1976 Code, as last amended by Act 194 of 1987, is further amended to read:

"Section 11-25-640. Copies of the acts and joint resolutions must be distributed as follows:

(1) to each circuit judge, one copy;

(2) to each solicitor, one copy;

(3) to each clerk of court, one copy;

(4) to each judge of probate, one copy;

(5) to each county government, one copy;

(6) to the Supreme Court at Columbia and to the Court of Appeals at Columbia, one copy to each court;

(7) to each magistrate in the State, one copy;

(8) to each master, one copy;

(9) to each of the chartered colleges of the State, one copy;

(10) to the Code Commissioner, the number of copies requested by the commissioner;

(11) to the clerks of the two houses of the General Assembly, the number of copies requested by each clerk;

(12) to the Attorney General of the State, one copy;

(13) to the University of South Carolina, two copies;

(14) to the Charleston library, two copies;

(15) to the Athenaeum, Boston, and to the Athenaeum, Philadelphia, one copy each;

(16) to each county attorney, one paperback copy; and

(17) to each family court judge."

Copies of Acts, Joint Resolutions, Code of Laws, distribution

SECTION 5. Section 11-25-650 of the 1976 Code is amended to read:

"Section 11-25-650. (A) The officials charged with distribution of these publications shall deliver to the law library of the University of South Carolina not later than thirty days after they are printed, from time to time, the following number of these publications in addition to those otherwise required by law to be delivered to the law library:

(1) five copies of the acts and joint resolutions of the General Assembly;

(2) twenty-five copies of the proceedings of any constitutional convention of this State;

(3) five copies of the Code; and

(4) five copies of the reports of the Supreme Court.

(B) The officials of the law library of the University of South Carolina shall exchange all or any part of these publications for publications relating to government useful to students of law and public officials and shall catalogue and arrange the material to make it serviceable to members of the General Assembly."

Time effective

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

Ratified the 30th day of April, 2009.

Approved the 6th day of May, 2009.

No. 11

(R36, H3452)

AN ACT TO AMEND SUBARTICLE 11, ARTICLE 3, CHAPTER 6, TITLE 61, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REGULATION OF MANUFACTURERS OF ALCOHOLIC LIQUORS, SO AS TO AUTHORIZE THE ESTABLISHMENT OF MICRO-DISTILLERIES OF ALCOHOLIC LIQUORS, TO SET FORTH REGULATIONS AND LIMITATIONS OF THE MICRO-DISTILLERIES, TO PROVIDE FOR BIENNIAL LICENSES AND FEES FOR MANUFACTURERS AND MICRO-DISTILLERIES OF ALCOHOLIC LIQUORS, TO PROVIDE PROCEDURES FOR

TASTINGS AT MANUFACTURERS AND MICRO-DISTILLERIES OF ALCOHOLIC LIQUORS, TO PROVIDE FOR LIMITED RETAIL SALE AT MICRO-DISTILLERIES OF THEIR PRODUCTS, AND TO PROVIDE PENALTIES FOR VIOLATIONS; AND TO AMEND SECTION 12-33-210, AS AMENDED, RELATING TO TAXES ON LICENSES GRANTED PURSUANT TO THE ALCOHOLIC BEVERAGE CONTROL ACT, SO AS TO INCREASE THE MANUFACTURER LICENSE FEE AND ADD A LICENSE FEE FOR A MICRO-DISTILLERY.

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

Alcoholic liquors, manufacturers and micro-distilleries

SECTION 1. Subarticle 11, Article 3, Chapter 6, Title 61 of the 1976 Code is amended to read:

"Subarticle 11

REGULATION OF MANUFACTURERS AND MICRO-DISTILLERIES

Section 61-6-1095. For the purposes of this subarticle:

(A) 'Micro-distillery' means a manufacturer who distills, blends, and bottles alcoholic liquors on the licensed premises in this State with an alcohol content greater than seventeen percent and who produces a maximum quantity of one hundred twenty-five thousand cases per year at the licensed premises.

(B) 'Licensed premises' means a location where the micro-distillery or manufacturer is licensed pursuant to this subarticle for the manufacture, tasting, and retail sales of alcoholic liquors produced at the licensed location and includes those areas normally used by the licensee to conduct his business, and includes the producing areas, storage areas, tasting areas, selling areas, and parking lots.

(C) 'Person' means an individual, partnership, corporation, or other form of business entity.

Section 61-6-1100. A manufacturer may not own or operate more than one plant, establishment, or place of business for the manufacture of alcoholic liquors in any one county of this State, nor may he permit

the drinking of alcoholic liquors on his premises, except as otherwise authorized by this subarticle.

Section 61-6-1110. The department may issue a manufacturer's license to a person to manufacture alcoholic liquors in the State subject to the requirements of this chapter and a payment of a biennial manufacturer license fee of fifty thousand dollars. This section is not applicable to a micro-distillery as defined and licensed pursuant to the provisions of this subarticle.

Section 61-6-1120. (A) The department may issue a micro-distillery license to a person to operate one micro-distillery in the State subject to the requirements of this chapter and payment of a biennial micro-distillery license fee of five thousand dollars.

(B) A micro-distillery is not required to obtain an additional manufacturing and retail liquor license required pursuant to this title.

Section 61-6-1130. (A) A micro-distillery or manufacturer desiring to offer tastings and sales of alcoholic liquors to consumers at its licensed premises shall remit taxes to the department for alcoholic liquors sold and dispensed in an amount equal to taxes paid by wholesalers on alcoholic liquors.

(B) Alcoholic liquors produced and sold on a licensed premises pursuant to this subarticle must be taxed and remitted as provided in Chapter 33, Title 12. The micro-distillery or manufacturer licensee shall maintain adequate records to ensure the collection of this tax.

Section 61-6-1140. A holder of a valid micro-distillery or manufacturer license issued by the State may permit tastings and retail sales of the alcoholic liquors produced at the licensed premises subject to the following limitations and any other limitations provided in this subarticle:

(1) tastings by and sales to consumers must be held in conjunction with a tour by the consumer of the on-site licensed premises;

(2) the micro-distillery or manufacturer shall establish appropriate protocols to ensure that a consumer sold or served alcoholic liquors pursuant to this section is not under twenty-one years of age and that a consumer shall not attend more than one tasting in a day;

(3) the micro-distillery or manufacturer shall dispense alcoholic liquors for tasting in quantities not greater than one-half ounce per sample;

(4) the micro-distillery or manufacturer may not dispense more than one and one-half ounces to an individual consumer in one day;

(5) tastings and sales may occur only between the hours of nine a.m. and seven p.m., Monday through Saturday;

(6) the micro-distillery or manufacturer may charge for alcoholic liquors consumed at a tasting, but must collect and remit the liquor by the drink excise tax pursuant to the provisions of Chapter 33, Title 12;

(7) tastings may not occur in conjunction with the service of food in a restaurant setting; and

(8) only brands of alcoholic liquors actually manufactured, distilled, or fermented at and distributed to wholesalers from the licensed premises may be sold or offered for tasting.

Section 61-6-1150. Authorization by this section of sales and tastings at licensed premises of a micro-distillery or manufacturer is expressly intended for the promotion of education regarding production of alcoholic liquors in the State and not to create competition between producers and retailers. A holder of a valid micro-distillery or manufacturer license issued by the State may:

(1) sell in any quantities the alcoholic liquors produced at the licensed premises to a wholesaler licensed by the State;

(2) transport in any quantities the alcoholic liquors produced at the licensed premises out of state for sale outside of the State;

(3) sell at retail at the licensed premises only in quantities of 750-milliliter bottles the alcoholic liquors produced at the licensed premises, but only if the labels for the bottles are marked ‘not for resale’;

(4) sell at retail no more than three 750-milliliter bottles of alcoholic liquors to a consumer in one business day;

(5) not allow consumption on the licensed premises of alcoholic liquors sold by the bottle at the licensed premises;

(6) maintain pricing of the alcoholic liquors sold at the licensed premises at a price approximating retail prices generally charged for identical alcoholic liquors in the county where the on-site premises is located;

(7) in addition to the sale of alcoholic liquors as authorized by this section, sell items promoting the brand or brands of alcoholic liquors produced at that location in a room on the licensed premises separate from the locations of the tastings; and

(8) not sell or store goods, wares, or merchandise in or from the room in which alcoholic liquors are sold or tasted.

Section 61-6-1160. Except as otherwise provided in this title:

(A) a person who transports, possesses, or consumes alcoholic liquors and who violates a provision of this subarticle 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; and

(B) a person licensed pursuant to this subarticle who violates a provision of this subarticle must:

(1) for a first offense, be fined not less than two hundred dollars nor more than five hundred dollars or have his license suspended for not more than thirty days, or both;

(2) for a second offense within three years of the first offense, be fined not less than two hundred dollars nor more than five hundred dollars or have his license suspended for not more than one hundred eighty days, or both; or

(3) for a third offense within three years of the first offense, be fined not less than five hundred dollars and have his license revoked permanently; and

(C) a person licensed pursuant to this subarticle who acts to avoid payment of the excise tax imposed on the serving of alcoholic liquors by the drink provided for in Chapter 33, Title 12 must be fined not less than one thousand dollars and have his license revoked permanently."

Tax, Alcoholic Beverage Control Act, license fees

SECTION 2. Section 12-33-210(A) of the 1976 Code, as last amended by Act 96 of 2007, is further amended to read:

"(A) The biennial license taxes on licenses granted pursuant to Title 61, in addition to all other license taxes, are as follows:

(1) manufacturer's license: fifty thousand dollars;

(2) wholesaler's license: twenty thousand dollars;

(3) micro-distillery license: five thousand dollars;

(4) retail dealer's license: one thousand two hundred dollars; and

(5) special food manufacturer's license: one thousand two hundred dollars."

Severability clause

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 30th day of April, 2009.

Approved the 6th day of May, 2009.

No. 12

(R43, H3856)

AN ACT TO AMEND SECTION 51-17-85, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO LIMITATIONS ON DISPOSITION OF HERITAGE TRUST PROPERTY, SO AS TO EXCLUDE PUBLIC INFRASTRUCTURE PROJECTS FROM THE LIMITATION.

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

Disposition of Heritage Trust property

SECTION 1. Section 51-17-85 of the 1976 Code, as added by Act 251 of 2006, is amended to read:

"Section 51-17-85. (A) Notwithstanding another provision of law or subsection (B) of this section, the board may not dispose of any Heritage Trust property if otherwise permitted to do so unless there are restrictions sufficient to protect all of the natural and cultural characteristics of the property.

(B) For the purposes of county, state, or federal infrastructure projects, subsection (A) does not apply."

Time effective

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

Ratified the 30th day of April, 2009.

Approved the 6th day of May, 2009.

No. 13

(R23, S97)

AN ACT TO AMEND SECTION 59-53-1410, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CREATION OF THE CENTRAL CAROLINA TECHNICAL COLLEGE COMMISSION, SO AS TO PROVIDE THAT THE COMMISSION MUST CONSIST OF ELEVEN TOTAL MEMBERS, WITH AN ADDITIONAL MEMBER APPOINTED FROM CLARENDON COUNTY AND AN ADDITIONAL MEMBER APPOINTED FROM KERSHAW COUNTY.

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

Additional members added to commission

SECTION 1. Section 59-53-1410 of the 1976 Code is amended to read:

"Section 59-53-1410. There is created the Central Carolina Technical College Commission representing the counties of Clarendon, Kershaw, Lee, and Sumter. The commission is a body politic and corporate consisting of eleven members. Each member must be appointed by the Governor, upon the recommendation of a majority of the legislative delegation of the member's respective county, and each member must be a qualified registered elector of the county represented. Six members must be appointed from Sumter County. Two members must be appointed from Kershaw County. Two members must be appointed from Clarendon County. One member must be appointed from Lee County. The terms of all members are for four years and until their successors are appointed and qualified. A

vacancy must be filled in the manner of the original appointment for the unexpired portion of the term only. The commission shall organize by electing one of its members as chairman, one as vice chairman, and one as secretary. The terms of appointees expire July first of the appropriate year."

Time effective

SECTION 2. This act takes effect upon approval by the Governor. The initial appointments to fill the second membership positions for Kershaw County and Clarendon County provided for in SECTION 1 of this act become effective on April 1, 2009, or as soon thereafter as members for these positions are appointed and qualified, and continue until June 30, 2013.

Ratified the 30th day of April, 2009.

Became law without the signature of the Governor -- 5/7/09.

No. 14

(R31, H3203)

AN ACT TO AMEND ARTICLE 4, CHAPTER 56, TITLE 44 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DRYCLEANING FACILITY RESTORATION TRUST FUND, SO AS TO, AMONG OTHER THINGS, FURTHER SPECIFY THAT WHOLESALE DRYCLEANING FACILITIES ARE SUBJECT TO THE PROVISIONS OF THIS ARTICLE AND ARE ELIGIBLE TO SEEK RESTORATION ASSISTANCE UNDER THIS ARTICLE; TO AUTHORIZE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO USE FUNDS, OTHER THAN FUNDS FROM THE DRYCLEANING FACILITY RESTORATION TRUST FUND, IF AN EMERGENCY EXISTS AND FUNDS ARE NOT AVAILABLE FROM THE TRUST FUND AND TO FURTHER PROVIDE THAT THESE FUNDS MUST BE REPAID FROM THE TRUST FUND; TO PROVIDE EXEMPTIONS FROM THE ENVIRONMENTAL SURCHARGE IMPOSED ON THE GROSS PROCEEDS OF SALES OF

RETAIL DRYCLEANING FACILITIES, INCLUDING AN EXEMPTION FOR WHOLESALE SALES OF DRYCLEANING SERVICES; TO FURTHER PROVIDE FOR ELIGIBILITY REQUIREMENTS AND PROCEDURES FOR REQUESTING AND ISSUING RESTORATION ASSISTANCE, INCLUDING PROVIDING CRITERIA FOR DEDUCTIBLES AND CONDUCTING SECONDARY ASSESSMENTS; TO PROVIDE INITIAL AND ANNUAL REGISTRATION FEES FOR DRYCLEANING FACILITIES ESTABLISHED AFTER OCTOBER 1, 1995, AND TO AUTHORIZE THE PROPERTY OWNER TO REGISTER A FACILITY IF THE OWNER OR OPERATOR OF THE FACILITY DOES NOT; TO PROVIDE FOR THE ISSUANCE OF CERTIFICATES OF REGISTRATION, TO REQUIRE PRESENTATION OF CERTIFICATES IN ORDER TO PURCHASE DRYCLEANING SOLVENT, TO PROHIBIT A SUPPLY FACILITY, OR OTHER DRYCLEANING FACILITY, FROM SELLING DRYCLEANING SOLVENT TO A DRYCLEANING FACILITY IF THE FACILITY DOES NOT POSSESS A CERTIFICATE, AND TO PROVIDE CIVIL PENALTIES FOR VIOLATIONS; TO SPECIFY REQUIREMENTS FOR A DRYCLEANING FACILITY EXEMPTION CERTIFICATE; TO AUTHORIZE A DRYCLEANING FACILITY PREVIOUSLY REGISTERED UNDER THIS ARTICLE TO OPT OUT IF THE FACILITY HAS BEEN IN OPERATION BEFORE JANUARY 1, 1940, AND ONLY HAS USED NONHALOGENATED CLEANERS; AND TO REVISE THE MEMBERSHIP OF THE DRYCLEANING ADVISORY COUNCIL.

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

Drycleaning Facility Restoration Trust Fund revisions

SECTION 1. Article 4, Chapter 56, Title 44 of the 1976 Code is amended to read:

"Article 4

Drycleaning Facility Restoration Trust Fund

Section 44-56-410. As used in this article:

(1) 'Department' means the Department of Health and Environmental Control.

(2) 'Discharge' means leakage, seepage, or other release.

(3) 'Drycleaning facility' means a professional commercial establishment located in this State for the purpose of cleaning clothing and other fabrics utilizing a process which involves the use of drycleaning solvents. In the case of a retail establishment, the establishment is one that operates or has at some time in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics for members of the public, other drycleaning facilities, and dry drop-off facilities. In the case of a wholesale establishment, the establishment is one that operates or has at some time in the past operated in whole or in part for the purpose of cleaning clothing and other fabrics for other drycleaning facilities or dry drop-off facilities. 'Drycleaning facility' includes laundry facilities that are using or have used drycleaning solvents as part of their cleaning process but does not include textile mills or uniform rental and linen supply facilities.

(4) 'Drycleaning solvents' means nonaqueous solvents used in the cleaning of clothing and other fabrics and includes halogenated drycleaning fluids and nonhalogenated cleaners, and their breakdown products. 'Drycleaning solvents' includes only solvents originating from use at a drycleaning facility or by a wholesale supply facility.

(5) 'Dry drop-off facility' means a commercial retail store that receives from customers clothing and other fabrics for drycleaning at an off-site drycleaning facility and does not clean the clothing or fabrics at the store utilizing drycleaning solvents.

(6) 'Employee' means a natural person employed and paid by the owner of a drycleaning facility for thirty-five or more hours a week for forty-five or more weeks a year and on whose behalf the owner contributes payments to the South Carolina Employment Security Commission or Department of Revenue as required by law. Excluded from the meaning of the term 'employee' are owners of drycleaning facilities and family members of owners, regardless of the level of consanguinity, if the family members are not employed and not compensated pursuant to the definition of the term 'employee' contained in this item. Part-time employees who are employed and paid for fewer than thirty-five hours a week for fewer than forty-five weeks a year must not be deemed to be employees unless their hours and weeks of employment, when combined with the hours and weeks of employment of another or other part-time employee or employees, total thirty-five or more hours a week for forty-five or more weeks a year.

(7) 'Person' includes an individual, partnership, corporation, association, trust, estate, receiver, company, limited liability company, or another entity or group.

(8) 'Wholesale supply facility' means a commercial establishment that supplies drycleaning solvents to drycleaning facilities.

(9) 'Insolvent' means the approved expenses of the Department of Health and Environmental Control and the Department of Revenue as well as the estimated cleanup costs are projected to exceed the fund balance and projected revenues for a five-year period commencing on January fifteenth of each year.

(10) 'Halogenated drycleaning fluid' means any nonaqueous solvent formulated, in whole or in part, with ten percent or more by volume any of the halogenated compounds chlorine, bromine, fluorine, or iodine. Halogenated drycleaning fluids include perchloroethylene (also known as tetrachloroethylene), trichlorethylene, and any breakdown components of them.

(11) 'Nonhalogenated cleaner' means any nonaqueous solvent used in a drycleaning facility that contains less than ten percent by volume of any halogenated compound. Nonhalogenated cleaners include petroleum based drycleaning solvents and any breakdown components of them.

(12) 'Nonaqueous solvent' means any cleaning formulation designed to minimize swelling of fabric fibers and containing less than fifty-one percent of water by volume.

(13) 'Former drycleaning facility' means a drycleaning facility or wholesale supply facility that ceases to be operated as a drycleaning facility or wholesale supply facility before July 1, 1995.

(14) 'Property owner' means a person who is vested with ownership, dominion, or legal or rightful title to the real property or who has a ground lease interest in the real property on which a drycleaning or wholesale supply facility is or has ever been located.

Section 44-56-420. (A) There is created in the state treasury a separate and distinct account called the 'Drycleaning Facility Restoration Trust Fund', revenue for which must be collected and enforced by the Department of Revenue, and the fund must be administered by the Department of Health and Environmental Control and expended for the purposes of this article. However, the department may contract for the administration of the fund or any part of the administration of the fund. Judgments, recoveries, reimbursements, loans, and other fees and charges related to the implementation of this section, the tax revenues levied, collected, and credited pursuant to

Section 44-56-480, and the registration fees collected pursuant to Section 44-56-470 must be credited to the fund. Charges against the fund must be made in accordance with the provisions of this section. The State accepts no financial responsibility as a result of the creation of the fund. The creation of the fund creates no burden upon the State to provide monies for the fund by any mechanisms other than as provided in this section. The State may recover to the fund any funds expended from the fund which were not utilized in accordance with this article.

(B) If incidents of contamination by drycleaning solvents related to the operation of drycleaning facilities or wholesale supply facilities pose a threat to the environment or the public health, safety, or welfare, the department shall obligate monies available in the fund pursuant to this section to provide for:

(1) the prompt investigation and assessment of the contaminated sites; however, the owner or operator of a drycleaning facility or wholesale supply facility or a property owner must pay for the cost of the investigation and assessment up to the amount of the owner's, operator's, or property owner's deductible, and the department only shall provide monies that exceed the owner's, operator's, or property owner's deductible; however, in order to receive these monies the owner, operator, or property owner must comply with this article and the regulations promulgated pursuant to this article;

(2) the expeditious treatment, restoration, or replacement of potable water supplies;

(3) the rehabilitation of contaminated drycleaning facility sites, which consist of rehabilitation of affected soil, groundwater, and surface waters, using the most cost-effective alternative that is reliable and feasible technologically and that provides adequate protection of the public health, safety, and welfare and minimizes environmental damage in accordance with the site selection and rehabilitation criteria established by the department, except that nothing in this article may be construed to authorize the department to obligate funds for payment of costs which may be associated with, but are not integral to, site rehabilitation;

(4) the maintenance and monitoring of contaminated sites;

(5) the inspection and supervision of activities described in this section;

(6) the expenses of administering the fund by the department including the employment of department staff to carry out the department's duties described in this article; however, the department may exclude five percent of the average annual collections of the fund

or the amount required to fund four employees and the administrative costs associated with these employees, whichever is greater;

(7) the payment of reasonable costs of restoring property so as to assure public health and safety, as determined by the department.

(C) The fund may not be used to:

(1) restore sites which are contaminated by solvents normally used in drycleaning operations if the activities at a site are not related to the operation of a drycleaning facility or wholesale supply facility;

(2) restore sites that are contaminated by drycleaning solvents being transported to or from a drycleaning facility or wholesale supply facility or that are contaminated as a result of the delivery of drycleaning solvents to a drycleaning facility or wholesale supply facility on or after July 1, 1995, if the contamination resulted from gross negligence;

(3) fund any costs related to the restoration of a site that is proposed for listing or is listed on the State Priority List or on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, or any site that is required to obtain a permit pursuant to the Resource Conservation and Recovery Act, as amended;

(4) pay any costs associated with a fine, penalty, or action brought against the owner or operator of a drycleaning facility or wholesale supply facility or a property owner under local, state, or federal law;

(5) pay any costs incurred before July 1, 1995, for the remediation of a contaminated site;

(6) pay any costs to landscape or otherwise artificially improve a contaminated site;

(7) pay any contamination assessment or costs restoration before the actual date of the first payment of registration fees for the site pursuant to Section 44-56-470(B);

(8) pay any costs related to contamination assessment where no contamination from drycleaning solvents is discovered;

(9) pay any costs for work not approved by the department in accordance with this article or regulations promulgated pursuant to this article;

(10) restore sites that are uniform rental and linen supply facilities unless the site was operated on or after July 1, 1995, as a drycleaning facility for garments or fabrics belonging to the public and has participated in the fund;

(11) restore sites that are no longer operated as drycleaning facilities or coin-operated drycleaning facilities where the owner, operator, or property owner has not paid a registration fee for the site pursuant to Section 44-56-470(B) and has not been involved in the drycleaning industry after October 1, 1995.

(D) The department shall promulgate regulations that provide for an initial contamination assessment to determine whether a drycleaning facility or wholesale supply facility is contaminated by drycleaning solvents. Payment for the initial assessment is as provided for in subsection (B), and site rehabilitation portions of the program must be administered through direct payments to contractors actually accomplishing the site rehabilitation and not through reimbursement to drycleaning or wholesale supply facility owners, operators, or property owners. All services related to site rehabilitation must be preapproved by the department before performance in order to receive payment for services rendered.

(E) If the committed money in the fund exceeds the current balance and the department declares a site is an emergency or the amount committed to a site has reached the maximum allowable expenditure for any one site in a given year and the department declares the site is an emergency, the department may use other funds to pay the cost of that cleanup. However, once the fund has an available uncommitted balance, the department's other sources of money that paid for the approved emergency cleanup may be reimbursed for the costs incurred through annual payments which may not exceed five percent of the total fund's average annual balance. The fund may not obligate itself for more than it is estimated to generate through surcharges, annual fees, and registration fees.

Section 44-56-430. (A)(1) An environmental surcharge, equal to one percent of the gross proceeds of sales of a retail drycleaning facility or a dry drop-off facility is imposed upon every owner or operator of a retail drycleaning facility or a dry drop-off facility.

Exempt from the environmental surcharge imposed in this subsection are:

(a) drycleaning facilities in existence before July 1, 1995, that possess a Drycleaning Facility Exemption Certificate issued by the Department of Revenue on or after July 1, 2009;

(b) dry drop-off facilities where the clothing or other fabrics are only cleaned by a drycleaning facility:

(i) owned or operated by the same person who owns or operates the dry drop-off facility;

(ii) issued a Drycleaning Facility Exemption Certificate by the Department of Revenue on or after July 1, 2009; and

(iii) where the owner or operator, or related entity, does not own or operate any other drycleaning facilities that are participating in the fund through payment of any surcharges or fees imposed pursuant to this article; and

(c) wholesale sales of drycleaning services provided to another drycleaning facility or a dry drop-off facility.

(2) At any time the uncommitted balance of the Drycleaning Facility Restoration Trust Fund account exceeds five million dollars, the one percent of the gross proceeds of sales of drycleaning surcharge is suspended until that time the uncommitted balance of the trust fund account becomes less than one million dollars. The Department of Health and Environmental Control is responsible for notifying the Department of Revenue when these amounts have been reached. The suspension of the environmental surcharge occurs at the end of the month in which the Department of Revenue is notified by the Department of Health and Environmental Control. The lifting of the suspension occurs on the first day of the month following the month in which the Department of Revenue is notified by the Department of Health and Environmental Control.

(B)(1) The surcharge imposed by this section is due and payable on the twentieth day of each month for the preceding month. The Department of Revenue may authorize the quarterly, semiannual, or annual payment of this surcharge. The surcharge must be reported on forms and in the manner determined by the Department of Revenue.

(2) The Department of Revenue must administer, collect, and enforce the surcharge in the manner that the sales and use taxes are administered, collected, and enforced under Chapter 36, Title 12, except that no timely payment discount or exemptions or exclusions are allowed. The provisions of Title 12 apply to the collection and enforcement of the surcharge by the Department of Revenue.

(3) The Department of Revenue shall retain funds for the costs incurred to administer, collect, and enforce the fund which may include a part-time employee with the related expenses for audit purposes. The funds withheld must not exceed the actual costs to administer, collect, and enforce the fund. The proceeds of the surcharge, after deducting the costs incurred by the Department of Revenue in administering, auditing, collecting, distributing, and enforcing the surcharge, must be remitted to the State Treasurer and credited to the fund and must be used as provided in Section 44-56-420. For the purposes of this section, the proceeds of the surcharge include all funds collected and received

by the Department of Revenue, including interest and penalties on delinquent surcharges.

(C) The Department of Health and Environmental Control is required to report each January fifteenth the current financial position of the Drycleaning Facility Restoration Trust Fund to the General Assembly. In addition, Department of Health and Environmental Control must include projected information that would enable the General Assembly to determine the solvency of the fund. At a minimum this must include a five-year budget projection. This report also must review and comment on the adequacy of the current program in resolving contamination problems at both operating and closed drycleaning facilities in this State.

Section 44-56-440. (A) The Board of the Department of Health and Environmental Control shall establish a moratorium on administrative and judicial actions by the department concerning drycleaning facilities and wholesale supply facilities resulting from the discharge of drycleaning solvents to soil or waters of the State. This moratorium applies only to those facilities deemed eligible as defined in this section. The board may review and determine the appropriateness of the moratorium at least annually. This review must include, but is not limited to, consideration of these factors:

(1) the solvency of the fund as described in Section 44-56-420;

(2) prioritization of the sites;

(3) public health concerns related to the sites;

(4) eligibility of the sites;

(5) corrective action plans submitted to the department.

After review, the board may suspend all or a portion of the moratorium if necessary.

(B) A drycleaning facility or wholesale supply facility that is being operated as a drycleaning facility or wholesale supply facility at the time a request for determination of eligibility is filed and at which there is contamination from drycleaning solvents is eligible under this section regardless of when the contamination was discovered if the drycleaning facility or wholesale supply facility:

(1) has been registered with and has paid all annual fees, surcharges, and solvent fees as required by the Department of Revenue;

(2) is determined by the department to be in compliance with department regulations regulating drycleaning facilities or wholesale supply facilities;

(3) has third-party liability insurance when and if the insurance becomes available at a reasonable cost, as determined by the

Department of Insurance, and if the insurance covers liability for contamination that occurred both before and after the effective date of the policy;

(4) has provided documented evidence of contamination by drycleaning solvents or where the department, after conducting a secondary assessment, has documented evidence of contamination by drycleaning solvents;

(5) has not been operated in a grossly negligent manner at any time after November 18, 1980.

(C) If a request for determination of eligibility is filed for a former drycleaning facility at which there is contamination from drycleaning solvents, the former drycleaning facility is eligible under this section regardless of when the contamination was discovered; however, the owner or operator of the drycleaning facility or wholesale supply facility shall provide documented evidence of the contamination by drycleaning solvents and the owner or operator has an operating drycleaning facility in the fund and has paid all annual fees, surcharges, and solvent fees on every drycleaning facility registered in the fund and in existence under their control since July 1, 1995, as required by the Department of Revenue. For any former drycleaning facility seeking eligibility under this section after November 24, 2006, the deductible is twenty-five thousand dollars, if the following are met:

(1) the former facility is determined to be eligible; and

(2) the owner or operator, who was in the fund on October 1, 1995, applies for money from the fund within six months of discovering evidence of contamination.

(D) A drycleaning facility that has been contaminated as a result of the discharge of drycleaning solvents by a supplier of solvents during the delivery of drycleaning solvents to a drycleaning facility first must utilize the insurance of the supplier to the full extent of the coverage for site rehabilitation before any funds may be expended from the fund for the rehabilitation of that portion of the site which was contaminated by the discharge during delivery.

(E) If the facility started operation before November 24, 2004, and an eligible drycleaning or wholesale owner or operator or person applies for monies from the fund:

(1) on or before November 24, 2005, the deductible is one thousand dollars;

(2) after November 24, 2005, the deductible is twenty-five thousand dollars.

An eligible drycleaning or wholesale supply facility that has applied for monies from the fund before May 24, 2004, shall have a deductible

of one thousand dollars regardless of any deductible previously assigned to the facility based on its application date or type of site. Any approved assessment or remedial costs in excess of one thousand dollars previously incurred by the owner, operator, or property owner shall be refunded, without interest, to the party by the department.

A facility first starting its operations on or after November 24, 2004, shall have a deductible of twenty-five thousand dollars if it is determined to be eligible and if the owner, operator, or property owner applies for money from the fund within six months of obtaining evidence of contamination.

(F)(1) An owner or operator of a drycleaning facility or wholesale supply facility or property owner seeking eligibility under this subsection shall submit an application for determination of eligibility to the department on forms provided by the department. The department shall review the application and request any additional information within ninety days. The department shall notify the applicant within one hundred eighty days as to whether the facility is eligible.

(2) If the facility is not eligible because contamination has not been found and the department has determined that the facility is a high priority, the department shall notify the owner, operator, or property owner that a secondary assessment must be conducted. If the owner, operator, or property owner can demonstrate, based on criteria developed by the department, that they are unable to afford to hire a contractor to conduct this secondary assessment, the department shall upon payment of one thousand dollars within thirty days, conduct the secondary assessment.

(a) If the payment of one thousand dollars is received within thirty days, the department shall conduct a secondary assessment. If evidence of contamination:

(i) is found, the payment of one thousand dollars in excess of the facility deductible must be refunded, without interest;

(ii) is not found, the facility can become eligible if at any time in the future the facility is found to have documented evidence of contamination by drycleaning solvents, and the owner, operator, or property owner provides that documentation to the department within six months of discovery.

(b) If the owner, operator, or property owner does not pay one thousand dollars to the department within thirty days or does not agree within thirty days to conduct a secondary assessment, the facility is permanently barred from receiving funding from the Drycleaning Restoration Trust Fund and the moratorium provided for in Section 44-56-440(A) does not apply to this facility.

(G) Eligibility under this section applies to the site of the drycleaning facilities or wholesale supply facilities. A determination of eligibility or ineligibility is not affected by the subsequent conveyance of the ownership of the drycleaning facilities or wholesale supply facilities.

(H) This section does not apply to a site where the department has been denied site access to implement this section or to drycleaning facilities owned or operated by a local government or by the state or federal government.

(I) A site owned by an owner or operator of a drycleaning facility or a property owner at any time subsequent to October 1, 1995, who misrepresents the number of employees upon which the registration fee provided for in Section 44-56-460 is based is not eligible for funds under this section.

Section 44-56-450. (A) In order to identify drycleaning facilities and wholesale suppliers which have experienced contamination resulting from the discharge of drycleaning solvents and to assure the most expedient rehabilitation of these sites, the owners and operators of drycleaning facilities and wholesale suppliers and property owners are encouraged to detect and report contamination from drycleaning solvents related to the operation of drycleaning facilities or wholesale supply facilities. Forms must be distributed to owners and operators of drycleaning and wholesale supply facilities and to property owners. The Department of Revenue shall use reasonable efforts to identify and notify owners, operators, and property owners of drycleaning and wholesale supply facilities before November 24, 2004, of the registration requirements by certified mail, return receipt requested. The Department of Revenue shall provide to the Department of Health and Environmental Control a copy of each applicant’s registration materials within thirty working days of the receipt of the materials.

(B) A report of drycleaning solvent contamination at a drycleaning facility made to the department by a person in accordance with this article or regulations promulgated pursuant to this article may not be used directly as evidence of liability for the discharge in a civil or criminal trial arising out of the discharge.

Section 44-56-460. (A) The fund must be used to rehabilitate sites that pose a significant threat to the public health, safety, or welfare. The department shall promulgate regulations to establish priorities for state-conducted rehabilitation at contaminated drycleaning facilities or

wholesale supply facilities sites based upon factors that include, but are not limited to:

(1) the degree to which human health, safety, or welfare may be affected by exposure to the contamination;

(2) the size of the population or area affected by the contamination;

(3) the present and future uses of the affected aquifer or surface waters, with particular consideration as to the probability that the contamination is substantially affecting or will migrate to and substantially affect a known public or private source of potable water; and

(4) the effect of the contamination on the environment.

(B) Nothing in this subsection may be construed to restrict the department from modifying the priority status of a drycleaning facility or wholesale supply facility rehabilitation site where conditions warrant. Criteria for determining completion of site rehabilitation program tasks and site rehabilitation programs must be based upon the factors set forth in subsection (A)(1) and these factors:

(1) individual site characteristics, including natural rehabilitation processes;

(2) applicable state water quality standards;

(3) whether deviation from state water quality standards or from established criteria is appropriate, based upon the degree to which the desired rehabilitation level is achievable and can be reasonably and cost-effectively implemented within available technologies or control strategies, except that, where a state water quality standard is applicable, the deviation may not result in the application of standards more stringent than the standard;

(4) it is recognized that restoration of groundwater resources contaminated with certain drycleaning solvents, such as perchloroethylene, may not be achievable using currently available technology. In situations where available technology is not anticipated to meet water quality standards, the department, at its discretion, is encouraged to use innovative technology including, but not limited to, technology which has been field tested through the federal innovative technology program and which has engineering and cost data available;

(5) nothing in this section may be construed to restrict the department from temporarily postponing completion of a site rehabilitation program for which drycleaning restoration funds are being expended whenever the postponement is considered necessary in order to make funds available for rehabilitation of a drycleaning facility or wholesale supply facility site with a higher priority status;

(6) the department shall provide the rehabilitation of eligible drycleaning facilities and wholesale supply facilities consistent with this subsection. Nothing in this article subjects the department to liability for any action that may be required of the owner, operator, or person by a private party or a local, state, or federal governmental entity.

(C) The department may not expend more than two hundred fifty thousand dollars from the fund annually to pay for the costs at any one eligible site for the activities described in Section 44-56-420(B).

(D) The department shall promulgate regulations necessary for the implementation of this section.

(E) The department shall create a mechanism in which consultants' credentials, work objectives and plans, proposed costs ranging from assessment, cleanup, and monitoring are outlined and submitted in writing for the department's approval. The department shall establish a list of those vendors who are qualified to perform work to be financed by the fund. Vendors must be recertified every two years.

Section 44-56-470. (A)(1) For each drycleaning facility in operation, the owner or operator of the drycleaning facility shall register with and pay initial registration fees to the Department of Revenue by October 1, 1995, and pay annual or quarterly renewal registration fees as established by the Department of Revenue. The fee must be accompanied by a notarized certification from the owner or operator of the drycleaning facility, on a form provided by the Department of Revenue, certifying the number of employees employed by the owner, or operator of the drycleaning facility and his dry drop-off facilities, for the twelve-month period preceding payment of the fee.

(2) For each drycleaning facility in operation that was established after October 1, 1995, the owner or operator of the drycleaning facility shall register with and pay initial registration fees to the Department of Revenue, and pay annual or quarterly renewal registration fees as established by the Department of Revenue. The fee must be accompanied by a notarized certification from the owner or operator of the drycleaning facility, on a form provided by the Department of Revenue, certifying the number of employees employed by the owner or operator of the drycleaning facility and his dry drop-off facilities for the twelve-month period preceding payment of the fee.

(3) If the owner or operator of the drycleaning facility does not register a facility under the provisions of this section, the property

owner of the facility may register the facility. Upon registration by the property owner, the owner or operator of the drycleaning facility must be notified by the Department of Revenue of the registration and the owner or operator of the drycleaning facility must comply with all applicable provisions of this article, including the payment of subsequent renewal fees imposed under subsection (B).

(4) To register a facility, the property owner must obtain a notarized certification from the owner or operator of the drycleaning facility, on a form provided by the Department of Revenue, certifying the number of employees employed by the owner or operator of the drycleaning facility and his dry drop-off facilities for the twelve-month period preceding payment of the fee and must remit the fee imposed pursuant to subsection (B). If the property owner is unable to obtain information as to the number of employees at the facilities, the property owner must remit the fee imposed pursuant to subsection (B)(3) in order to register the facility.

(B) An initial and annual registration fee for each drycleaning facility with:

(1) up to four employees is seven hundred fifty dollars;

(2) five to ten employees is one thousand five hundred dollars;

(3) eleven or more employees is two thousand two hundred fifty dollars.

Exempt from the fee imposed pursuant to this section are drycleaning facilities in existence before July 1, 1995, that possess a Drycleaning Facility Exemption Certificate issued by the Department of Revenue on or after July 1, 2009, and drycleaning facilities in existence before January 1, 1940, that have drycleaned only with nonhalogenated cleaners.

(C) The provisions of Title 12 apply to the collection and enforcement of the fees by the Department of Revenue.

(D) The Department of Revenue must retain funds for the costs incurred to collect and enforce the fund which may include a part-time employee with the related expenses for audit purposes. The funds withheld must not exceed the actual costs to administer, collect, and enforce the fund. The proceeds of the registration fee, after deducting the costs incurred by the Department of Revenue in auditing, collecting, distributing, and enforcing the registration fee, must be remitted to the State Treasurer and credited to the fund and must be used as provided in Section 44-56-420. For the purposes of this section, the proceeds of the registration fee include all funds collected and received by the Department of Revenue, including interest and penalties on delinquent fees.

(E) Revenue derived from the registration fees must be submitted to the State Treasurer and credited to the Drycleaning Facility Restoration Trust Fund.

(F) Before May 24, 2005, an owner or operator of a drycleaning facility in operation before November 24, 2004, shall install dikes or other containment structures around each machine or item of equipment in which drycleaning solvents are used and around an area in which solvents or waste containing solvents are stored. The containment must meet the following criteria:

(1) the dikes or containment structures must be capable of containing one-third of the capacity of the total tank capacity of each machine;

(2) dikes or containment structures around areas used for storage of solvents or waste containing solvents must be capable of containing one hundred percent of the volume of the largest container stored or retained in the containment structure;

(3) all diked containment areas must be sealed or otherwise made impervious to the drycleaning solvents in use at the facility, including floor surfaces, floor drains, floor joints, and inner dike walls;

(4) to the extent practicable, an owner or operator of a drycleaning facility or property owner shall seal or otherwise render impervious those portions of all floor surfaces upon which any drycleaning solvents may leak, spill, or otherwise be released;

(5) containment devices must provide for the temporary containment of accidental spills or leaks until appropriate response actions are taken by the owner/operator to abate the source of the spill and remove the product from all areas on which the product has accumulated; and

(6) materials used in constructing the containment structure or sealing the floors must be capable of withstanding permeation by drycleaning solvents in use at the facility for not less than seventy-two hours.

(G) For drycleaning facilities that commence operating on or after November 24, 2004, the owners or operators of these facilities or property owners, before the commencement of operations, shall install beneath each machine or item of equipment in which drycleaning solvents are used a rigid and impermeable containment vessel capable of containing one hundred percent of the volume of the largest single tank in the machine or piece of equipment or one-third of the total tank capacity of each machine, whichever is greater. Dikes or containment structures must be installed before delivery of any drycleaning solvents

to the facility. All dikes or containment structures shall meet all criteria of Section 44-56-470(F).

(H) A property owner or the owner or operator of a drycleaning facility or wholesale supply facility at which there is a spill of more than the federally mandated reportable quantity of drycleaning solvent outside of a containment structure, after July 1, 1995, shall report the spill to the department immediately upon the discovery of the spill and comply with existing emergency response regulations.

(I) Failure to comply with the requirements of this section constitutes gross negligence with regard to determining site eligibility.

(J) Effective January 1, 2010, all halogenated solvents must be delivered by a closed-loop delivery system.

Section 44-56-475. (A) Each drycleaning facility registered in accordance with Section 44-56-470 must be issued an annual drycleaner's certificate of registration by the Department of Revenue. The certificate of registration authorized pursuant to this section is valid beginning the first day of October following the registration and ending on the last day of the following September. In the case of a new drycleaning facility registered in accordance with Section 44-56-470, the certificate of registration authorized pursuant to this section is valid beginning on the day it is issued and ending on the last day of the following September.

(B) A drycleaning facility's certificate of registration or drycleaning facility exemption certificate must at all times be conspicuously displayed at the drycleaning facility.

(C) In order to purchase or receive drycleaning solvent from a wholesale supply facility or another drycleaning facility, a drycleaning facility must provide the wholesale supply facility or other drycleaning facility a copy of its current certificate of registration or drycleaning facility exemption certificate, whichever is applicable.

(D)(1) A wholesale supply facility is prohibited from selling or transferring drycleaning solvent to any drycleaning facility not in possession of a current certificate of registration or a drycleaning facility exemption certificate issued by the Department of Revenue on or after July 1, 2009. A wholesale supply facility selling or providing drycleaning solvent in violation of the provisions of this subsection is subject to a civil penalty of up to ten thousand dollars for each violation. Each sale or transfer constitutes a separate violation.

(2) A drycleaning facility is prohibited from selling or transferring drycleaning solvent to any other drycleaning facility not in possession of a current certificate of registration or a drycleaning

facility exemption certificate issued by the Department of Revenue on or after July 1, 2009. This prohibition applies even if the same person owns or operates both drycleaning facilities. A drycleaning facility selling or providing solvent to another drycleaning facility in violation of the provisions of this subsection is subject to a civil penalty of up to ten thousand dollars for each violation. Each sale or transfer constitutes a separate violation.

(3) A drycleaning facility not in possession of a current certificate of registration or a drycleaning facility exemption certificate issued by the Department of Revenue on or after July 1, 2009, is prohibited from purchasing or receiving drycleaning solvent. A drycleaning facility purchasing or receiving drycleaning solvent in violation of the provisions of this subsection is subject to a civil penalty of up to ten thousand dollars for each violation. Each purchase or receipt constitutes a separate violation.

(E) The Department of Revenue, in addition to all other penalties authorized by this law and in addition to the provisions of Section 12-54-90, may revoke one or more certificates of registration of any owner or operator of a drycleaning facility for failure to remit any taxes, surcharges, or fees due by the owner or operator under this article or Title 12 or when the owner or operator fails, neglects, violates, or refuses to comply with the provisions of this section.

Section 44-56-480. (A) Beginning July 1, 1995, an environmental surcharge is assessed on the privilege of producing in, importing into, or causing to be imported into the State drycleaning solvent. A surcharge of ten dollars per gallon on halogenated drycleaning fluid and two dollars per gallon on nonhalogenated cleaner is levied on each gallon to be used for drycleaning purposes when imported into or produced in the State. Nonhalogenated cleaners purchased, produced, or transported in a nonliquid physical state must be assessed a surcharge of twenty cents per pound. Exempt from the surcharge imposed under this section are sales or distributions to, or purchases or receipts by, drycleaning facilities in existence prior to July 1, 1995, that possess a Drycleaning Facility Exemption Certificate issued by the Department of Revenue on or after July 1, 2009.

(B) A person producing in, importing into, or causing to be imported into this State drycleaning solvent for sale, use, or otherwise must register with the Department of Revenue and become licensed for the purposes of remitting the surcharge pursuant to this section. The person must register as a producer or importer of drycleaning solvent. Persons operating at more than one location only are required to have a

single registration. The fee for registration is thirty dollars. Failure to register before importing or producing drycleaning solvent into this State is a misdemeanor and, upon conviction, the person must be fined up to twenty-five thousand dollars or imprisoned up to thirty days.

(C) The surcharge imposed by this section is due and payable on or before the twentieth day of the month succeeding the month of production, importation, or removal from a storage facility. The surcharge must be reported on forms and in the manner determined by the Department of Revenue.

(D) All drycleaning solvent to be used for drycleaning purposes which are imported, produced, or sold in this State are presumed to be subject to the surcharge imposed by this section. An owner or operator of a drycleaning facility participating in the fund who has purchased drycleaning solvent for use, consumption, resale, or distribution in this State must document that the surcharge imposed by this section has been paid or must pay the surcharge directly to the Department of Revenue in accordance with subsection (C). The solvent dealer may pass the costs of the surcharge to any owner or operator of a drycleaning facility who has purchased drycleaning solvent for use, consumption, resale, or distribution in this State except the surcharge imposed by this section must not be charged to a facility in existence before July 1, 1995, that possesses a Drycleaning Facility Exemption Certificate issued by the Department of Revenue on or after July 1, 2009.

(E) The surcharge imposed by this section must be remitted to the Department of Revenue. The payment must be accompanied by the forms as the Department of Revenue prescribes. The proceeds of the surcharge, after deducting the administrative costs incurred by the Department of Revenue in administering, auditing, collecting, distributing, and enforcing the surcharge, must be remitted by the Department of Revenue to the State Treasurer to be credited to the Drycleaning Facility Restoration Trust Fund and must be used as provided in Section 44-56-420. For the purposes of this section, the proceeds of the surcharge include all funds collected and received by the Department of Revenue, including interest and penalties on delinquent surcharges.

(F) The Department of Revenue shall administer, collect, and enforce the surcharge authorized pursuant to this section in the manner that sales and use taxes are administered, collected, and enforced under Chapter 36, Title 12, except no timely payment discount or exemptions or exclusions are allowed. Provisions of Title 12 regarding the Department of Revenue’s authority to audit and make assessments, the

keeping of books and records, and interest and penalties on delinquent taxes apply.

(G) The Department of Revenue must retain funds for the costs incurred to administer, collect, and enforce the program. The proceeds of the surcharge, after deducting the costs incurred by the Department of Revenue in administering, auditing, collecting, distributing, and enforcing the surcharge, must be remitted to the State Treasurer and credited to the fund and must be used as provided in Section 44-56-420. For the purposes of this section, the proceeds of the surcharge include interest and penalties collected by the Department of Revenue.

(H) The Department of Revenue may establish audit procedures and assess delinquent surcharges.

(I) Drycleaning solvent used for drycleaning exported from the storage facility at which it is held in this State by the producer or importer is exempt from the surcharge authorized pursuant to this section. Anyone exporting drycleaning solvent on which the surcharge has been paid may apply for a refund or credit. A person who sells drycleaning solvent that is exempt from the collection of the surcharge pursuant to subsection (D) may apply for a credit or refund. The Department of Revenue may require information as it considers necessary in order to approve the refund or credit.

(J) The Department of Revenue may authorize:

(1) a quarterly return and payment when the surcharge remitted by the licensee for the preceding quarter did not exceed one hundred dollars;

(2) a semiannual return and payment when the surcharge remitted by the licensee for the preceding six months did not exceed two hundred dollars;

(3) an annual return and payment when the surcharge remitted by the licensee for the preceding twelve months did not exceed four hundred dollars.

Section 44-56-485. (A) Notwithstanding any other provision of this article, this article does not apply to a drycleaning facility that possesses a Drycleaning Facility Exemption Certificate issued by the Department of Revenue on or after July 1, 2009. A Drycleaning Facility Exemption Certificate only may be issued by the Department of Revenue if the drycleaning facility meets the requirement in subsection (F) or all of the following requirements:

(1) the drycleaning facility was in existence on July 1, 1995;

(2)(a) the drycleaning facility drycleaned with nonhalogenated cleaners only on or before July 1, 1995; or

(b) the drycleaning facility drycleaned with halogenated fluids and nonhalogenated cleaners and elected to remove the facility from the requirements of this article by election made to the Department of Revenue before October 1, 1995;

(3) the drycleaning facility has never participated in the fund through payment of any surcharges or fees imposed pursuant to this article that are administered and collected by the Department of Revenue;

(4) the drycleaning facility requested a Drycleaning Facility Exemption Certificate from the Department of Revenue by December 31, 2009; and

(5) the department has verified that the drycleaning facility has met the requirements contained in items (1) through (4) for the issuance of the Drycleaning Facility Exemption Certificate to the drycleaning facility.

However, with respect to item (4), if the ownership or operation of a drycleaning facility that possesses a Drycleaning Facility Exemption Certificate is transferred to another person after December 31, 2009, the new owner or operator shall request and must be provided an updated Drycleaning Facility Exemption Certificate from the Department of Revenue; otherwise the certificate remains current.

The Drycleaning Facility Exemption Certificate authorized pursuant to this section only applies to the physical location at which the drycleaning took place and is not transferable to any other physical location.

Notwithstanding any other provision of this article, this article also does not apply to dry drop-off facilities where the clothing or other fabrics are only cleaned by a drycleaning facility:

(i) owned or operated by the same person that owns or operates the dry drop-off facility;

(ii) issued a Drycleaning Facility Exemption Certificate by the Department of Revenue on or after July 1, 2009; and

(iii) where the owner or operator, or related entity, does not own or operate any other drycleaning facilities participating in the fund through payment of any surcharges or fees imposed pursuant to this article.

However, an owner or operator of a drycleaning facility or property owner may elect to place the drycleaning facility under the provisions of this article by paying the required annual fee for the drycleaning facility before October 1, 1995. If an owner or operator of a

drycleaning facility or property owner does not elect to place a drycleaning facility under this article before October 1, 1995, the current or a future owner or operator of the site or property owner is prohibited from receiving any funds or assistance pursuant to this article. Failure to pay the required annual fee by October 1, 1995, constitutes electing not to place a drycleaning facility under this article. Additionally, an owner, operator, or property owner who does not elect to place a drycleaning facility that was in existence on July 1, 1995, under this article is prohibited from receiving any funds or assistance pursuant to this article for any site the owner, operator, or property owner elected not to place under this article and any site operated or abandoned before July 1, 1995. If the owner, operator, or property owner placed a drycleaning facility that was in existence on July 1, 1995, under this article, and met all other requirements including registration of that site, the facility is eligible pursuant to this article.

(B) A drycleaning facility in existence on July 1, 1995, that uses halogenated fluids and nonhalogenated cleaners may elect to remove the facility from the requirements of this article if the election is made before October 1, 1995. Failure to pay the required annual fee by October 1, 1995, constitutes electing to remove a facility from the requirements of this article. An owner, operator, or property owner of a facility using halogenated and nonhalogenated cleaners may not elect to remove a facility from the requirements of this article for one solvent and not the other.

(C) Notwithstanding subsections (A) and (B) of this section, if a property owner or an owner or operator of a drycleaning facility in existence on July 1, 1995, has made an election not to place a facility under the provisions of this article as allowed in subsection (A) or (B), then the property owner or an owner or operator of a drycleaning facility may affirmatively and irrevocably elect to place the drycleaning facility under the provisions of this article. This election must be made by registering with the Department of Revenue on or before July 1, 2005, and paying the fees and taxes provided pursuant to this article. An electing drycleaning facility is liable for payment of all taxes and fees from the later of July 1, 1995, or the date the drycleaning facility began operating, but is not liable for any penalties or interest. An electing drycleaning facility may pay the back taxes and fees that the facility is required to pay under this subsection by making monthly installments toward full payment of all back taxes and fees. The monthly installments must commence no later than July 1, 2004, and all back taxes and fees must be fully paid on or before July 1, 2006.

(D) Notwithstanding any other provision of this article, any property owner or owner or operator of a drycleaning facility that has not registered with the Department of Revenue and complied with the provisions of this article may voluntarily register with the Department of Revenue on or before July 1, 2005, without incurring any penalties or interest. Payment of all taxes and fees due pursuant to this article is required to be made from the later of July 1, 1995, or the date the drycleaning facility began operating. A property owner or owner or operator of a drycleaning facility that does not voluntarily register under this subsection is subject to interest, penalties, and payment of all taxes and fees from the later of July 1, 1995, or the date the drycleaning facility began operating. No fees may be prorated or refunded for a business in operation for less than twelve months.

(E) Notwithstanding any other provision of this article, the department may direct the Department of Revenue to allow a property owner or owner or operator of a drycleaning facility, who elected not to place the facility under this article pursuant to subsection (A) or (B) of this section to register, provided the department finds that the property owner or owner or operator of the drycleaning facility requesting to register did not have notice of this article for more than ninety days prior to requesting registration. The property owner or owner or operator of a drycleaning facility registering pursuant to this subsection is liable for payment of all taxes or fees, including interest, from the later of July 1, 1995, or the date the drycleaning facility began operating; however, the registering property owner or owner or operator of a drycleaning facility is not liable for penalties. No fees may be prorated or refunded for a business in operation for less than twelve months.

(F) Notwithstanding any other provision of this article, the department may direct the Department of Revenue to allow a property owner, owner or operator of a drycleaning facility that has previously registered for coverage under this article to elect to opt out of the provisions of this article provided the facility has been in operation before January 1, 1940, has drycleaned only with nonhalogenated cleaners and applies for a Drycleaning Facility Exemption Certificate after July 1, 2009, and before September 30, 2009. Fees that have been paid by the property owner, owner or operator of a drycleaning facility that is opting out of the provisions of this article may not be refunded and may not receive any benefit from this article.

Section 44-56-490. (A) If the department finds that a person is in violation of a provision of this article or a regulation promulgated

pursuant to this article, the department may issue an order requiring the person to comply with the provision or regulation or the department may bring civil action for injunctive relief in an appropriate court of competent jurisdiction.

(B) A person who violates a provision of this article, a regulation promulgated pursuant to this article, or an order of the department issued pursuant to subsection (A) is subject to a civil penalty not to exceed ten thousand dollars for each day of violation.

(C) A person who wilfully violates a provision of this article, a regulation promulgated pursuant to this article, or an order of the department issued pursuant to subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five thousand dollars for each day of violation or imprisoned for not more than one year, or both.

Section 44-56-495. (A) There is created the Drycleaning Advisory Council to advise the Department of Health and Environmental Control on matters relating to regulations and standards which affect drycleaning and related industries.

(B) The council is composed of the following members:

(1) eight representatives of the drycleaning industry who are participating in this article;

(2) one representative of the wholesale industry;

(3) one representative of the drycleaners who have a Drycleaning Exemption Certificate issued by the Department of Revenue;

(4) one representative from the Department of Health and Environmental Control, who must be an administrator.

(C) Members enumerated in subsections (B)(1) through (B)(3) shall be appointed by the Board of the Department of Health and Environmental Control and shall serve terms of two years and until their successors are appointed. The chairman of the council must be elected by the members of the council at the first meeting of each new term.

(D) An employee of the Department of Revenue shall attend meetings of the council to provide the council informal assistance as to matters involving the surcharges and fees that are imposed pursuant to this article and which are administered and collected by the Department of Revenue.

(E) The Department of Revenue may disclose to the department information on a return filed with the Department of Revenue pursuant to the provisions of Section 44-56-430. The Department of Revenue and the department may not disclose to the members enumerated in

subsections (B)(1) through (B)(3) or to the public specific information on a return filed with the Department of Revenue pursuant to the provisions of Section 44-56-430; however, the Department of Revenue and the department may provide these members available statistical information concerning the surcharge imposed pursuant to Section 44-56-430."

Time effective

SECTION 2. This act takes effect upon approval by the Governor; however, the amendments to the impositions of the surcharges and fees imposed pursuant to Sections 44-56-430(A), 44-56-470(A), 44-56-480(A), and 44-56-480(D) of the 1976 Code, as amended in Section 1 of this act, take effect March 1, 2010.

Ratified the 30th day of April, 2009.

Approved the 6th day of May, 2009.

No. 15

(R39, H3635)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 50-9-560 SO AS TO SPECIFY APPLICABLE FEES FOR RECREATIONAL SALTWATER FISHING LICENSES; BY ADDING SECTION 50-9-715 SO AS TO SPECIFY RECREATIONAL SALTWATER FISHING LICENSE EXEMPTIONS; BY ADDING SECTION 50-9-925 SO AS TO SPECIFY HOW THE REVENUE FROM THE SALE OF STAMPS, LICENSES, PRINTS, AND RELATED ARTICLES MUST BE DISTRIBUTED; TO AMEND SECTION 50-5-15, RELATING TO THE DEFINITIONS APPLICABLE TO THE SOUTH CAROLINA MARINE RESOURCES ACT, SO AS TO DEFINE THE TERMS "DROP NET" AND "FOLD UP TRAP"; TO AMEND SECTION 50-5-955, RELATING TO THE DESIGNATION AND MAINTENANCE OF PUBLIC SHELLFISH GROUNDS, SO AS TO SUBSTITUTE REFERENCE TO THE RECREATIONAL SALTWATER FISHING LICENSE FOR THE MARINE RECREATIONAL

FISHING STAMP; TO AMEND SECTION 50-5-1915, RELATING TO CHARTER FISHING VESSEL LOGS, SO AS TO REQUIRE MONTHLY SUBMISSIONS TO THE SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES; TO AMEND SECTION 50-9-20, RELATING TO THE DURATION OF HUNTING AND FISHING LICENSES, SO AS TO REMOVE REFERENCES TO RESIDENT AND NONRESIDENT LICENSES; TO AMEND SECTION 50-9-40, RELATING TO LICENSES FOR FRESHWATER FISHING, SO AS TO SPECIFY RECREATIONAL FRESHWATER FISHING; TO AMEND SECTION 50-9-540, AS AMENDED, RELATING TO FRESHWATER AND SALTWATER FISHING LICENSES, SO AS TO MAKE TECHNICAL CORRECTIONS; AND TO REPEAL SECTIONS 50-5-1905, 50-5-1910, 50-5-1920, 50-5-1925, AND 50-5-1945 ALL RELATING TO RECREATIONAL SALTWATER FISHERIES LICENSES AND STAMPS.

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

Fees

SECTION 1. Article 5, Chapter 9, Title 50 of the 1976 Code is amended by adding:

"Section 50-9-560. (A) For the privilege of recreational fishing in the saltwaters of this State:

(1) a resident shall purchase an annual recreational saltwater fishing license for ten dollars, of which one dollar may be retained by the issuing agent;

(2) in lieu of obtaining an annual recreational saltwater fishing license, a resident may purchase a temporary recreational saltwater fishing license valid for fourteen specified consecutive days for five dollars, of which one dollar may be retained by the issuing agent;

(3) a nonresident shall purchase an annual recreational saltwater fishing license for thirty-five dollars, of which one dollar may be retained by the issuing agent; and

(4) in lieu of obtaining an annual recreational saltwater fishing license, a nonresident may purchase a temporary recreational saltwater fishing license valid for fourteen specified consecutive days for eleven dollars, of which one dollar may be retained by the issuing agent.

(B) For the privilege of operating a public fishing pier in the salt waters of this State, the owner or operator must purchase an annual saltwater public fishing pier license for:

(1) one hundred fifty dollars for a pier one hundred feet or less in total length; or

(2) three hundred fifty dollars for a pier greater than one hundred feet in total length.

(C) For the privilege of operating a charter fishing vessel in the salt waters of this State, the owner or operator must purchase an annual charter vessel license for each vessel for the following fee to:

(1) carry six or fewer passengers, one hundred fifty dollars;

(2) carry seven to forty-nine passengers, two hundred fifty dollars; and

(3) carry fifty or more passengers, three hundred fifty dollars."

Exemptions

SECTION 2. Article 7, Chapter 9, Title 50 of the 1976 Code is amended by adding:

"Section 50-9-715. The following are exempt from purchasing the recreational saltwater fishing license a:

(1) fisherman fishing from a licensed charter fishing vessel or from a licensed public fishing pier;

(2) drop net fisherman using no more than three drop nets;

(3) fold up fisherman using no more than three fold up traps;

(4) hand line fisherman using no more than three hand lines with a single bait each and no hooks; and

(5) fisherman taking shrimp with bait."

Revenue distribution

SECTION 3. Article 9, Chapter 9, Title 50 of the 1976 Code is amended by adding:

"Section 50-9-925. (A) Revenue from the sale of the stamps, recreational saltwater licenses, prints, and related articles must be paid into a special account separate from the general fund. Revenues in the account are carried forward each year and may be used to match available federal funds. The revenue must be distributed as follows:

(1) from the sale of an annual or temporary recreational saltwater fishing license; twenty-five cents to saltwater administration, one dollar

to saltwater enforcement, and the balance to recreational saltwater programs;

(2) from the sale of a charter vessel license; five percent to saltwater administration, twenty percent to saltwater enforcement, and the balance to recreational saltwater programs; and

(3) from the sale of stamps, prints, and related articles; five percent to saltwater administration, twenty percent to saltwater enforcement, and the balance to recreational saltwater programs.

(B) Revenues distributed for recreational saltwater programs may be used only for the following programs which directly benefit recreational saltwater fisheries:

(1) development of recreational saltwater fishing facilities;

(2) scientific research and management of recreational saltwater fisheries;

(3) protection, maintenance, or enhancement of saltwater habitat important to the continued production of fish stocks and their food sources of significance to recreational saltwater fisheries;

(4) other programs directly benefiting recreational saltwater fisheries recommended by the Saltwater Recreational Fisheries Advisory Committee; and

(5) publish an annual report to be made available to stamp and license holders to indicate how the previous year's funds were utilized.

(C) Revenue distributed for saltwater administrative activities must be used in support of activities authorized pursuant to the South Carolina Marine Resources Act of 2000.

(D) Revenue distributed for saltwater enforcement activities must be expended for enforcement of the laws and fishery management regulations relating to recreational saltwater fisheries, including habitat protection and other activities authorized pursuant to this chapter."

Definitions

SECTION 4. Section 50-5-15 of the 1976 Code is amended to read:

"Section 50-5-15. As used in this title pertaining to saltwaters:

(1) 'Anadromous' identifies fish which undertake adult migration from brackish or salt waters into freshwaters to spawn, except striped bass or rock fish and hybrid bass, and includes landlocked stocks of those fish.

(2) 'Bang stick' means a device containing a charge mounted on a spear, pole, or other contrivance which is activated in order to stun or kill fish or other marine resource.

(3) 'Board' means the South Carolina Board of Natural Resources.

(4) 'Bottoms' are all of the lands within this State covered at mean high water from the freshwater/saltwater dividing line seaward to the seawardmost limits of the territorial sea.

(5) 'Bull rake' means a rake having a basket and a width greater than twelve inches.

(6) 'Bushel' means one U.S. bushel.

(7) 'Cast net' means nonbaited circular webbing having a weighted peripheral line which is thrown by hand and retrieved by a central line connected to radiating tuck lines attached to the peripheral line.

(8) 'Catadromous' identifies fish which undertake adult migration from freshwater into brackish or salt water to spawn.

(9) 'Channel net' means any conical-shaped, fixed, or stationary net used for taking shrimp which:

(a) is attached to poles, stakes, anchors, buoys, or other fixed objects; and

(b) has a mesh size of less than two and one-half inches when the mesh is stretched; and is also known as a set net.

(10) 'Charter fishing vessel' means a vessel used to transport recreational saltwater fishermen for hire and includes charter, party, and head boats.

(11) 'Commercial equipment' means:

(a) any trawl, haul seine, gill net, channel net, bull rake, seed fork, grabs, escalator, or dredge; and

(b) any net, seine, trap, pot, tongs, rake, fork, trotline, or other device or appliance when used for taking or attempting to take fish for a commercial purpose.

(12) 'Commercial purpose' means:

(a) being engaged in buying or selling fish;

(b) taking or attempting to take fish in order to derive income or other consideration;

(c) using commercial equipment; and

(d) otherwise being engaged in the fisheries industry with the intent to derive income.

(13) 'Conservation of fisheries' means management, regulation, data collection and analysis, permitting, public interactions, enhancement and protection of fisheries stocks and habitat, law enforcement, and research.

(14) 'Conviction' or 'convicted' means adjudication at trial or civil hearing and includes the entry of a plea of guilty, or nolo contendere, or the forfeiture of bail or collateral deposited to secure a defendant's appearance in court.

(15) 'Crustacean' means all forms of crabs, shrimp, crayfish, stone crabs, lobsters, and other motile fish having a chitonized shell excluding snails and horseshoe crabs.

(16) 'Culch' means oyster shell or other substrate which is purposely placed for propagation of oysters through the attachment of oyster larvae.

(17) 'Cultured live rock' means a type of live rock which has been produced as a result of cultivation under controlled conditions, as in aquaculture operations. Live rock culture specifically entails the deposition of substrate materials for the express purpose of removing the material at a later date for use, sale, or trade as live rock.

(18) 'Department' means the South Carolina Department of Natural Resources unless otherwise stated.

(19) 'Dredge' means equipment used for harvesting bottom dwelling aquatic life which is not a trawl and is powered by mechanical means, and is designed to contact the bottom when in operation.

(20) 'Drop net' means a net mounted to a rigid frame with its diameter or diagonal width being eight feet or less and designed to be fished vertically by hand.

(21) 'Elver' means all American eels (Anguilla rostrata) less than or equal to six inches in total length.

(22) 'Fish' means finfish, shellfish including mollusks, crustaceans, horseshoe crabs, whelks (conchs), turtles, and terrapin or products thereof.

(23) 'Fishing' means all activity and effort involved in taking or attempting to take fish.

(24) 'Fishery and fisheries' mean the interactions within and between:

(a) the populations of fish or marine resources being harvested;

(b) the populations of fishermen;

(c) the method, equipment, and effort involved in taking or attempting to take fish;

(d) the processing, transporting, offering for sale, or selling of fish or marine resources; and

(e) the natural resources supporting that interaction.

(25) 'Fold up trap' means a pyramid-shaped plastic or wire meshed collapsing trap, with a square base panel and triangular-shaped side panels, that opens outward to occupy a single plane when placed on the water bottom. It is baited in the center of the base panel and encloses crabs when retrieved by means of a cord drawing together the topmost points of the side triangles.

(26) 'Gig' means a device used to spear fish by hand; to take fish by hand by use of a prong, spear, or similar device and includes bow and arrow.

(27) 'Gill net' means a net which is designed to hang vertically and capture fish by entanglement usually of the head, gill covers, or preopercles, and does not include gill net for taking shad unless specified.

(28) 'Haul seine' means a net of twine no smaller than #9 with a stretched mesh size no smaller than two inches and no larger than two and seven-eighths inches, one end of which is anchored to the shore and the other end is moved through the water by a vessel to take fish by encircling the fish and then being mechanically drawn to the shore.

(29) 'Herring' means all life stages of the river herrings being blueback herring (Alosa aestivalis) and alewife (Alosa pseudoharengus).

(30) 'Inshore salt waters' means those salt waters of this State between the landward limit of the Atlantic Ocean connected by COLREG demarcation lines, and the freshwater/saltwater dividing line.

(31) 'Landed' or 'to land' means to take and retain possession while afloat or to take and bring ashore.

(32) 'Live rock' means living saltwater organisms or an assemblage of them attached to a hard substrate including dead coral or rock. Living saltwater organisms associated with hard bottoms, banks, reefs, and live rock include, but are not limited to:

(a) sea anemones (Phylum Cnidaria: Class Anthozoa: Order Actinaria);

(b) sponges (Phylum Porifera);

(c) tube worms (Phylum Annelida) including fan worms, feather duster worms, and Christmas tree worms;

(d) bryozoans (Phylum Bryozoa);

(e) sea squirts (Phylum Chordata); and

(f) marine algae including mermaid's fan and cups (Udotea spp.), corraline algae, green feather and green grape algae (Caulerpa spp.), and watercress (Halimeda spp.).

(33) 'Mariculture' means controlled cultivation in confinement of marine and estuarine organisms in salt waters.

(34) 'Marine resource' means any live, fresh, processed, or frozen whole, part, or portion of any marine organism, anadromous fish, or catadromous fish, to include shell deposits occurring upon or within state-owned bottoms and those lying above the mean high water mark if created by processes of natural accretion upon state-owned lands or bottoms.

(35) 'Mile' means one nautical mile, being six thousand seventy-six feet.

(36) 'Minnow trap' means a trap having no opening which has a dimension greater than one inch only when used for taking small finfish for bait.

(37) 'Mollusk' or 'molluscan' means a member of the phylum Mollusca.

(38) 'Peeler crab' means a hard crab of the blue crab species (Callinectes sapidus) which has a fully formed soft shell beneath the exterior hard shell and exhibits molt signs in the form of red, pink, or white lines just inside the exterior margin of the rear paddle (swimming) legs.

(39) 'Peeler trap' means a trap constructed of one inch or smaller hexagonal wire which is:

(a) unbaited; or

(b) baited with only one live male crab and may have one single piece of fish having no dimension greater than three inches.

(40) 'Pot' has the same definition as 'trap' herein contained.

(41) 'Protected species' means a species with which man's interaction is legally controlled, restricted, or prohibited either continually or periodically.

(42) 'Public fishing pier' means piers open to the public which charge a fee to fish.

(43) 'Recreational fishermen' means persons taking or attempting to take saltwater fish for recreation only, and not for commercial purposes.

(44) 'Salt waters' mean all waters of the rivers and their tributaries, streams, and estuaries lying seaward of the dividing line between salt water and freshwater and all impounded waters seaward of the dividing line between salt water and freshwater which are intermittently filled or drained by the action of the tide.

(45) 'Saltwater gamefish' means a species of saltwater fish designated as a saltwater gamefish in this title.

(46) 'Saltwater privileges' mean the privilege of participating or assisting in the taking or attempting to take or to buy, receive, handle, pack, process, ship, consign, sell, barter, or trade a saltwater fish or marine resource and includes the privilege to hold any license, permit, or stamp authorizing such activity.

(47) 'Seed fork' means a fork manufactured having seven or more straight or slightly curved tines or having a tine greater than eight inches in length. All tines must be at least one inch apart unless utilized for mariculture harvest.

(48) 'Shad' means American or white shad (Alosa sapidissima) and hickory or skip-jack shad (Alosa mediocris).

(49) 'Shellfish' means oysters, clams, mussels, scallops, and all nonmotile molluscan fish having shells.

(50) 'Shoreline' means the line of mean high water along that portion of a land mass which is in direct contact with the waters of the Atlantic Ocean.

(51) 'Shrimp seine' means an unanchored net having a stretched mesh of not less than one inch but no greater than one and three-quarters inches, the webbing of which does not exceed forty feet in length or six feet in depth, which is continually moved through the water by human and not mechanical power, and which has no tail bag or cod.

(52) 'Shrimp trawl' means a trawl with netting having a stretch mesh size of less than two and one-half inches.

(53) 'Sponge crab' means a female blue crab bearing visible eggs.

(54) 'State resident' has the same meaning as prescribed in Chapter 9 of this title unless otherwise indicated.

(55) 'State waters' extend to the seaward limit of the territorial sea.

(56) 'Stretch' as used to describe the measure of mesh of nets means that the material is pulled snugly but not to the point of lengthening the single or multistrand line of the netting. Measurement is made across the widest dimension of the mesh when pulled.

(57) 'Striker' means a person, other than a licensed saltwater commercial fisherman, who under immediate supervision assists a licensed commercial saltwater fisherman, but does not use separate commercial equipment on a vessel which is engaged in commercial fishing.

(58) 'Take' means to harass intentionally, hunt, capture, gather, harvest, remove, catch, wound, or kill or attempt to harass, hunt, capture, gather, harvest, remove, catch, wound, or kill.

(59) 'Territorial sea' means that portion of the Atlantic Ocean under the jurisdiction of the State of South Carolina.

(60) 'Trap' is an enclosed device used for taking fish, constructed to facilitate entry but prohibit or restrict exit of fish and is also called 'pot'.

(61) 'Trawl' means a net, other than a haul seine, towed behind a boat.

(62) 'Trawler' means a vessel rigged for towing a trawl.

(63) 'Trawling' means fishing with a trawl or having part of a trawl door in the water.

(64) 'Trotline' means a single line or wire having numerous hooks or baits and is also called long line."

Designation and maintenance of public shellfish grounds; areas containing DHEC permitted structure; taking for commercial purpose prohibited

SECTION 5. Section 50-5-955(A) of the 1976 Code is amended to read:

"(A) The Department of Natural Resources may designate and shall maintain public shellfish grounds where persons holding or exempted from holding a recreational saltwater fishing license may gather shellfish solely for personal use not to exceed the personal limits specified in this article. The open areas must be located preferably at or near public landings. The Department of Natural Resources may not designate an area located within one thousand feet of highland property capable of development as a public shellfish ground. Areas designated before January 1, 1996, are exempt from the siting provision of this section and retain their designation until such designation is removed by the department."

Charter fishing vessel and public pier logs; penalties

SECTION 6. Section 50-5-1915 of the 1976 Code is amended to read:

"Section 50-5-1915. (A) Charter fishing vessels shall maintain a log of the number of persons carried each day, number of hours engaged in fishing, number of fish by species caught each day and other information considered necessary by the department. The logs must be submitted to the department monthly by the tenth day of the following month.

A person licensed to operate a charter fishing vessel who fails to maintain or submit a log as required is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty-five dollars nor more than five hundred dollars, or imprisoned for not more than thirty days, and a subsequent charter fishing vessel license must not be issued until the requirements of this subsection are met.

(B) Public fishing piers shall maintain a log of the number of persons fishing from that structure each day. The logs must be submitted to the department monthly by the tenth day of the following month as prescribed or approved by the department. An owner or

operator who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty-five dollars nor more than five hundred dollars or imprisoned for not more than thirty days and a subsequent license must not be issued until the requirements of this subsection are met."

Duration of hunting and fishing licenses

SECTION 7. Section 50-9-20 of the 1976 Code is amended to read:

"Section 50-9-20. Annual licenses, permits, stamps, and tags issued by the department are valid July first through June thirtieth of the following year. Temporary licenses and permits are valid for the consecutive days of issue."

Regulation of freshwater fishing only

SECTION 8. Section 50-9-40 of the 1976 Code is amended to read:

"Section 50-9-40. Licenses for fishing privileges regulated by this chapter, unless otherwise specified, apply to recreational freshwater fishing."

Fishing licenses; fees

SECTION 9. Section 50-9-540(F) of the 1976 Code, as added by Act 268 of 2008, is amended to read:

"(F) For the privilege of recreational saltwater fishing, a resident of this State may obtain a lifetime recreational saltwater fishing license from the department for three hundred dollars at its designated licensing locations."

Code sections repealed

SECTION 10. Sections 50-5-1905, 50-5-1910, 50-5-1920, 50-5-1925, and 50-5-1945 of the 1976 Code are repealed.

Time effective

SECTION 11. This act takes effect on July 1, 2009.

Ratified the 30th day of April, 2009.

Became law without the signature of the Governor -- 5/7/09.

No. 16

(R40, H3721)

AN ACT TO AMEND SECTION 12-6-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE APPLICATION OF THE INTERNAL REVENUE CODE TO STATE TAX LAWS, SO AS TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE TO THE YEAR 2008; TO AMEND SECTION 12-6-50, AS AMENDED, RELATING TO INTERNAL REVENUE CODE SECTIONS NOT ADOPTED BY STATE LAW, SO AS TO MAKE ADDITIONS; AND TO PROVIDE THAT A TAXPAYER WHO FOLLOWS SECTION 3094 OF THE FEDERAL HOUSING ECONOMIC RECOVERY ACT OF 2008, FOR SOUTH CAROLINA PURPOSES MUST NOT BE PENALIZED.

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

Application of federal Internal Revenue Code to state tax laws

SECTION 1. Section 12-6-40(A)(1)(a) of the 1976 Code, as last amended by Act 311 of 2008, 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, 2008, and includes the effective date provisions contained in it."

Internal Revenue Code sections specifically not adopted by State

SECTION 2. Section 12-6-50 of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:

"Section 12-6-50. For purposes of this title and all other titles that provide for taxes administered by the department, except as otherwise

specifically provided, the following Internal Revenue Code Sections are specifically not adopted by this State:

(1) Sections 1(a) through 1(e), 3, 11, and 1201 relating to federal tax rates;

(2) Sections 22 through 54, 515, 853, 901 through 908, and 960 relating to tax credits;

(3) Sections 55 through 59 relating to minimum taxes;

(4) Sections 78, 86, 87, 168(k), 168(l), 168(m), 168(n), 196, and 280C relating to dividends received from certain foreign corporations by domestic corporations, taxation of social security and certain railroad retirement benefits, the alcohol fuel credit, bonus depreciation, deductions for certain unused business credits, and certain expenses for which credits are allowable;

(5) Sections 72(m)(5)(B), 72(f), 72(o), 72(q), and 72(t), relating to penalty taxes on certain retirement plan distributions;

(6) Section 172(b)(1) relating to net operating loss carrybacks;

(7) Section 199 relating to the deduction attributable to domestic production activities;

(8) Sections 531 through 564 relating to certain special taxes on corporations;

(9) Sections 581, 582, and 585 through 596 relating to the taxation of banking institutions;

(10) Sections 665 through 668 relating to taxation of certain accumulation distributions from trusts;

(11) Sections 801 through 845 relating to taxation of insurance companies;

(12) Sections 861 through 908, 912, 931 through 940, and 944 through 989 relating to the taxation of foreign income;

(13) Sections 1352 through 1359 relating to an alternative tax on qualifying shipping activities;

(14) Sections 1400 through 1494;

(15) Sections 1501 through 1505 relating to consolidated tax returns; and

(16) Sections 2001 through 7655, 7801 through 7871, and 8001 through 9602, except for Sections 6015 and 6701, and except for Sections 6654 and 6655 which are adopted as provided in Section 12-6-3910 and Section 12-54-55."

Effect of compliance with the federal Housing Economic Recovery Act of 2008

SECTION 3. For purposes of Section 12-6-3910, as last amended by Act 363 of 2002, a taxpayer must not be penalized for following the provisions of Section 3094 of the federal Housing Economic Recovery Act of 2008 (PL 110-289) for South Carolina purposes.

Time effective

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

Ratified the 30th day of April, 2009.

Became law without the signature of the Governor -- 5/7/09.

No. 17

(R38, H3627)

AN ACT TO AMEND SECTION 59-67-535, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE USE OF BOATS OPERATED BY THE STATE DEPARTMENT OF EDUCATION FOR THE TRANSPORTATION OF SCHOOL CHILDREN FROM ISLANDS TO MAINLAND SCHOOLS BY CERTAIN OTHER PERSONS, SO AS TO FURTHER PROVIDE FOR THE OPERATION OF THESE BOATS BY THE DEPARTMENT ON SANDY ISLAND, FOR USE OF THESE BOATS BY SPECIFIED PERSONS, AND THE PROCEDURES APPLICABLE FOR USE.

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

Operation of boats by department

SECTION 1. Section 59-67-535 of the 1976 Code is amended to read:

"Section 59-67-535. Boats operated by the State Department of Education for transportation of school children from Sandy Island to mainland schools also may be used to transport, on a space available

basis only, any Sandy Island resident. A person requesting boat transportation shall present his residence verification to the employee or representative of the State Department of Education who is in charge of the particular boat.

The term 'resident' as used herein means a person with an official residential address on Sandy Island.

Use of these boats by residents shall be only on a space available basis and only at such time as the boat is being otherwise operated on official business. School children in every case shall be given priority of carriage. Provided, that other trips on the Sandy Island boat may be approved by the county school district, in which case the operations, logistics, and all costs shall be borne by the school district to the extent that funds are available. The school district may contract with a third party to operate the ferry and manage the logistics associated with the other trips. Persons who are not residents of Sandy Island may be allowed to be transported by the boat when accompanied by a resident.

Any person authorized for transportation pursuant to the provisions of this section shall, prior to boarding, execute a 'covenant not to sue' the State of South Carolina or any agency thereof, on a form approved by the State Department of Education.

Nothing in this section shall be construed as a waiver of the state's general immunity from liability and suit."

Time effective

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

Ratified the 30th day of April, 2009.

Vetoed by the Governor -- 5/6/09.
Veto overridden by House -- 5/13/09.
Veto overridden by Senate -- 5/14/09.

No. 18

(R44, S13)

AN ACT TO AMEND SECTION 56-3-910, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MOTOR VEHICLE FEES AND PENALTIES, SO AS TO

PROVIDE THAT ALL FEES AND PENALTIES MUST BE PLACED IN THE STATE HIGHWAY ACCOUNT OF THE TRANSPORTATION INFRASTRUCTURE BANK WITHOUT CREDITING ANY TO THE DEPARTMENT OF TRANSPORTATION OR THE GENERAL FUND OF THE STATE.

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

Motor vehicle fees and penalties; distribution procedure revised

SECTION 1. Section 56-3-910 of the 1976 Code, as last amended by Act 176 of 2005, is further amended to read:

"Section 56-3-910. All fees and penalties collected by the department under the provisions of this chapter must be placed in the state highway account of the South Carolina Transportation Infrastructure Bank except for those fees and penalties which must be credited to a different account as otherwise provided for by law.

Not later than September first of each year, the department must provide the South Carolina Transportation Infrastructure Bank a report for the previous fiscal year that lists the total amount of fees and penalties it collected pursuant to Sections 56-3-660 and 56-3-670 by vehicle classification and weight."

Time effective

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

Ratified the 13th day of May, 2009.

Approved the 19th day of May, 2009.

No. 19

(R45, S232)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 48-52-220 SO AS TO DEFINE "RENEWABLE ENERGY RESOURCES" FOR

PURPOSES OF THE SOUTH CAROLINA ENERGY EFFICIENCY ACT; BY ADDING ARTICLE 12 TO CHAPTER 52, TITLE 48 SO AS TO REQUIRE STATE AGENCIES TO CONSIDER AND IMPLEMENT COST EFFECTIVE ENERGY, WATER, AND WASTEWATER CONSERVATION MEASURES, TO PROVIDE FOR AUDITS, AND TO PROVIDE FOR REPORTS TO THE STATE ENERGY OFFICE; TO AMEND SECTIONS 48-52-210, 48-52-420, AND 48-52-430, RELATING TO THE POLICIES AND PURPOSES UNDERLYING THE PLAN FOR ENERGY POLICY, THE DUTIES OF THE STATE ENERGY OFFICE, AND THE ANNUAL STATE ENERGY ACTION PLAN, SO AS TO PROVIDE ADDITIONAL PURPOSES AND POLICIES APPLICABLE TO THE PLAN FOR ENERGY POLICY, PROVIDE THAT STRATEGIES OF THE STATE ENERGY OFFICE PROMOTING CLEAN ENERGY MUST INCLUDE NUCLEAR ENERGY, RENEWABLE ENERGY SOURCES, AND CONSERVATION AND EFFICIENCY MEASURES, AND PROVIDE FOR ADDITIONAL REPORTING BY THAT AGENCY; AND TO AMEND SECTION 58-3-530, AS AMENDED, RELATING TO THE POWERS AND DUTIES OF THE STATE REGULATION OF PUBLIC UTILITIES REVIEW COMMITTEE, SO AS TO REQUIRE AN ANNUAL REVIEW OF THE STATE ENERGY ACTION PLAN FOR SUBMISSION TO THE GENERAL ASSEMBLY.

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

Definition added

SECTION 1. Article 2, Chapter 52, Title 48 of the 1976 Code is amended by adding:

"Section 48-52-220. For the purposes of this chapter, 'renewable energy resources' means energy conservation and efficiency, solar photovoltaic energy, solar thermal energy, wind power, hydroelectric power, geothermal energy, tidal energy, wave energy, recycling, hydrogen fuel derived from renewable resources, biomass energy, energy derived from municipal and other solid waste, energy derived from waste oil, energy derived from waste tires, and landfill gas."

State agency conservation measures

SECTION 2. Chapter 52, Title 48 of the 1976 Code is amended by adding:

"Article 12

State Government Energy Efficiency
and Renewable Energy Goals

Section 48-52-910. (A) Each agency must consider reductions of its energy, water, and wastewater use, and must implement recommended conservation measures to the degree the agency determines that the measures are cost effective. An audit must be performed by internal or external auditors, or by an energy services company in the manner provided in Section 48-52-670. Audit results and recommendations must be included in the report to the State Energy Office.

(B) Each agency must comply with this section by July 1, 2011."

Additional plan requirements

SECTION 3. Section 48-52-210 of the 1976 Code is amended to read:

"Section 48-52-210. (A) It is the policy of this State to have a comprehensive state energy plan that maximizes to the extent practical environmental quality and energy conservation and efficiency and minimizes the cost of energy throughout the State. To implement this policy there is adopted the Plan for State Energy Policy.

(B) The purpose of the plan is to:

(1) ensure access to energy supplies at the lowest practical environmental and economic cost;

(2) ensure long-term access to adequate, reliable energy supplies;

(3) ensure that demand-side options are pursued wherever economically and environmentally practical;

(4) encourage the development and use of clean energy resources, including nuclear energy, energy conservation and efficiency, and indigenous, renewable energy resources;

(5) ensure that basic energy needs of all citizens, including low income citizens, are met;

(6) ensure that energy vulnerability to international events is minimized;

(7) ensure that energy-related decisions promote the economic and environmental well-being of the State and maximize the ability of South Carolina to attract retirees, tourists, and industrial and service-related jobs;

(8) ensure that short-term energy decisions do not conflict with long-range energy needs;

(9) ensure that internal governmental energy use patterns are consistent with the state's long-range interests;

(10) ensure that state government is organized appropriately to handle energy matters in the best public interest;

(11) ensure that governmental energy-related tax, expenditure, and regulatory policies are appropriate, and, wherever possible, maximize the long-range benefits of competition; and

(12) ensure that any future energy strategy that promotes carbon-free, nongreenhouse gas emitting sources includes nuclear energy, renewable resources, and energy conservation and efficiency."

Duties of State Energy Office

SECTION 4. Section 48-52-420 of the 1976 Code is amended by adding at the end:

"(12) ensure that any future energy strategy that promotes carbon-free, nongreenhouse gas emitting sources includes nuclear energy, renewable energy resources, and energy conservation and efficiency."

Reports required

SECTION 5. Section 48-52-430 of the 1976 Code is amended to read:

"Section 48-52-430. The State Energy Office annually shall submit to the Governor and the Public Utility Review Committee, the House Labor, Commerce and Industry Committee, and the Senate Agriculture and Natural Resources Committee a state energy action plan that includes, but is not limited to:

(a) activities by the State Energy Office to carry out the Plan for State Energy Policy;

(b) recommendations for long-term quantitative and qualitative energy goals for the residential, commercial, industrial, transportation, governmental, and utility sectors, and measures of progress for these goals;

(c) identification of obstacles to efficiency for which legislative, regulatory, or other governmental remedies are appropriate."

Annual review of state energy action plan

SECTION 6. Section 58-3-530 of the 1976 Code, as last amended by Act 137 of 2005, is further amended to read:

"Section 58-3-530. The review committee has the following powers and duties:

(1) to nominate:

(a) no more than three candidates for each seat on the Public Service Commission to be elected by the General Assembly. In order to be nominated, a candidate must be found qualified by meeting the requirements as provided in Sections 58-3-20 and 58-3-560;

(b) no more than one qualified candidate for the Governor to consider in appointing the Executive Director of the Office of Regulatory Staff. In order to be nominated, a candidate must be found qualified by meeting the minimum requirements as provided in Section 58-4-30. The review committee must give due consideration to a candidate's experience and expertise in matters related to public utilities. A person must not be appointed to serve as Executive Director of the Office of Regulatory Staff unless nominated by the review committee. If the Governor rejects a person nominated for the position of executive director by the review committee, the review committee must nominate another candidate for the Governor to consider, until the Governor makes an appointment;

(2) notwithstanding any other provision of law, to set the salary of the Executive Director of the Office of Regulatory Staff;

(3) to conduct an annual performance review of each member of the commission, which must be submitted to the General Assembly. A draft of the member's performance review must be submitted to the member, and the member must be allowed an opportunity to be heard before the review committee before the final draft of the performance review is submitted to the General Assembly. The final performance review must be made a part of the member's record for consideration if the member seeks reelection to the commission;

(4) to evaluate the actions of the commission, to the end that the members of the General Assembly may better judge whether these actions serve the best interests of the citizens of South Carolina, both individual and corporate;

(5) to develop and distribute to each party and its representatives appearing before the commission an anonymous and confidential survey evaluating the commissioners. At a minimum, the survey must include the following:

(a) knowledge and application of substantive utility issues; ability to perceive relevant issues;

(b) absence of influence by political considerations;

(c) absence of influence by identities of lawyers;

(d) absence of influence by identities of litigants;

(e) courtesy to all persons appearing before the commission; and

(f) temperament and demeanor in general, preparation for hearings, and attentiveness during hearings;

(6) to submit to the General Assembly, on an annual basis, the review committee's evaluation of the performance of the commission. A proposed draft of the evaluation must be submitted to the commission prior to submission to the General Assembly, and the commission must be given an opportunity to be heard before the review committee prior to the completion of the evaluation and its submission to the General Assembly;

(7) to conduct an annual performance review of the Executive Director of the Office of Regulatory Staff, which must be submitted to the General Assembly. A draft of the executive director's performance review must be submitted to the executive director, and the executive director must be allowed an opportunity to be heard before the review committee before the final draft of the performance review is submitted to the General Assembly;

(8) to submit to the General Assembly, on an annual basis, the review committee's evaluation of the performance of the Office of Regulatory Staff. A proposed draft of the evaluation must be submitted to the Office of Regulatory Staff prior to submission to the General Assembly, and the Office of Regulatory Staff must be given an opportunity to be heard before the review committee prior to the completion of the evaluation and its submission to the General Assembly;

(9) to assist in developing an annual workshop of at least six contact hours concerning ethics and the Administrative Procedures Act for the commissioners and employees of the Public Service Commission and the Executive Director and employees of the Office of Regulatory Staff;

(10) to make reports and recommendations to the General Assembly on matters relating to the powers and duties set forth in this section;

(11) to submit a letter with the annual budget proposals of the Office of Regulatory Staff and the Public Service Commission, indicating the review committee has reviewed and approved the proposals;

(12) to appoint a committee from the general public at large to advise the review committee on any of its powers and duties. Members must not be members of the General Assembly, members or employees of the Public Service Commission, or the Executive Director or employees of the Office of Regulatory Staff;

(13) to undertake such additional studies or evaluations as the review committee considers necessary;

(14) to review candidates for appointment to the South Carolina Public Service Authority Board of Directors as submitted by the Governor to determine whether the candidates meet the qualifications set forth in Section 58-31-20; and

(15) to submit to the General Assembly, on an annual basis, a review of the state energy action plan of the State Energy Office as required by Section 48-52-430."

Time effective

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 13th day of May, 2009.

Approved the 19th day of May, 2009.

No. 20

(R46, S268)

AN ACT TO AMEND CHAPTER 8, TITLE 6, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO BUILDING CODES ENFORCEMENT OFFICERS, SO AS TO ESTABLISH A "SPECIAL INSPECTOR" TO PERFORM BUILDING INSPECTIONS IN ONE OR MORE CONSTRUCTION TRADE DISCIPLINES, AND TO PROVIDE THE LICENSING PROCEDURE TO REQUIRE AUTHORIZATION FOR PERFORMING THESE INSPECTIONS FROM THE SOUTH CAROLINA BUILDING CODES COUNCIL AND THE DEPARTMENT OF LABOR, LICENSING AND REGULATION.

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

Building codes enforcement officers, special inspector

SECTION 1. Chapter 8, Title 6 of the 1976 Code is amended to read:

"CHAPTER 8

Building Codes Enforcement Officers

Section 6-8-10. As used in this chapter:

(1) 'Building codes enforcement officer' means a person employed by a local jurisdiction, who is responsible for administering a building inspection department, enforcement or rendering interpretations of building, residential, plumbing, electrical, mechanical, fuel gas and energy conservation codes, performing building plan reviews, or performing inspections on one or more building systems.

(2) 'Construction trade discipline' means a discipline, other than any activity regulated by Chapter 13, Title 46, related to the construction of a building including, but not limited to, building, electrical, gas, plumbing, mechanical, or energy services.

(3) 'Contract inspector' means a person certified to perform a building inspection, other than a special inspection, in a construction trade discipline within a local jurisdiction on a contract basis.

(4) 'Local jurisdiction' means a municipality or county of this State.

(5) 'Special inspector' means a person certified to perform special inspections in one or more construction trade disciplines pursuant to the International Building Code.

(6) 'Special registration' means a current authorization issued by the South Carolina Building Codes Council for a person who holds a certification by a recognized code organization, approved by the council, in no more than one construction trade discipline.

(7) 'General registration' means a current authorization issued by the South Carolina Building Codes Council for a person certified in multiple construction trade disciplines by a code organization recognized and approved by the council.

Section 6-8-20. (A) The South Carolina Building Codes Council is responsible for the registration of a building codes enforcement officer, contract inspector, and special inspector pursuant to this chapter. The

council or its designated representative may conduct hearings and proceedings required by law or considered necessary by the council. The Department of Labor, Licensing and Regulation shall employ and supervise personnel needed to administer this chapter. The council may promulgate regulations for the proper enforcement of this chapter.

(B) The council shall keep a record of its hearings and proceedings and publish a roster of its registrants. A registrant shall notify the council of a change in required information within ten days of the change.

Section 6-8-30. (A) Certificates of registration issued without examination to building codes enforcement officers employed in codes enforcement by July 2, 2003, remain valid only for the position and locality held at the time of registration and may be renewed.

(B) Upon initial employment by a local jurisdiction, an uncertified individual must be granted a provisional registration without examination which is valid from the date the individual is assigned to perform code enforcement, for the time period authorized by regulation for the requested registration classification. A current or previously registered individual holding all certifications required for the registration classification for which the person was hired, may be granted a provisional registration for a different classification. The provisional registration may not be renewed.

Section 6-8-40. (A) Unless registered pursuant to the requirements of this chapter, a person may not practice as a code enforcement officer, contract inspector, or special inspector in this State, except an architect licensed by the Board of Architectural Examiners of this State or an engineer registered by the Board of Professional Engineers and Land Surveyors of this State may practice as a special inspector without additional registration required by this chapter.

(B) It is unlawful to act as a building codes enforcement officer, contract inspector, or special inspector without having first obtained authorization from the Building Codes Council and the Department of Labor, Licensing and Regulation. A person violating this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days for a first violation of this section. For each subsequent violation, a person is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars.

(C) A separate violation occurs on each day of a violation.

Section 6-8-50. If the council has reason to believe that a person is violating or intends to violate a provision of this chapter, in addition to other remedies, it may order the person to refrain from the conduct. The council may apply to the Administrative Law Court for an injunction restraining the person from the conduct. The court may issue a temporary injunction ex parte not to exceed ten days and upon notice and full hearing may issue other orders in the matter it considers proper. No bond is required of the council by the court as a condition to the issuance of an injunction or order pursuant to this section.

Section 6-8-60. (A) A person seeking registration as required by this chapter shall apply on a form prescribed by the council.

(B) An applicant shall furnish satisfactory proof to the council of valid certification by a recognized code organization or testing agency in the general or special construction trade discipline for which he is employed to perform an inspection. A special registration authorizes the registrant to practice in the named construction discipline only. A general registration authorizes a registrant to practice in all construction trade disciplines for which certification has been obtained. The council or its designated representatives shall review the guidelines employed by the code organization or testing agency in order to determine their continued compatibility with the requirements considered by the council to be consistent with this chapter.

(C) A local jurisdiction may impose additional requirements upon a person employed as a building codes enforcement officer or contract inspector in its jurisdiction.

Section 6-8-70. (A) All registrations, except provisional, expire on July first of each odd-numbered year unless renewed before that date. Renewal of a registration must be based upon a determination by council of the applicant’s participation in approved continuing education. The council may promulgate regulations setting forth the continuing education requirements for a registrant. A person failing to renew registration by the expiration date may not practice until registered in accordance with this chapter and shall qualify in the manner provided for new registrants.

(B) Funding for the certification, training, and continuing education of building code enforcement officers employed by local jurisdictions must be appropriated to the Department of Labor, Licensing and Regulation in the manner provided in Section 38-7-35.

(C) Certification, training, and continuing education of building code enforcement officers providing inspection services to local jurisdictions on a contractual basis do not qualify for funding as provided in subsection (B)."

Savings clause

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.

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 13th day of May, 2009.

Became law without the signature of the Governor -- 5/20/09.

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No. 21

(R47, S639)

AN ACT TO AMEND SECTION 7-7-290, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN GREENWOOD COUNTY, SO AS TO REVISE AND RENAME CERTAIN VOTING PRECINCTS OF GREENWOOD COUNTY AND REDESIGNATE A MAP NUMBER FOR THE MAP ON WHICH LINES OF THESE PRECINCTS ARE DELINEATED AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD.

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

Precinct changes, Greenwood County

SECTION 1. Section 7-7-290 of the 1976 Code, as last amended by Act 22 of 2007, is further amended to read:

"Section 7-7-290. (A) In Greenwood County there are the following voting precincts:
1-Greenwood No. 1
2-Greenwood No. 2
3-Greenwood No. 3
4-Greenwood No. 4
5-Greenwood No. 5
6-Greenwood No. 6
7-Greenwood No. 7
8-Greenwood No. 8
9-Glendale
10-Harris
11-Laco
12-Ninety Six
13-Ninety Six Mill
14-Ware Shoals
15-Hodges
16-Cokesbury
17-Coronaca

18-Greenwood High
19-Georgetown
20-Sandridge
21-Callison
22-Bradley
23-Troy
24-Epworth
25-Verdery
26-New Market
27-Emerald
28-Airport
29-Emerald High
30-Civic Center
31-Riley
32-Shoals Junction
33-Greenwood Mill
34-Stonewood
35-Mimosa Crest
36-Lower Lake
37-Pinecrest
38-Maxwellton Pike
39-New Castle
40-Rutherford Shoals
41-Liberty
42-Biltmore Pines
43-Marshall Oaks
44-Sparrows Grace.

(B) The precinct lines defining the precincts are as shown on the official map P-47-09 on file with the Office of Research and Statistics of the State Budget and Control Board and as shown on copies provided to the Greenwood Board of Voter Registration. The official map may not be changed except by act of the General Assembly.

(C) The Greenwood County Election Commission shall designate the polling places of each precinct."

Time effective

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

Ratified the 13th day of May, 2009.

Approved the 19th day of May, 2009.

No. 22

(R54, H3957)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 48-1-55 SO AS TO PROVIDE THAT ON ANY NAVIGABLE RIVER IN THIS STATE WHERE AN OYSTER FACTORY IS LOCATED, THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL MAY UTILIZE QUALIFIED PERSONNEL OF THE COUNTY OR MUNICIPALITY IN WHOSE JURISDICTION THE FACTORY OPERATES TO ASSIST WITH THE MONITORING OF WATER QUALITY AND OTHER ENVIRONMENTAL STANDARDS THE DEPARTMENT IS REQUIRED TO ENFORCE.

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

Use of local personnel by DHEC

SECTION 1. Chapter 1, Title 48 of the 1976 Code is amended by adding:

"Section 48-1-55. On any navigable river in this State where an oyster factory is located, the Department of Health and Environmental Control may utilize qualified personnel of the county or municipality in whose jurisdiction the factory operates to assist with the monitoring of water quality and other environmental standards the department is required to enforce. The assistance may be provided at the request of the department and upon the consent of the county or municipality concerned."

Time effective

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

Ratified the 13th day of May, 2009.

Approved the 19th day of May, 2009.

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